

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.10**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Operations

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to execute contract amendment No. 3 San Francisco Municipal Transportation Agency Elevator Maintenance Agreement with ThyssenKrupp Elevator Company for an additional amount of \$65,214 for a total contract amount not to exceed \$423,979 to accommodate an unanticipated volume of call-back events and to provide additional funds for anticipated call back events.

**SUMMARY:**

- Authorizing the Executive Director/CEO to execute contract amendment No. 3 to the elevator maintenance agreement with ThyssenKrupp Elevator Company that provides maintenance service for six elevators at Church & Castro Street Stations, four elevators at Forest Hill Station, and two elevators at the William B. Scott Non-Revenue facility.
- The requested contract modification is for the amount of \$65,214 to increase the not to exceed total contract amount from \$358,765 to \$423,979. This increase is to accommodate an unanticipated volume of call-back events and to provide additional funds for call back events.
- Since the requested contract modification is for an amount greater than ten percent of the original contract amount, it is being submitted to the SFMTA Board for approval.

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

1. SFMTAB Resolution
2. Contract Amendment No. 3

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

FINANCE

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO

Rosa Rankin 700 Pennsylvania

\_\_\_\_\_

ASSIGNED MTAB CALENDAR DATE:

\_\_\_\_\_

## **PAGE 2**

### **PURPOSE:**

The purpose of this contract modification is to provide additional funds for the existing elevator maintenance agreement with ThyssenKrupp Elevator Company that provides labor, materials and maintenance service for elevators at the Church Street, Castro Street and Forest Hill MUNI Metro Stations and at the William B Scott Non-Revenue Maintenance Facility. This increase is due to an unanticipated volume of service call-back events that are not covered by the existing contract and to provide additional funds in the amount of \$4,000 for callback events that may occur prior to contract expiration.

### **GOAL:**

The goal of the modification is to provide for the continuance of elevator service for patrons and staff at three locations in the Muni Metro System and at the Non-Revenue Maintenance and Garage Facility in an accessible and safe manner; hence this modification supports the following goals and objectives of the Strategic Plan:

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

Objective No. 1.4 Improve accessibility across transit service

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

Objective No. 2.2 Ensure efficient transit connectivity and span of service.

### **DESCRIPTION:**

In 1978, six U.S. Elevator Company manufactured traction elevators were installed and put into service at the Church Street and Castro Street Stations. U.S. Elevator Company was subsequently acquired by Dover Elevator Company, which was later merged with ThyssenKrupp Elevator Company.

Under Resolution Number 04-130, the SFMTA Board approved the execution of a full service elevator maintenance agreement with ThyssenKrupp Elevator Company for the six elevators located at the Church and Castro Street Stations in an amount not to exceed \$120,000 for three years. The elevator maintenance agreement includes an option to extend the contract for two additional years. The contract term commenced August 1, 2004, with an initial expiration date of July 31, 2007.

Under Resolution Number 06-155, the SFMTA Board authorized the Executive Director/CEO to execute the First Amendment to the Elevator Maintenance Agreement with ThyssenKrupp Elevator Company expanding its scope to include the four elevators at Forest Hill Station, and two elevators at the William B. Scott Non-Revenue Maintenance Facility for a total amount of \$248,765 for the first three years of the contract term.

## PAGE 3

Under Resolution Number 07-104, the SFMTA Board authorized the Executive Director/CEO to execute the Second Amendment to exercise the option to extend the term of the elevator maintenance agreement for two additional years prior to termination on July 31, 2007.

In addition, the Second Amendment reflected an increase in the total contract amount of \$110,000 to increase the contract amount from \$248,765 to \$358,765.

SFMTA staff has determined that the existing contract is under funded due to higher than anticipated volume of call-back events which are not covered under the terms of the agreement as follows:

### Section 2. Exclusions:

The following work is excluded from this Agreement, and is not considered the responsibility of the Contractor.

- A. Power supply feeders, switches, and fuses.
- B. Products of combustion detectors for fire recall.
- C. Car enclosure finishes and lighting lamps, hoistway enclosure door panels, frames and sills.
- D. Damage caused by vandalism, negligence or misuse of the equipment by persons other than the Contractor, his representatives, or employees, excluding wear and tear.
  - 1. For the purposes of the Agreement, “vandalism” is defined as the willful abuse or misuse of the VTE (Vertical Transportation Equipment) with the explicit intent to injure or destroy said equipment.
  - 2. For the purposes of this Agreement, “negligence” is defined as the failure to exercise the degree of care that a normally prudent person, who possesses no specialized training, knowledge, or experience in elevator operation, care or repair, would exercise.
  - 3. For the purposes of this Agreement, “misuse” is defined as use of the VTE equipment for some purpose other than that which a normally reasonable person would assume it was intended.
- E. New attachments as may be recommended or directed by insurance companies, federal, state, municipal, or other authorities having jurisdiction over some aspect of the elevator operation.

Section 15. Term and Conditions:

- A. Hours of Work: All normal work under this Agreement is to be performed during regular hour of regular working days of the elevator service and repair trade. If overtime work is required, the City will pay only the difference between normal and overtime labor rates at the Contractor's regular billing rate. Removal of the elevators from service shall be coordinated with, and approved by the San Francisco Municipal Transportation Agency representative at the VTE location.

When the annualized contract cost is determined, an additional seven to ten percent is requested to provide for repair work not covered under the Agreement and overtime work. Call back charges were occasioned by:

- Vandalism/misuse of equipment
- Operational failures during non-regular work hours
- Passenger entrapments during non-regular work hours
- Repair service for work not covered under the Agreement
- Repair service not covered under the Agreement but specified by CALOSHA for permit issuance

From June 2007 to February 2009, staff recorded 31 chargeable call-back events totaling \$61,214.00:

Description	Number of Events
Church/Castro	
sensor vandalized	3
operation malfunction	11
replace sill	3
trapped patron	1
door vandalized	2
install solid state starters	1
Forest Hill	
replace ADA phone	1
operating malfunction	2
replace sill	4
Trapped patrons	3
Scott Facility Garage	
trapped passengers	1
operating malfunction	1

An additional increase of \$4,000 is requested to provide funds solely for callback charges that may occur prior to the contract's expiration.

**ALTERNATIVES CONSIDERED:**

No alternatives were considered.

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**FUNDING IMPACT:**

Operating funds for the maintenance of elevators and escalators are budgeted in the operating budget.

**OTHER APPROVAL RECEIVED OR STILL PENDING:**

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

**RECOMMENDATION:**

Authorizing the Executive Director/CEO to execute the Third Amendment to the Elevator Maintenance Agreement with ThyssenKrupp Elevator Company for the full service maintenance of the six elevators located at the Church & Castro Streets, four elevators at the Forest Hill Station, and two elevators at the William B. Scott Non-Revenue Maintenance Facility, and to modify the existing contract in the amount of \$65,214 to increase the not to exceed total contract amount from \$358,765 to \$423,979.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, Under Resolution Number 04-130, dated September 4, 2004, the MTA Board approved the execution of a full service elevator maintenance agreement with ThyssenKrupp Elevator Company for the six elevators located at the Church and Castro Street Stations in an amount not to exceed \$120,000 for three years; and

WHEREAS, Under Resolution Number 06-155, dated December 5, 2006, the SFMTA Board approved the execution of the First Amendment to a full service elevator maintenance agreement with ThyssenKrupp Elevator Company for maintenance and service of all twelve elevators located at Church & Castro Streets Stations, Forest Hill Station, and the William B. Scott Non-Revenue Maintenance Facility; and

WHEREAS, Under Resolution Number 07-104 dated June 29, 2007, the SFMTA Board approved the execution of the Second Amendment to consolidate all of its elevator maintenance agreements with ThyssenKrupp Elevator Company into one agreement and increase the contract amount by \$110,000.00 for a not to exceed contract amount total of \$358,765; and

WHEREAS, Charges for callback repairs including non-routine repair service and repair service during non-regular work hours in the amount of \$61,214 from June, 2007 through February, 2009 are not covered under the Second Amendment; and

WHEREAS, An additional increase of \$4,000 is requested to provide funds for callback charges that may occur prior to the contract expiration; and

WHEREAS, The proposed Third Amendment contract modification of an additional \$65,214 will increase the not to exceed total contract amount from \$358,765 to \$423,979; and

WHEREAS, Funds are available for this work in the Operating Budget; now, therefore be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute the Third Amendment to the Elevator Maintenance Agreement with ThyssenKrupp Elevator Company, to enter into a contract modification in the amount of \$65,214 to increase the not to exceed total contract amount from \$358,765 to \$423,979 to pay for charges for callback repairs in the amount of \$61,214 and to provide additional funds for future callback events prior to the contract's expiration.

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

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

**CITY AND COUNTY OF SAN FRANCISCO**  
MUNICIPAL TRANSPORTATION AGENCY  
401 S. VAN NESS AVENUE, 7<sup>TH</sup> FLOOR  
SAN FRANCISCO, CALIFORNIA 94103

**THIRD AMENDMENT**

THIS AMENDMENT (this “Amendment”) is made as of \_\_\_\_\_, 2009 in San Francisco, California, by and between ThyssenKrupp Elevator Company (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (“SFMTA”).

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the not to exceed amount;

NOW, THEREFORE, Contractor and the City agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

(a) **Agreement.** The term “Agreement” shall mean the Agreement dated August 1, 2004 between Contractor and City.

(b) **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

(a) **Section 5.** Section 5 of the Agreement currently reads as follows:

**5. Compensation**

Compensation shall be made in monthly payments on or before the 30<sup>th</sup> day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Transportation, in his or her sole discretion, concludes has been performed as of the first day of the immediately preceding month. In no event shall the amount of this Agreement exceed \$358,765.00 for five years.

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

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

The City agrees to render payment under this Agreement for any services provided during the current fiscal year and duly invoiced for by Contractor prior to signing of this Agreement.

Such section is hereby amended in its entirety to read as follows:

## **5. Compensation**

Compensation shall be made in monthly payments on or before the 30<sup>th</sup> day of each month for work, as set forth in Section 4 of this Agreement, that the Director of Transportation, in his or her sole discretion, concludes has been performed as of the first day of the immediately preceding month. In no event shall the amount of this Agreement exceed \$423,979.00 for five years.

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

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

The City agrees to render payment under this Agreement for any services provided during the current fiscal year and duly invoiced for by Contractor prior to signing of this Agreement.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

**4. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.



IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

CONTRACTOR

City and County of San Francisco: By and through its Municipal Transportation Agency

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

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

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.

Approved as to Form:

DENNIS J. HERRERA  
City Attorney

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

San Francisco Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Address

Attest:

\_\_\_\_\_  
City

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

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.11**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Parking and Traffic

**BRIEF DESCRIPTION:** Authorizing the Executive Director/CEO of the San Francisco Municipal Transportation Agency (SFMTA) to execute Contract Amendment No. 4 to SFgo Initial Phase Agreement for Professional Services and Software License with Telvent Farradyne Inc. (the "Agreement") to extend the original contract deadline to March 26, 2010.

**SUMMARY:**

- The SFgo Program is a citywide transportation management system that will gather real-time information on traffic flow and congestion, process and analyze this information, respond to changes in roadway conditions, and disseminate information to the public.
- On February 28, 2005, by Resolution No. 05-034, the SFMTA Board approved award of the Agreement to PB Farradyne, Inc. for the implementation of the SFgo Project ("SFgo"),.
- On August 16, 2005, by Resolution No. 05-131, the SFMTA Board approved Contract Amendment No. 1 to add Center-to-Center integration with Regional Transportation Management Centers.
- On February 5, 2008, by Resolution No. 08-019, the SFMTA Board approved Contract Amendment No. 2 to reassign all rights, duties, and obligations from PB Farradyne, Inc. to Telvent Farradyne Inc..
- On April 1, 2008, by Resolution No. 08-059, the SFMTA Board approved Contract Amendment No. 3 to add various software enhancements to SFgo's central system software.
- Contract Amendments No. 1 and No. 3 include detailed deliverables and payment schedules, but do not explicitly modify the original contract duration or expiration date.
- The SFMTA requests authorization to execute Contract Amendment No.4 for a no-cost time extension to the Agreement, extending the term of the Agreement to March 26, 2010, in order to provide the additional time needed to complete the revised scopes of work under Contract Amendments No.1 and No. 3. Additional time is required due to delays to upgrades of Caltrans traffic controls systems.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract Amendment No. 4

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

SHOULD BE RETURNED TO \_\_\_\_\_

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

## **PAGE 2.**

### **PURPOSE**

SFMTA staff requests the SFMTA Board of Directors to authorize the SFMTA Executive Director/CEO to execute Contract Amendment No. 4 to SFgo Initial Phase Agreement for Professional Services and Software License with Telvent Farradyne Inc. (the "Agreement"). The contract deadline for the Agreement was February 28, 2006; this contract amendment would extend this original contract deadline to March 26, 2010 to allow additional time to complete work defined in the Agreement and subsequent contract amendments.

### **GOAL**

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

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

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

Objective 2.3 Fulfill bicycle and pedestrian network connectivity.

Objective 2.4 Reduce congestion through major corridors.

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

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

Objective 6.1 Information and technology leadership: identify, develop and deliver the new and enhanced systems and technologies required to support SFMTA's 2012 goals.

### **DESCRIPTION**

The SFgo Program is a citywide transportation management system that allows the SFMTA to control traffic signals from remote command centers, respond to traffic conditions by routing traffic away from congested areas, and assist in maintaining open corridors for emergency responders and public transit. The system also helps the SFMTA to gather real-time information on traffic flow and levels of congestion, process and analyze this information, respond to changes in roadway conditions, and disseminate up-to-the-minute information to travelers.

On February 28, 2005, by Resolution No. 05-034, the SFMTA Board approved award of the Agreement to PB Farradyne, Inc. (the "Contractor") for the purchase of proprietary software, hardware, and related services to implement the SFgo Intelligent Transportation System Project ("SFgo"), for an amount not to exceed \$699,961. The original contract's duration was 365 days, expiring on February 28, 2006. All work required as part of this original contract has been completed.

## **PAGE 3.**

On August 16, 2005, by Resolution No. 05-131, the SFMTA Board approved Contract Amendment No. 1 to expand the scope of work to include Center-to-Center integration with Regional Transportation Management Centers, for an amount not to exceed \$349,000, for a total contract amount of \$1,048,961. This contract amendment does not include an ending date, but does specify a final payment due on April 5, 2006, contingent upon completion of the tasks and deliverables outlined in the revised scope of work. This project is presently on hold due to delays caused by project partners, including Caltrans, which still needs to complete necessary upgrades to their Transportation Management Center (TMC). Caltrans is expecting to complete these upgrades shortly, and the Contractor expects to complete their portion of the Center-to-Center integration work by March 26, 2010.

On February 5, 2008, by Resolution No. 08-019, the SFMTA Board approved Contract Amendment No. 2 to assign any and all rights, duties, and obligations of PB Farradyne, Inc. under the original Agreement to Telvent Farradyne Inc. This amendment was executed solely to accommodate a change in the contractor's ownership, and does not modify the scope of work.

On April 1, 2008, by Resolution No. 08-059, the SFMTA Board approved Contract Amendment No. 3 to further expand the scope of work by having Telvent Farradyne Inc. develop and install various software enhancements to SFgo's central system software, for an amount not to exceed \$80,877, for a total contract amount of \$1,129,838. This work is essentially complete. No ending date is specified in this amendment, but final payment was due on March 25, 2009, contingent upon completion of the tasks and deliverables outlined in the revised scope of work.

Contract Amendments No. 1 and No. 3 include detailed deliverables and payment schedules, and identify specific dates for final payments to the Contractor, but do not explicitly modify the original contract duration or expiration date. This proposed contract amendment is for a no-cost time extension to the original Agreement to accommodate the expanded scopes of work in these two contract amendments. Additional time to complete the work is required because of delays in upgrades to Caltrans' TMC.

The City Attorney has reviewed this calendar item.

## **ALTERNATIVES CONSIDERED**

The City Attorney's Office advised SFMTA staff that the original contract and subsequent amendments are still valid, since new performance and payment dates were clearly defined, thereby implicitly modifying the contract duration and expiration date. The SFMTA can therefore simply complete the project, and process payments to the Contractor according to the terms defined in the contract documents.

Alternatively, the SFMTA can execute a contract amendment through which the term of the Agreement is formally modified. The City Attorney's Office noted that this would be preferable, but is not necessary. This alternative would clarify the term of the contract, and help to ensure that the contract work is completed as intended, as well as facilitate the accounting process and handling of payments to the Contractor. SFMTA staff recommends this second option.

## **FUNDING IMPACT**

There are no funding impacts as this will be a no-cost contract amendment.

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

The SFMTA will issue all pending and remaining payments to the Contractor according to the terms in the contract documents, after the SFMTA Board's approval of this calendar item.

## **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to execute Contract Amendment No.4 for a no-cost time extension to the SFgo Initial Phase Agreement for Professional Services and Software License with Telvent Farradyne Inc., extending the term of the Agreement to March 26, 2010.

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

WHEREAS, The SFMTA Board approved Resolution No. 05-034 on February 28, 2005, awarding the SFgo Initial Phase Agreement for Professional Services and Software License (the "Agreement") to PB Farradyne, Inc. (the "Contractor"), for the purchase of proprietary software, hardware, and related services to implement the SFgo Intelligent Transportation System Project, for an amount not to exceed \$699,961, with a contract duration of 365 days, expiring on February 28, 2006; and,

WHEREAS, The SFMTA Board approved Contract Amendment No. 1 to the Agreement on August 16, 2005, to expand the scope of work to include Center-to-Center integration with Regional Transportation Management Centers, for an amount not to exceed \$349,000, for a total contract amount of \$1,048,961; and,

WHEREAS, The SFMTA Board approved Contract Amendment No. 2 to the Agreement on February 5, 2008, to assign any and all rights, duties, and obligations of PB Farradyne, Inc. under the original Agreement to Telvent Farradyne Inc. to accommodate a change in the contractor's ownership; and,

WHEREAS, The SFMTA Board approved Contract Amendment No. 3 to the Agreement on April 1, 2008, to further expand the scope of work by having Telvent Farradyne Inc. develop and install various software enhancements to SFgo's central system software, for an amount not to exceed \$80,877, for a total contract amount of \$1,129,838; and,

WHEREAS, Contract Amendments No. 1 and No. 3 include detailed deliverables and payment schedules, and identify specific dates for final payments to the Contractor, but do not explicitly modify the original contract duration or expiration date; and,

WHEREAS, Extending the term of the original Agreement is required due to delays to Caltrans' upgrades to its traffic control systems, and additional time will help to ensure that the Contractor will complete all work under the contract documents, and allow the SFMTA to process all remaining payments to the Contractor, upon completion of all work defined under the SFgo project; now therefore, be it

RESOLVED, The SFMTA Board authorizes the Executive Director/CEO to execute Contract Amendment No.4 to the SFgo Initial Phase Agreement for Professional Services and Software License with Telvent Farradyne Inc., to extend the term of the Agreement to March 26, 2010 at no cost to the City.

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

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

**Fourth Amendment to the  
Agreement for Professional Services and Software License  
between the  
City and County of San Francisco  
and  
Telvent Farradyne Inc.**

**Revision to Contract Duration**

THIS FOURTH AMENDMENT, dated for convenience as July 10, 2009, to the Agreement for Professional Services and Software License, Contract No. ITS 99-5934(093) dated February 28, 2005, is made by and between **Telvent Farradyne Inc.**, 999 Third Avenue, Suite 2200, Seattle, WA 98104 (“Contractor”), and the **City and County of San Francisco**, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency, Department of Parking and Traffic.

Contractor and the City agree as follows:

**1. Modifications to the Agreement.** The Agreement is hereby modified as follows:

(a) **Section 2.2.** Section 2.2 Term of the Agreement is hereby amended in its entirety to read as follows:

Subject to Section 2.1, the term of this Agreement shall be from February 28, 2005 to March 26, 2010. This extension of the term of the Agreement is for time only. The City shall bear no additional costs resulting or arising from this extension of the term of the Agreement.

**2. Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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

**CITY**

**CONTRACTOR**

Recommended by:

\_\_\_\_\_  
Cathal Hennessy  
Acting SFgo Program Manager

\_\_\_\_\_  
Bond M. Yee  
Director of Parking and Traffic

Approved by:

\_\_\_\_\_  
Nathaniel P. Ford  
Executive Director/CEO  
Municipal Transportation Agency  
City and County of San Francisco

\_\_\_\_\_  
Les Jacobson  
Vice President  
Telvent Farradyne Inc.  
999 Third Avenue, Suite 2200  
Seattle, WA 98104  
Tel. 206-382-5290  
Vendor No. 74579

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
Robert K. Stone  
Deputy City Attorney

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

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

Attest:

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



THIS PRINT COVERS CALENDAR ITEM NO.: 10.12

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Transportation Planning and Development

**BRIEF DESCRIPTION:**

Requesting approval of the plans and specifications, and authorizing bid call for San Francisco Municipal Transportation Agency Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation.

**SUMMARY:**

- Utility relocation is necessary to accommodate the future Central Subway Moscone Station and Portal structure.
- Advance construction contracts involving utility relocation is a standard industry practice that assists in the on-time delivery of major programs.
- Funding for consultant services under this Contract will be furnished from federal, state and local sources.

**ENCLOSURES:**

1. SFMTA Board of Directors Resolution
2. Project Budget & Financial Plan

**APPROVALS:**

**DATE:**

DEPUTY OF DIVISION

PREPARING ITEM:

\_\_\_\_\_

\_\_\_\_\_

FINANCE (IF APPLICABLE):

\_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO:

\_\_\_\_\_

\_\_\_\_\_

SECRETARY:

\_\_\_\_\_

\_\_\_\_\_

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

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

## **PAGE 2.**

### **PURPOSE**

SFMTA staff requests the SFMTA Board of Directors to approve the plans and specifications and authorize the Executive Director to advertise San Francisco Municipal Transportation Agency Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation.

Contract No. 1250 will relocate the majority of underground utilities along the Central Subway alignment and will provide additional foundation support for several adjacent private structures in preparation for the construction of the Central Subway Project Moscone Station and the tunnel portal.

### **GOAL**

The Central Subway Project, supported by Contract No. 1250, 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 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 in eastern San Francisco for the first time in 50 years.

The Central Subway Project, Phase 2 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 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 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 (56,000 riders are projected for 2016) and future development (78,000 riders are projected for 2030).

The Third Street LRT 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 LRT 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 congested 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 service 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, and within the Central Subway portion of the alignment, 68 percent of households are transit-dependent.

The Central Subway Project is the second phase of the Third Street Light Rail Project. Both phases of the project were initially evaluated under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), in an Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) that was certified in 1998. On January 19, 1999, the Public Transportation Commission approved

**PAGE 4.**

Resolution No. 99-009, which adopted the environmental findings for the Project, including mitigation measures set forth in the 1998 FEIS/FEIR and Mitigation Monitoring Report. The Federal Transit Administration (FTA) issued a Record of Decision on the 1998 FEIS/FEIR for the IOS on March 16, 1999. Revenue operation of Phase 1 of the Third Street Light Rail, extending from Bayshore Boulevard to Fourth and King Streets, began in April 2007.

The SFMTA Board of Directors adopted Resolution No. 02-144 on November 19, 2002, which authorized the Director of Transportation to execute Contract No. CS-138 with the joint venture of Parsons Brinckerhoff Quade & Douglas and PGH Wong for professional engineering and other support services for the Central Subway segment of the Project (“PB/Wong Agreement”), in an amount not to exceed \$29,800,000. The Board of Supervisors adopted Resolution No. 03-58 on January 27, 2003, which authorized the Director of Transportation to execute the PB/Wong Agreement. The PB/Wong Agreement included services to prepare a SEIS/SEIR for the Project.

On June 7, 2005, the SFMTA Board of Directors adopted Resolution No. 05-087, which selected the Fourth/Stockton option as the Locally Preferred Alternative (LPA) to be carried forward in the SEIS/SEIR. The intent of the SEIS/SEIR was to update environmental conditions in the Central Subway study area and to evaluate alternatives to the project, including an enhancement to the alignment discussed in the EIS/EIR (Alternative 2) and the Fourth/Stockton Alignment, LPA (Alternative 3A). A Notice of Preparation was issued in June 2005 and a public scoping meeting was held.

In response to comments received during the public scoping process and preliminary cost estimates prepared for the Project, SFMTA made refinements to the Fourth/Stockton Alignment and identified a Fourth/Stockton, Modified LPA (Alternative 3B) for evaluation in the SEIS/SEIR.

The Draft Supplemental EIS/EIR was issued on October 17, 2007, for a 55-day public review period. During the public comment period, a series of three publicized community meetings were held in the Chinatown, Union Square and South of Market areas to provide information to the public about the Draft SEIS/SEIR released for public review. These informational meetings were well attended and the public was provided with opportunities to view renderings and talk with project staff about the Project and the environmental process. The San Francisco Planning Department conducted a public hearing on the Supplemental EIS/EIR on November 15, 2007.

The public comment period was closed on December 10, 2007. SFMTA received 39 comment letters, and 23 people, representing 20 organizations, provided comments at the Planning Commission public hearing held on November 15, 2007. At the public hearing, 19 speakers expressed support for the Project and one opposed the Project. Of those responding during the public comment period, five (including the Recreation and Parks Department) expressed support specifically for Alternative 3B.

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On February 19, 2008, the SFMTA Board of Directors adopted Resolution No. 08-029, selecting the Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street, as the Locally Preferred Alternative, and authorizing the Executive Director/CEO to carry forward this selection in the Final SEIS/SEIR.

The San Francisco Planning Commission adopted Motion No. M-17668 on August 7, 2008, certifying completion of the Central Subway Final SEIR. The Planning Commission certified the SEIR as accurate, adequate and objective, reflecting the independent judgment of the Planning Commission.

On August 19, 2008, the SFMTA Board of Directors, adopted Resolution No. 08-150, adopting Central Subway Project Alternative 3B, Fourth/Stockton Alignment, the CEQA Findings and Statement of Overriding Considerations for the SEIS/SEIR, and the Mitigation Monitoring and Reporting Plan.

Environmental appeals were filed and heard by the Board of Supervisors on September 16, 2008. The Board of Supervisors voted unanimously to uphold the Environmental findings. No legal challenges under CEQA were filed, and the time to file such challenges has expired. The time to file a legal challenge under NEPA expired on July 28, 2009.

The notice for the Final SEIR appeared in the Federal Register on October 3, 2008 and the 30-day waiting period has elapsed. The FTA issued the Record of Decision announcing the completion of the Central Subway environmental process on November 16, 2008.

The Federal Transit Administration (FTA), the FTA Project Oversight Consultant (PMOC) and the SFMTA have jointly participated in four risk assessment workshops that resulted in the conformation of the Project schedule and budget, and provided for additional schedule and budget contingency.

**Current Status:**

The Central Subway design consists of a short portion of in-street surface light rail in the southern portion of the system before transitioning into subway operation for most of the alignment. Twin bore tunnels are proposed for the subway with three subway stations serving the Moscone/Yerba Buena, Union Square/Market Street, and Chinatown areas. The Union Square/Market Street Station will interconnect with the existing BART/Muni Powell Street Station. A deep tunneling approach using tunnel boring machines (TBMs) is proposed to reduce surface disruption during construction, to create a more direct alignment, and to shorten the construction period. The Central Subway tunnels will pass under the existing BART/Muni Market Street subway tunnels with the rail over 100 feet below the ground surface. Most of the alignment will be located under existing street right-of-way with limited required underground easements. The stations will have center-platforms with passenger end-loading and are designed to accommodate high-floor

## **PAGE 6.**

two-car trains. Whenever feasible, off-street properties have been identified for the primary station access with transit oriented development opportunities at the Moscone/Yerba Buena and Chinatown Stations.

Construction methods consist of TBM construction of the running tunnels, which will pass through differing geological formations, including bay mud, alluvium, Colma formation, and Franciscan bedrock. Subway station construction methods will vary. The Moscone/Yerba Buena Station will be constructed using traditional top-down cut-and-cover construction. The Union Square/Market Street Station is located in a very constricted area and will most likely be constructed using a combination of cut and cover and mined sequential excavation methods. Chinatown Station, also in a very constricted area, will be constructed using mined sequential excavation.

The project has completed the preliminary engineering work. Seven major construction contracts are scheduled to implement the Project. The Project construction is scheduled to begin in 2010 and be completed in 2017.

### **Purpose and Scope of Contract:**

SFMTA Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation is the first of several contracts for the construction of the Central Subway Project. Work under the contract will relocate the majority of existing utilities and will provide additional foundation support for several private structures adjacent to the proposed Moscone Station and the tunnel portal on Fourth Street between Bryant and Harrison Streets.

Both the Moscone Station and the tunnel portal will be constructed under the Fourth Street roadway using a top-down construction method that requires a large opening in the street. Within the street, public and private utilities are imbedded under the roadway and sidewalks. The relocation of the utilities will permit access to construct the station and portal. Public utilities include sewer, water distribution, auxiliary water supply, traffic signals, street lighting, electric, gas, telephone, and television cable. Private building utility include a water line. The majority of utilities will be relocated outside of the planned footprints of the station and tunnel portal. Relocation of remaining utilities will be accomplished under subsequent contracts to be issued to construct the Moscone Station and the Tunnel.

The contract will include relocation and modification of water lines, including a private building water line at 475 Fourth Street adjacent to the Portal. Access to the building is required to perform the work. The contract also includes construction of supports (underpinning) designed to protect and limit settlement of buildings at 801-805 Howard Street and 401 Fourth Street, which are adjacent to the Moscone Station and tunnel portal construction sites. The underpinning will be performed from the exterior of the affected buildings, but the contractor will require access to the buildings.

The estimated cost for the contract is \$9,300,000.

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**ALTERNATIVES CONSIDERED**

The Central Subway Project may have alternate locations to site the Portal and Station. However, at each considered location within the urban setting, utility relocations would be required for the project proceed.

**FUNDING IMPACT**

The \$1.58 billion FTA New Starts Project includes this contract, is to be funded by a combination of federal, state and local monies. The Project Budget & Financial Plan is set forth in Enclosure 2.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The Contract Compliance Office has established a 20 percent SBE goal for this contract and has approved this calendar item.

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

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors approve the plans and specifications and authorize the Executive Director to advertise bid call for San Francisco Municipal Transportation Agency Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation.

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 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 San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No 02-144 on November 19, 2002, which authorized the Director of Transportation to execute Contract No. CS-138 with Parsons Brinkerhoff Quade and Douglas and PGH Wong (PB/Wong) for Professional Engineering and other support services for the Central Subway; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No 05-087 on June 7, 2005, which selected the Fourth Street alignment as the Locally Preferred Alternative (LPA) for the Central Subway Project, which alternative will be carried through the Supplemental Environmental Impact Statement/Environmental Impact Report (SEIS/SEIR) and the federal New Starts Process; and,

WHEREAS, Alternative 3B, Fourth/Stockton Alignment, was developed as a modified LPA in response to comments received through the public scoping process for the SEIS/SEIR initiated in June 2005 and also as a result of preliminary cost estimates identifying the need for Project cost savings; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No 08-029 on February 19, 2008, selecting Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street, as the modified LPA; and,

WHEREAS, The City of San Francisco Planning Commission adopted Motion No. M-17668 on August 7, 2008, certifying completion of the Central Subway Final Supplemental Environmental Impact Report; and,

WHEREAS, On August 19, 2008, the SFMTA Board of Directors, approved Resolution No. 08-150, adopting Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street and a construction variant to extend the tunnel another 2,000 feet north of Jackson Street, the CEQA Findings and Statement of Overriding Considerations for the SEIS/SEIR, and the Mitigation Monitoring and Reporting Plan; and,



WHEREAS, On September 16, 2008, the San Francisco Board of Supervisors conducted a hearing and rejected all appeals to the Final SEIS/SEIR; and,

WHEREAS, On November 16, 2008, the Federal Transit Administration issued a Record of Decision for the Central Subway Project; and,

WHEREAS, On December 2, 2008, the SFMTA Board of Directors adopted Resolution No. 08-201, which authorized the Executive Director/CEO to execute Contract CS-149 with Central Subway Partnership for Professional Program Management and Construction Management (PM/CM) services; and,

WHEREAS, SFMTA Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation is a construction contract to relocate utilities and provide additional foundation support for several adjacent private structures adjacent to the proposed Moscone Station and Tunnel Portal of the Central Subway Project; and,

WHEREAS, The work to be preformed includes relocating water distribution, auxiliary water supply, traffic signals, street lighting, electric, gas, telephone, and television cable; and additional foundation support for adjacent private structures; and,

WHEREAS, The bid documents have been completed; and,

WHEREAS, The funding for work under Contract No. 1250 is to be furnished from federal, state and local sources; and,

WHEREAS, The Contract Compliance Office has established a 20 percent SBE goal for this contract; and,

WHEREAS, Contract No. 1250 will assist SFMTA in meeting the objectives of Goal No. 1 of the Strategic Plan -- to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; Goal No. 2 -- to improve transit reliability; Goal No. 3 --to improve economic vitality through improved regional transportation; and Goal No. 4 -- to ensure the efficient and effective use of resources; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves the plans and specifications and authorizes the Executive Director/CEO to advertise San Francisco Municipal Transportation Agency Contract No. 1250, Third Street Light Rail Program, Phase 2 Central Subway – Moscone Station and Portal Utilities Relocation.

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

ENCLOSURE 2  
 THIRD STREET LIGHT RAIL PROJECT  
 CENTRAL SUBWAY

San Francisco Municipal Railway Contract No. 1250

<b>Cost</b>	<b>(\$Millions)</b>
Conceptual and Preliminary Engineering	43.35
Program Management & Construction Management	158.60
Final Design	42.00
Construction Contracts	1014.69
Vehicles	29.09
Contingency	172.47
<b>Total Central Subway Cost</b>	<b>\$ 1,578.30</b>

<b>Funding</b>	<b>(\$Millions)</b>
Federal 5309 New Starts <sup>1</sup>	942.20
State RTIP Grant	88.00
CMAQ	6.23
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
Option Local and Regional Sources	163.89
<b>Total Central Subway Funding</b>	<b>\$ 1,578.30</b>

<sup>1.</sup> New Starts funding to be determined after FTA issues approval to enter Final Design

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.13**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Parking and Traffic

**BRIEF DESCRIPTION:** Requesting the Municipal Transportation Agency Board of Directors to authorize the Executive Director/CEO to issue a Request for Proposals (RFP) for Contract No. SFMTA 2008/09-53, Automated Red Light Photo Enforcement Program, and negotiate a contract for administration, maintenance, and expansion of the Red Light Camera Program with the selected proposer(s) for a term not to exceed five years.

**SUMMARY:**

- The City entered into the current agreement with ACS State and Local Solutions in 2005 for a base term of three years which expired on December 30, 2008, with two one-year options to renew. The City exercised a one-year renewal option to extend the term until December 30, 2009. One one-year extension remains which could extend the contract until December 30, 2010.
- The RFP includes a pilot project requiring proposers to install their systems free of charge at test locations for evaluation of different technologies under local operating conditions.
- The new contract shall consist of a three year contract term with two one-year renewal options for a maximum of five years.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Request for Proposals

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

FINANCE \_\_\_\_\_

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

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION TO BE RETURNED TO Tabin Chung

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

## **PAGE 2.**

### **PURPOSE**

The purpose of this Request for Proposals (RFP) is to allow for the automated enforcement of red lights to continue uninterrupted upon the expiration of the current contract. This RFP will establish the lowest and most responsible bidder subject to the City's competitive bidding rules and guidelines.

### **GOAL**

The Red Light Camera Program fulfills the following Strategic Goal:

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

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

### **DESCRIPTION**

#### **Background:**

The City and County of San Francisco implemented one of the first Red Light Photo Enforcement programs in the nation. The program automated the issuance of citations to motorists who violate red lights at enforced intersections saving valuable law enforcement resources and dramatically increased traffic and pedestrian safety throughout the City. The program has been very successful with over 120,000 citations issued since the program's inception in 1998.

The current contract with ACS commenced on December 30, 2005 and expired on December 30, 2008. The contract term is now in the first of two possible one year extensions which will expire on December 30, 2009. One extension remains which could extend the contract to December 30, 2010 at the option of the City.

The contract has been amended four times, as follows:

- The first amendment was executed under the authority of the Executive Director on December 1, 2007, and added five wet-film cameras to the City's existing camera pool to enable automated enforcement of 32 intersections at any given time.
- The second amendment was authorized by the SFMTA Board on December 2, 2008, and extended the Agreement through January 31, 2009, under the existing terms.
- The third amendment was authorized by the SFMTA Board on January 6, 2009 and extended the Agreement through December 30, 2009, under the existing terms.
- The fourth amendment was executed under the authority of the Executive Director on May 1, 2009 and established the terms for an equipment lease option supplying the City with new system equipment for expansion of the existing system.

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## **RFP – SCOPE OF WORK**

This RFP consists of two components: (1) Existing Enforcement System and (2) Expansion Enforcement System. Each proposer may submit a separate bid for each component.

Firms must demonstrate their ability to provide the best overall program services in the following areas: administration and maintenance of the existing enforcement system, design/construction/administration of the expansion enforcement system, or for the entire system including both the existing enforcement system and the expansion enforcement system. Consultants may submit proposals for each option. Up to two firms may be awarded a contract.

It is the goal of this RFP to minimize any disruption to the Program's enforcement continuity while transitioning between contracts.

In June, staff released a draft of the RFP for industry review as a Request for Information (RFI). Eight firms requested copies of the RFI, the following three submitted a formal response, American Traffic Solutions (ATS), Redflex, and ACS.

Staff reviewed the submissions with Contract Compliance. There were no major changes to the draft RFP as a result of the RFI.

## **ALTERNATIVES CONSIDERED**

Issuing this RFP and establishing a new contract is the only viable alternative to preserving the continuity of the existing enforcement program. The current contract expires December 30, 2009. While there is one one-year extension remaining, there is no agreement in place to continue automated red light enforcement beyond the expiration of the current contract.

The Police Department would need to deploy additional officers to enforce red light violations if the Automated Red Light Photo Enforcement Program ceases to operate.

## **FUNDING IMPACT**

Since its inception in 1996, the Red Light Camera Program has been a very successful, self-funded program. Funding for this program is appropriated from year to year with any surplus balance carried over to the next year. The program has never incurred a deficit.

Funds required for the operation, maintenance, and construction of new enforced intersections are self-generated through the citations issued by the program so there is no financial impact.

The program operates on an annual budget of \$1.5M per year. Out of this, a fixed monthly fee of \$91,486 (\$1.1M per year) is paid for administrative support under the current contract.

**PAGE 4.**

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The Contract Compliance office has established a 15% Local Business Enterprise (LBE) subcontracting goal for taking over the existing system, a 20% LBE subcontracting goal for replacing the existing system, and a 20% LBE subcontracting goal for system expansion.

The Risk Manager has established a \$1,000,000 performance bond requirement for this contract. In addition, proposers must also demonstrate an average annual positive net worth of at least \$2.5 million over the past three years, and submit reviewed financial statements for the past three years as confirmation of their financial stability.

The City Attorney has reviewed this report.

Authorization from the SFMTA Board and the Civil Service Commission will be sought to execute and award the negotiated contract resulting from this RFP.

**RECOMMENDATION**

The SFMTA recommends that the Municipal Transportation Agency Board of Directors authorize the Executive Director/CEO to issue a Request for Proposals (RFP) for Contract No. SFMTA 2008/09-53, Automated Red Light Photo Enforcement Program, and negotiate a contract for administration, maintenance, and expansion of the Red Light Camera Program with the selected proposer(s) for a term not to exceed five years.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, Collisions caused by red light running are among the most severe types of automobile accidents; and,

WHEREAS, The SFMTA's Division of Parking and Traffic began the Red Light Photo Enforcement Program in collaboration with the San Francisco Police Department in 1996 to reduce collisions, property damage, injuries, and deaths caused by red light running violations and has issued more than 120,000 citations to date; and,

WHEREAS, The current contract with ACS State and Local Solutions expires December 30, 2009; and,

WHEREAS, There is one remaining one-year contract extension which could extend the contract to December 30, 2010, at the option of the City; and,

WHEREAS, There is no agreement in place to continue automated red light enforcement beyond December 30, 2010; and,

WHEREAS, The draft Request For Proposals (RFP) has been circulated for industry review and responses were received from the American Traffic Solutions (ATS), Redflex, and ACS State and Local Solutions resulting in no major revisions to the RFP; and,

WHEREAS, The RFP includes a pilot project requiring proposers to install their systems free of charge at test locations for evaluation of different technologies under local operating conditions; and,

WHEREAS, Issuing this RFP is the most effective way to ensure the continuity of the Red Light Photo Enforcement Program; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to issue a Request for Proposals for SFMTA Contract No. 2008/09-53, Automated Red Light Photo Enforcement Program, and negotiate a contract for administration, maintenance, and expansion of the Red Light Camera Program with the selected proposer(s) for a term not to exceed five 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

**City and County of San Francisco**

**Request for Proposals for**

**Red Light Camera Program**

**Contract No. SFMTA 2008/09-53**



**NOTICE**

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

Date issued:	August 5, 2009
Pre-proposal conference:	August 19, 2009
Proposal due:	September 18, 2009



Request for Proposals for Red Light Camera Program

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**Appendices:**

- A. HRC Attachment 2: Requirements for Architecture, Engineering and Professional Services Contracts, for contacts \$29,000 and over (separate document). Proposers must submit the following forms: separate document

- Form 2A HRC Contract Participation form
- Form 2B HRC “Good Faith” Outreach Requirements form
- Form 3 HRC Non-discrimination Affidavit
- Form 5 HRC Employment form

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

- Form 4 Joint Venture Participation Form

- B. Standard Forms: Listing and Internet addresses of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C, and 14B of the S.F. Administrative Code. B-1
- C. Agreement for Professional Services (form P-500)
- D. Attestation of Compliance on Communication Prior to Contract Award
- E. Certification Regarding Debarment, Suspension, and Other Responsibility Matters
- F. Certification Regarding Lobbying

**Request for Proposals for  
Red Light Camera Program**

**I. Introduction and Schedule**

**A. General**

The San Francisco Municipal Transportation Agency (“SFMTA”) of the City and County of San Francisco (“City”) operates an Automated Red Light Camera Enforcement Program (“Program”). SFMTA manages the program in cooperation with the San Francisco Police Department and City Attorney's Office. This program, which is now commonplace in many jurisdictions nationwide, was originally pioneered by the City’s progressive traffic engineering division and was among the first of its type to be implemented in 1996. Since then, it has proven to be one of the most successful and longest running photo enforcement programs in the nation.

This Request for Proposals (“RFP”) solicits responses from qualified bidders to furnish services to the City to assist in the operational functionality of the program. Proposals for this RFP shall include the acquisition of System-specific equipment, professional services to design intersection installations (both new and retrofitting existing intersections), construction and construction consultation services, equipment maintenance and servicing, and other program administration duties as needed, as well as processing the resulting citations. These tasks are more fully detailed within this RFP.

**B. Term**

This RFP will result in a new contract that shall have an original term of three years. In addition, the City shall have two options to extend the term for a period of one year, which the City may exercise in its sole discretion, resulting in a maximum contract term of five years.

SFMTA is currently under contract with ACS State and Local Solutions (ACS) for administrative support services associated with this program. The current contract with ACS is anticipated to expire no later than December 30, 2010. Accordingly, the new contract resulting from this selection process is anticipated to begin no later than December 31, 2010. It is the goal of this RFP to minimize any disruption to the Program’s enforcement continuity while transitioning between contracts occurs.

**C. Schedule**

The anticipated schedule for the selection process is as follows:

<u><b>PROPOSAL PHASE</b></u>	<u><b>ANTICIPATED DATE</b></u>
RFP issued by the City	Wednesday, August 5, 2009
Pre-proposal conference	Wednesday, August 19, 2009

## RFP for Red Light Camera Program

Deadline for submission of written questions or requests for clarification	Friday, August 21, 2009
Proposals due	Friday, September 18, 2009
Oral interview with firms selected for further consideration	September, 2009
Pilot Program	October, 2009 thru December, 2010
Evaluation/Scoring/Selection	January - February, 2010
Notification of Highest Ranked	March, 2010
Negotiations	April/May, 2010
Letter of Intent to Award	May, 2010
MTAB Recommendation of Award	May, 2010
Board of Supervisor Approval	June, 2010
Civil Service Commission	July, 2010
City Controller Certification	July, 2010
Notice to Proceed	August, 2010

### II. Scope of Work

The Scope of Work is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project. The following are work tasks necessary for administration of the City's automated red light enforcement system comprised of 42 enforced approaches at 22 intersections and to design and/or construct up to 20 additional (expansion) enforced approaches. Proposers may submit proposals for the entire system, existing system only, or expansion portion only. Proposers are to include all construction costs necessary as part of their bids. A specific amount of work cannot be guaranteed beyond administering the existing enforcement system. City reserves the right to either maintain the existing enforcement levels or to expand the system up to an additional 20 enforced approaches. Prospective bidders should base their proposals on designing, constructing, and administering up to 20 additional enforced approaches. This RFP seeks Proposers who will provide 1) design services, 2) System Equipment for purchase or lease by the City, 3) construction and construction consultation, 4) maintenance services of System Equipment, 5) image review and citation processing on behalf of the City under the direction of SFMTA, and 6) cooperation with other City agencies as needed such as (but not limited to) the SFMTA, San Francisco Police Department ("SFPD"), Department of

Public Works (“DPW”), City Attorney's Office (“City Attorney”), Superior Court of California/County of San Francisco (“Court”), and Department of Public Health (“DPH”).

**This RFP is broken down into two components: (1) Existing Enforcement System and (2) Expansion Enforcement System. Each Proposer may submit a separate bid proposal for: (1) the Existing Enforcement System, (2) the Expansion Enforcement System, or (3) both. The SFMTA reserves the right to select the best qualified proposal for the Existing Enforcement System, Expansion Enforcement System, or for the entire system including both the Existing Enforcement System and the Expansion Enforcement System. Consultants are encourage to submit proposals for each option.**

#### **A. Existing Enforcement System**

The City currently has Automated Photo Enforcement Systems using Gatsometer wet-film technology at 42 enforced approaches (22 intersections) listed, below.

1. 1<sup>ST</sup> St. & Folsom St. (SB)
2. 3<sup>RD</sup> St. & Harrison St. (NB, WB)
3. 5<sup>TH</sup> St. & Harrison St. (WB, SB)
4. 5<sup>TH</sup> St. & Mission St. (WB, NB, SB)
5. 5<sup>TH</sup> St. & Howard St. (WB)
6. 6<sup>TH</sup> St. & Bryant St. (NB, SB, EB)
7. 7<sup>TH</sup> St. & Mission St. (NB, WB)
8. 8<sup>TH</sup> St. & Harrison St. (WB, SB)
9. 9<sup>TH</sup> St. & Howard St. (NB, WB)
10. 14<sup>TH</sup> St. & South Van Ness (EB, NB)
11. 15<sup>TH</sup> St. & Mission St. (NB, SB)
12. 19<sup>TH</sup> Ave. & Sloat Blvd. (NB, SB)
13. Bush St. & Van Ness Ave. (NB)
14. Francisco & Richardson Blvd. (EB, WB)
15. Franklin & Geary Blvd. (NB, WB)
16. Fulton & Park Presidio (NB, SB)
17. Geary & Park Presidio (EB, WB, NB, SB)
18. Hayes & Polk (WB, SB)
19. Lake & Park Presidio (NB, SB)
20. Lyon & Marina (EB)
21. Pine & Polk (WB)
22. 4<sup>TH</sup> & Howard (WB)

The Existing Enforcement System equipment at these locations is wholly owned by the City, and the Existing Enforcement System is currently administered by ACS. The City prefers to continue uninterrupted enforcement at all of these existing locations. To the extent possible, all Proposers may consider using the Existing Enforcement System equipment as-is to ensure program continuity and to reduce unnecessary equipment costs. The Existing Enforcement System equipment at these locations includes, but is not limited to, Gatsometer cameras, camera housings, auxiliary flashes, poles and conduits.

Should the Proposer elect not to use the Existing Enforcement System equipment, Proposals should clearly detail the construction costs to install the new equipment and the expected amount of enforcement downtime required to complete the changeover. In such cases, the selected Contractor shall remove and return to City or dispose of existing above-ground infrastructure at the discretion of the City. The evaluation process will seek to identify those proposals demonstrating a proven ability to immediately take over administration and maintenance of the Existing Enforcement System with the least amount of downtime and at the lowest cost.

## **B. Field Maintenance and Rotation**

The selected Contractor shall be responsible for maintenance of Existing Enforcement System equipment throughout the term of the contract. The Existing Enforcement System utilizes a 32 wet-film cameras which are rotated among 42 equipped approaches. In addition, there are 10 decoy cameras that flash but do not capture images.

### Camera Rotation:

Should the Contractor choose to continue the rotational enforcement, three business days before the first day of every month, the Contractor shall submit a schedule outlining the current status of all Existing Enforcement System equipment, and list approaches currently in enforcement within the System and proposed rotations to be approved by SFMTA.

### Maintenance

The Contractor shall inspect and test the Existing Enforcement System as necessary, to the specifications of the manufacturers of the Existing Enforcement System equipment, and shall complete field maintenance logs, created by Contractor and approved by SFMTA. (See Attachment B.A.9 Maintenance for more detailed requirements). The Contractor shall maintain the Existing Enforcement System equipment for the term of the contract at its expense.

The Contractor shall record and remedy any problems at Contractor's expense promptly. The Contractor shall record any problems with the Existing Enforcement System and notify SFMTA in writing within forty-eight (48) hours of Contractor's having knowledge of the problem.

The Contractor is not liable for third party damages. Any damage to the Existing Enforcement System equipment caused in part or in whole by the action or negligence of the City, its officers, employees, agents or contractors (with the exception of Contractor) or by third parties shall be repaired or replaced at the sole expense and discretion of the City. Such repairs or replacement may be done by Contractor upon mutual agreement of the parties. The cost of such repairs shall be itemized, negotiated and agreed upon, and included in the contract.

### Existing Enforcement System equipment relocation

The City shall be responsible for relocating any Existing Enforcement System equipment that must be moved to meet the needs of the City outside the scope of this work. In

this circumstance, the City shall relocate the Existing Enforcement System equipment at its sole expense.

### **C. Business Rules for Issuing Citations**

The Contractor shall process violations on a routine basis to meet California Vehicle Code (“CVC”) mailing requirements. The Contractor shall perform an initial screening of all violations captured to ensure that each meets the following criteria. The Contractor shall process all violations meeting these criteria as Citations and send the Citations to SFPD for final review prior to issuance.

Initially, the Contractor shall collect data (including but not limited to volumes of vehicles monitored and violations) and issue warning notices as required by California Vehicle Code 21455.5.b for a period of one month for each monitored approach or as determined by SFMTA.

The Contractor shall view images to ensure that violation photographs comply with California Vehicle Code (“CVC”) §210 which requires “a clear photograph of a vehicle’s license plate and the driver of the vehicle” as directed by the SFMTA.

The Contractor shall utilize the photograph of the license plate of the vehicles in the violation to identify the registered owners (“RO”) of said vehicles by direct computer access to the California Department of Motor Vehicles (“DMV”), acting as an agent for the City. The Contractor shall have a second employee verify violation photographs to ensure Contractor is capturing the correct DMV registration and driver's license information.

The Contractor shall obtain the “current address of the registered owner on file” with the DMV for purposes of mailing the citation, except when the City has reissued the citation to the driver. In that circumstance, Contractor shall obtain the address of the driver on file with the DMV or as provided by the court.

The Contractor must match the address of the RO with the address of the driver from the DMV’s driver’s license database (matching to a previous address is acceptable), except when a commercial or governmental entity owns the vehicle or the City has reissued the citation to the driver.

The City will not issue citations where the age or gender of the driver clearly does not match that of the RO, except when a commercial or governmental entity owns the vehicle or the City has reissued the citation to the driver.

The Contractor must include the California driver's license number of the alleged violator on the citation, except when a commercial or governmental entity owns the vehicle.

The Contractor shall process citations for all violations occurring more than 0.3 seconds into the red phase. Contractor may limit citations to those with a speed greater than the speed specified by SFMTA.

The Contractor shall provide separate and unique data for each violation photograph.

The Contractor shall process citations for all vehicles registered to governmental agencies, except emergency vehicles or vehicles with the SFPD, or other law enforcement agency escorts.

For violations which do not result in the issuance of a Notice to Appear, Contractor shall destroy driver information data and digital images immediately upon determination of non-issuance, and destroy film records within thirty (30) days of the violation. For violations which do result in the issuance of a Notice to Appear, Contractor shall destroy all related information, including but not limited to all data, digital images, film and paper records within fifteen (15) working days of final disposition.

The Contractor shall maintain and observe a confidentiality agreement with the DMV.

#### **D. Citation Processing**

The Contractor shall process all Citations meeting the criteria set forth in Section F. The Contractor shall prepare Citations on the form approved by the Court and the California Judicial Council. The Contractor shall provide on the Citation that information, and only that information, required by CVC §40518, the Court, and the California Judicial Council.

To the extent possible without blocking the image of the driver, Contractor shall block all the image of all passengers in violation photographs printed on Citations in the image showing a close up of the driver's face. SFPD shall have the final authority to settle any disputes as to image clarity and image editing. SFPD shall have the final decision in the event of any differences of opinion that arise between Contractor and City regarding image quality and whether or not a citation can or cannot be issued.

The Contractor and the Court shall mutually agree upon the numbering system for Citation numbers.

The Contractor shall send to each Alleged Violator along with the Citation a statement describing the technology in use including information necessary to interpret all data shown on photograph, approved in advance by the City. The Contractor shall amend this information if requested by City, at no additional cost to City. The Contractor is responsible for printing each envelope, Citation, and all other materials sent to each Alleged Violator.

The Contractor shall process photographs on a schedule that allows for the preparation and mailing of signed Citations within eleven (11) days as required by CVC §§22 and 40518. Upon mailing the signed Citation, Contractor shall obtain a Certificate of Mailing declaration issued by the USPS, attesting to the form of service of the signed Citation, for each signed Citation that Contractor sends to an Alleged Violator. The Contractor shall provide a copy of the Certificate of Mailing declaration to SFPD, Traffic Company within three (3) business days of mailing the signed Citation.

The Contractor shall submit the data from the signed Citation to the Court electronically by a means and in a form mutually agreed upon by the Court and Contractor within five (5) business days after mailing each signed Citation.

**E. Signing Citations**

The Contractor shall deliver each Citation to SFPD for review and manual signature and approval before Contractor mails the signed Citation to the Alleged Violator. All data included on the Citation shall be clearly legible, with all written information accurate as supplied from the DMV records. SFPD will reject any Citations that are not clearly legible. Unless specifically authorized by SFPD or ordered by a court of law, Contractor shall mail all signed Citations within eleven (11) days. The Contractor shall retain a true and exact copy of each signed Citation in accordance with the record retention policy, and file the original citation with the Court.

SFPD officers will be available for four (4) hours each Monday through Thursday to review Citations, except legal holidays. The officer's signing of the Citation shall be considered the act of issuing the Citation as required by the CVC.

**F. Court Evidence Packages**

When the Alleged Violator is a juvenile, Contractor shall send the Court Evidence Package to the Juvenile Traffic Court, 375 Woodside Avenue, San Francisco. When the Alleged Violator is an adult, Contractor shall provide the Court a Court Evidence Package (see Appendix C for a sample of a Court Evidence Package).

The Contractor shall also provide computerized or on-line access to violation data and photographs for court proceedings. If the Contractor cannot provide on-line access to violation data and photographs, Contractor shall include at least two photographs of the violation in the Court Evidence Package: 1) the full view of the first photograph taken by the System, and 2) the full view of the second photograph taken by the System. In either case, the Contractor shall provide access to violation photographs for review by alleged violators at the court. Contractor shall also provide hardcopy versions of the violation data and images in advance of the court hearings on request by City.

If the Court requests a Court Evidence Package ten (10) or more business days preceding the court date, Contractor shall provide the Court Evidence Package to the Court no later than five (5) business days preceding the court date. If the Court does not provide a request to Contractor a minimum of ten (10) business days preceding the court date, Contractor shall make its best effort to provide the Court Evidence Package to the Court prior to the date of the proceeding.

**G. Court Testimony**

The Contractor shall provide a training course for SFPD officers in order that SFPD officers may testify as to the operation of the Existing Enforcement System and Program and



testify as a witness in court proceedings. All SFPD officers completing the course will receive a Certificate of Training. The Contractor shall work with SFMTA and the City Attorney's Office to prepare the training course. The Contractor shall schedule the training course prior to the start of operation, unless otherwise specified by SFMTA.

The Contractor shall provide an expert witness(es) to testify in court at each trial as to the Existing Enforcement System's technology, processing of the Citations, field maintenance and operation of the Enforcement System, processing of images, and any other Program component managed by the Contractor. The Court holds Red Light Photo Enforcement trials typically on Tuesday, Wednesday, and Thursday at 1:30 pm.

The Contractor shall provide an original declaration of a qualified employee or subcontractor who can testify that the Existing Enforcement System was properly operating at the time of the alleged violation. The Contractor shall work with the City Attorney's office to prepare the declaration.

## **H. Citation Dismissals and Reissues**

The Contractor shall inform Alleged Violators through an approved form that they may identify the actual driver, if other than the RO, via correspondence without the necessity of making a personal appearance. The Court will process correspondence received related to this form.

When the RO provides complete information identifying a new driver, the Court shall process a dismissal and forward new driver information to Contractor for processing of a new Citation to the newly identified driver.

If it becomes necessary to dismiss an issued Citation for reasons other than those noted above, SFMTA, SFPD or the Court shall notify Contractor in a format mutually acceptable to all parties.

In the case of a commercially registered vehicle, Contractor shall prepare the Citation for issuance to the RO.

## **I. Monthly Report and Management Meeting**

The Contractor shall provide a monthly report to SFMTA no later than twenty-one (21) business days after the end of each month for each location monitored. This report shall show the number of violations detected and number of violations for which the City issued Citations. Of the violations detected but not issued, Contractor shall report the reason for non-issuance on an approved form. The Contractor shall also report any malfunctions, days not in service due to malfunction, and days not in service due to other reasons (see Appendix I for a sample of a Monthly Viewing Report).

The SFMTA Project Manager may schedule a meeting on a monthly basis with Contractor, SFPD, the Court, and any other interested City department or agency, to exchange information on the administration of the Existing Enforcement System.

**J. Expansion Enforcement System**

In addition to the existing 42 enforced approaches, the City is seeking proposals to expand Red Light Photo Enforcement to up to 20 additional enforced approaches. While the City cannot guarantee a specific number of additional enforced approaches or volume of work, prospective bidders should base their proposals on designing, constructing, and administering up to 20 additional enforced approaches. At the time of this RFP, the City is currently undergoing expansion of the Existing Enforcement System utilizing digital technology at Oak/Octavia Streets and at Ellis/Larkin Streets. In addition, two other intersections are anticipated to be constructed at Fell/Masonic Streets and at Market/Gough Streets utilizing digital technology. Other locations for the Expansion Enforcement System shall be determined solely at the discretion of SFMTA.

Proposers shall include a separate cost estimate for purchase or lease options of Expansion Enforcement System equipment, design, construction and administration for up to 20 additional enforced approaches (10 intersections). SFMTA reserves the right to either maintain the existing enforcement levels at the existing 22 intersections or to expand the system to up to 20 additional enforced approaches.

All items in Sections II. B through II.I, above shall also apply to the administration of the expansion system.

**Penalties may be assessed if the Contractor fails to meet deadlines set forth herein. Failure to perform any of these services will be cause for termination of the agreement as provided in the Contract.**

**K. Technical Upgrades**

This provision applies to any Contractor selected to provide services for the Red Light Camera Program. As Contractor develops and offers new products or upgrades of existing products, the Contractor will give the City the opportunity to upgrade to the newest product offerings. On or about each anniversary of Contract Certification, Contractor will provide a written report to the City's Program Manager detailing upgrades in technology and possible applicability to the City's Existing and/or Expansion Enforcement Systems. The Contractor will not implement technology upgrades without the specific approval of the SFMTA. Requests to employ technical upgrades shall be made in writing.

**L. Legal Changes and Challenges**

The Contractor shall perform any modifications to the system (either the existing enforcement system, expansion enforcement system, or both, depending on the outcome of this RFP as required by any changes in the California Vehicle Code, San Francisco Traffic Code, local, state or federal legislature or any legal action that has jurisdiction or bearing on the Enforcement System (Existing or Expansion) as directed by the SFMTA.

**M. Performance Bond**

Contractor shall provide a performance bond in the amount of \$1,000,000 should Contractor fail to meet contract requirements. Said bond shall cover all City costs related to acquisition of a new provider including City personnel expenses, system conversion, and removal of installed equipment.

The proposer must also demonstrate that it has maintained an average annual positive net worth of at least \$2.5 million over the past three years, and submit reviewed financial statements for the past three years.

**N. Termination of Contract**

Within 60 days after termination of the Agreement, the Contractor shall remove or cause to be removed all System Equipment at no expense to the City and shall restore all City property to its original condition per City standards at the discretion of the City. Should the Contractor fail to remove its equipment within 60 days after termination of this Agreement, the City shall have the right to remove said equipment and bill Contractor for its removal.

**III. Submission Requirements**

**A. Time and Place for Submission of Proposals**

Proposals must be received by 5:00 p.m., on Wednesday, July 22, 2009. Postmarks will not be considered in judging the timeliness of submissions. Proposals may be delivered in person and left at The Municipal Transportation Agency, 1 South Van Ness Avenue, 7<sup>th</sup> floor or mailed to:

The Municipal Transportation Agency  
1 South Van Ness Avenue, 7<sup>th</sup> floor  
San Francisco, Ca 94103-5417  
Attn: Tabin Chung

Proposers shall submit one reproducible original, nine copies of the proposal, and two copies, separately bound, of required HRC Forms (in addition to one electronic copy, see below) in a sealed envelope(s) or box(s) clearly marked, "Proposal – Red Light Photo Enforcement Program to the above location. If more than one envelope or box is used, each box must be clearly labeled as Box or Envelope 1 of 2 or 1 of 3, etc. such that the entire delivery may be visually accounted for upon delivery. Each delivery should further be labeled indicating which proposal is contained for example envelopes should be marked Proposal #1 – Existing Enforcement System, Proposal #2 – Expansion Enforcement System, etc. Proposals that are submitted by fax will not be accepted. Late submissions will not be considered.

**B. Format**

All proposals should be printed double-sided to the maximum extent practical. You may use tabs or other separators within the document.

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

All Proposers must also submit an exact copy of the proposal in Adobe PDF format saved on optical media such as a CD or DVD securely packaged and contained within the delivery. This version must be an exact copy of the hardcopy document inclusive of tables, charts, tab separators, and any handwritten information, if any. Any information that cannot be included on the electronic copy such as promotional brochures or pamphlets should be omitted from the proposal. No other information should be enclosed on the optical media other than an exact electronic copy of the proposal. Any additional information found on the optical media that is not part of the hardcopy version will not be considered.

**C. Content**

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

**1. Introduction and Executive Summary (up to two pages)**

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

**2. Project Approach (up to five pages, total)**

Describe the services and activities that your firm proposes to provide to the City. Include the following information:

- a. Overall scope of work tasks; and
- b. Proposer's Implementation Plan describing how to minimize or eliminate downtime of the City's existing enforcement system while transitioning between contracts. Proposers must provide procedural and operational steps, technical approach and milestones of how the Proposer intends to take over the enforcement system with specific deliverables and timetables.
- c. Schedule and ability to complete the project within the City's required time frame; and
- d. Assignment of work within your firm's work team.

**3. Firm Qualifications (up to three pages)**

Provide information on your firm's background and qualifications which addresses the following:

- a. Name, address, and telephone number of a contact person; and
- b. A brief description of your firm, as well as how any joint venture or association would be structured; and
- c. A description of not more than four projects similar in size and scope prepared by your firm including client, reference and telephone numbers, staff members who worked on each project, budget, schedule and project summary. Descriptions should be limited to one page for each project. If joint consultants or subconsultants are proposed provide the above information for each.

**4. Team Qualifications (up to five pages)**

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a. Provide a list identifying: (1) each key person on the project team, (2) the project manager, (3) the role each will play in the project, and (4) a written assurance that the key individuals listed and identified will be performing the work and will not be substituted with other personnel or reassigned to another project without the City's prior approval.

b. Provide a description of the experience and qualifications of the project team members, including brief resumes if necessary.

### **5. References (up to two pages)**

Provide references for the lead consulting firm, lead project manager, and all subconsultants, including the name, address and telephone number of at least **three** but no more than **ten** recent clients (preferably other public agencies).

### **6. Fee Proposal**

The City intends to award this contract to up to two (2) firm(s) that it considers will provide the best overall program services. The City reserves the right to accept other than the lowest priced offer and to reject any proposals that are not responsive to this request.

All costs quoted must be guaranteed for the maximum five year period of the contract.

Please provide a fee proposal in a sealed envelope that includes the following:

a. Fixed monthly fee to take over administration of the existing 42 enforced approaches including equipment and installation costs, if any and maintenance costs. Any new equipment costs shall be presented with options to purchase or lease. Costs should be clearly shown as one-time costs or recurring monthly fees. Unless otherwise indicated, the total administration costs shall be a monthly lump sum cost for all 42 approaches with equal costs for each approach.

b. Fee to design/construct each additional enforced approach up to 20 approaches. Any new equipment costs shall be presented with options to purchase or lease.

c. Fixed monthly fee to administer each additional enforced approach up to 20 approaches. Costs should be clearly shown as one-time costs or recurring monthly fees. Unless otherwise indicated, the total administration costs shall be a monthly lump sum cost for all 20 approaches with equal costs for each approach.

d. Hourly rates for all team members. Hourly rates and itemized costs may be used to negotiate changes in the Scope of Work if necessary.

## **IV. Evaluation and Selection Criteria**

### **A. Minimum Qualifications**

Each Proposer must have contractually supported an automated red light camera enforcement system in a California jurisdiction for a minimum of six months by the date of issuance of this RFP to be evaluated for selection. Any proposal that does not demonstrate this minimum requirement will not be eligible for award of the contract.

### **B. Selection Criteria**

The proposals will be evaluated by a selection committee comprised of parties with expertise in law enforcement and traffic engineering. The City intends to evaluate the proposals generally in accordance with the criteria itemized below. Four firms with the highest scoring proposals will be invited to be interviewed by the committee to make the final selection.

The technical aspects of the proposal will be evaluated objectively by the selection committee.

The Cost Proposal will be evaluated quantitatively and scored as described below.

Proposals will be scored based on the following criteria.

**1. Technical Qualifications (50 points)**

Proposals that demonstrate competitive and flexible technology with a proven ability that it can be rapidly deployed and/or implemented to immediately take over an existing red light camera enforcement program with the least amount of downtime will rate the best from a technical perspective.

This section will be based on the following criteria:

- a. Proposed systems must meet today's standards and be proven as reliable. Proposals should demonstrate their systems power, flexibility, and available proven solutions in deploying in varying environmental conditions such as those found in San Francisco (sub-sidewalk basements, multiple lane obstructions, mature trees restricting pole installation, etc)
- b. Additional points will be awarded to those systems that can also be shown as scalable to meet changing enforcement demands and also adaptable to address changes and advancements in technology.
- c. This section will include an evaluation of the Proposer's technology in terms of how efficiently it can be implemented for immediate use by an existing enforcement program with minimum downtime and how efficiently it can be deployed at new installations.
- d. Citation efficiency of the proposed enforcement system under similar business rules as San Francisco. This step will be further assessed and validated for those Proposers who participate in the pilot program.

**2. Assigned Project Staff (25 points)**

This section will be based on the following criteria:

- a. Recent experience of the principal staff assigned to the project and how their verifiable experience on similar projects will enable them to successfully take over administration and maintenance of the existing enforcement system with the least amount of downtime; and
- b. Professional qualifications and education; and
- c. Workload, staff availability and accessibility (include number of Full Time Staff or Full Time Equivalent (FTE) assigned to work on this project over the course of the contract period.

- d. A resume and list of references should be provided for the individual(s) (up to three) who will be assigned the day to day management of the system and who shall act as the primary point of contact for the City.
- e. A written assurance that the key individuals listed and identified in this section will be performing the work will maintain a fulltime, local presence and will not be substituted with other personnel or reassigned to another project without the City's prior approval.

**3. Experience of Firm and Sub-consultants (25 points)**

This section will be based on the following criteria:

- a. Expertise of the firm and sub-consultants in the fields necessary to complete the tasks; and
- b. Quality of recently completed projects, including adherence to schedules, deadlines and budgets; and
- c. Recent experience of staff assigned to the project and a description of the tasks to be performed by each staff person.
- d. Professional qualifications and education.
- e. Workload, staff availability and accessibility.
- f. Experience with similar projects. Please list all past experience including number of installed sites with the proposed equipment with references for each. All past experience where your firm provided contractually obligated automated red light photo enforcement services in California should be listed. Three references should be provided. If you do not possess three references in California, other references may be used but they must be from public agencies/jurisdictions from within the United States; and
- g. Results of reference checks.

Part of this evaluation will include inspecting the past record of performance as determined from all available information including direct communication by the City with the Proposer's present and former clients. Consideration will be given to specific experience in the technical fields to successfully support an automated enforcement program as outlined in this RFP. Factors that will be considered include but may not be limited to, past records of the following: level of technical proficiency, dedication/longevity to the assignment, responsiveness, reliability, dependability, quality of work, and the ability to work effectively and maintain effective working relationships on a day to day basis for the continuous term of the contract with a variety of City, County, and State agency's. The reference check will also seek each Proposer's verifiable success rate in taking over existing enforcement systems.

**4. Oral Interview (25 points)**

Following the evaluation of the written proposals, to the top four Proposers receiving the highest scores will be invited to an oral interview. The interview will consist of standard questions asked of each of the interviewing Proposers and may seek clarification about each written proposal. Evaluation of the oral interview will be based primarily on the Proposer's substantive remarks. No part of the written proposal may be altered during the oral interview.

**5. Fee Proposal (25 points)**

Fee proposals should be enclosed in a separate, sealed envelope. The lowest fee proposal will receive 25 points. The remaining cost proposals will be scored by dividing the amount of the lowest cost by the cost of the proposal being scored and multiplying the result by the total number of points assigned to the cost evaluation criterion (25). Additionally, the Human Rights Commission's ("HRC") rating discount shall be applied as described by HRC documents included herein

Proposers understand and agree that the City is not responsible for any costs incurred by the Proposer in responding to this RFP. Proposers who respond to this RFP, including attendance at a pre-proposal conference and a post-submission oral presentation, do so solely at their own expense.

Cost proposals shall be based on the following items.

a. Program Administration.

Separate itemized costs should be provided for those components that proposers desire to submit bids on i) program administration of the existing locations, ii) costs associated with administering the expansion locations. Costs should further be itemized in the format, below.

<b>Program Administration Itemized Monthly Costs</b>	<b>a. 23 Existing Locations</b>	<b>b. 10 Expansion Locations</b>
Transportation		
Rent		
Administrative Overhead		
Systems Support		
Camera Rotation (if applicable)		
Monthly Report Preparation		
Fixed Maintenance Costs		
Others (list)		
Monthly Total		
5 Year Total (Monthly Total x 60 Months)		

b. Construction Design and Consultation

Construction Design and Consultation. A cost analysis for the construction phase



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providing the System Equipment, construction-ready engineering drawings and specifications, and construction consultation. These are non-recurring expenses including administrative costs. For options involving the 23 existing locations, the Proposer must specify if they will be using the existing equipment or retrofitting existing equipment with different technology.

Separate itemized costs should be provided for those components that proposers desire to submit bids on either i) construction design and consultation for the existing locations or ii) construction design and consultation for the expansion locations. Costs should further be itemized in the format, below.

<b>Construction Design and Consultation</b>	<b>a. 23 Existing Locations</b>	<b>b. 10 Expansion Locations</b>
Engineering Drawings		
Construction Consultation		
Administrative		
Engineer's Construction Cost Estimate		
Others (list)		
<b>TOTAL</b>		

System Equipment – Existing Locations This section will have zero cost associated with it if Proposer is using the existing equipment.

An itemized costs for any new System Equipment (if any) for the 23 existing locations, including cameras, image processing units, loops, poles, housing, conduit, etc. Proposers must provide prices for the city to (Option 1) purchase or (Option 2) lease of the System Equipment.

Should the City elect Option 1, the City may require the Contractor to purchase, or buy-back, the System Equipment provided to the City during the term of the Agreement. At any time after the initial 3 year contract, the City may require the Contractor to buy-back the equipment. Proposer should outline a price schedule for salvaged system equipment based on years of installation. For the purposes of this table, list the Buy-Back price of equipment after 3 years in service.

**System Equipment for 23 existing locations**

**Option 1 - Purchase**

<b>Item</b>	<b># Units</b>	<b>Cost per unit</b>	<b>Total Cost (# units x per unit cost)</b>
Cameras			
Image processing unit			
Loops			

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Poles			
Housings			
Conduits			
Others (list)			
<b>TOTAL</b>			

**Option 2 – Lease**

<b>Item</b>	<b># Units</b>	<b>Lease Price per month per unit</b>	<b>Total Cost (# units x \$/per month x 60 months)</b>
Cameras			
Image processing unit			
Loops			
Poles			
Housings			
Conduits			
Others (list)			
<b>TOTAL</b>			

**Buyback price schedule**

<b>Item</b>	<b>Cost per unit</b>	<b>3 years</b>	<b>4 years</b>	<b>5 years</b>
Cameras				
Image processing unit				
Loops				
Poles				
Housings				
Conduits				
Others (list)				
<b>TOTAL</b>				

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c. System Equipment – Expansion Locations

Those proposers who wish to submit a bid on administering the expansion system should list their equipment costs in this section.

System Equipment. An itemized costs for System Equipment for the 10 future intersections, including cameras, image processing units, loops (detection system), poles, housing, conduit, etc. For the purpose of this estimate, assume two enforced approaches at each intersection. Proposers must provide prices for the city to (Option 1) purchase or (Option 2) lease the System Equipment. Should the City elect Option 1, the City may require the Contractor to purchase, or buy-back, the System Equipment provided to the City during the term of the Agreement. Proposer should outline a price schedule price for salvaged system equipment. For the purposes of this table, list the Buy-Back price of equipment after 5 years in service.

**System Equipment for 10 Future locations**

**Option 1 – Purchase**

<b>Item</b>	<b># Units</b>	<b>Cost per unit</b>	<b>Optional Buy-Back Price</b>	<b>Total Cost (# units x per unit cost)</b>
Cameras				
Image processing unit				
Loops				
Poles				
Housings				
Conduits				
Others (list)				
<b>TOTAL</b>				

**Option 2 - Lease**

<b>Item</b>	<b># Units</b>	<b>Lease Price per month per unit</b>	<b>Total Cost (# units x \$/per month x 60 months)</b>
Cameras			
Image processing unit			
Loops			
Poles			

RFP for Red Light Camera Program

Housings			
Conduits			
Others (list)			
<b>TOTAL</b>			

**6. Pilot Program (25 points)**

Four of the highest ranking Proposers shall provide at no cost to the City, a complete, installed system for evaluation under local operating conditions at up to two intersections. This section will be based on the following criteria:

- a. Quality of system design, responsiveness and timeliness to plan review changes by City review process.
- d. Timeliness and efficiency of design, construction, installation, and system startup. A post-construction examination will determine those designs requiring the least amount of construction change orders.
- e. Image quality of images/videos needed to generate issueable citations of detected violations.
- f. Citation rates (issuable citations/triggered events) achieved by system in San Francisco environment and operating conditions.
- g. Efficiency and responsiveness to System maintenance issues.
- h. System security and chain of evidence protocol
- i. Program administration staffing, knowledge of CVC regulations governing Red Light Camera programs, expert witness testimony, communication, and responsiveness.

The pilot program may require each Proposer to reconstruct an existing wet-film deployment with each firms Proposed technology or to construct a new expansion intersection at a currently unenforced intersection, or both. Once constructed, each vendor will have a 30 to 60 day window of opportunity to demonstrate their full system capability including customer service and back office processing.

Proposers who choose to take over administration of the existing system in place with no new hardware may be required to operate an existing enforced intersection at no cost to the City as a part of this pilot program.

## **V. Pre-proposal conference and Contract award**

### **A. Pre-Proposal Conference**

Proposers are strongly encouraged to attend the pre-proposal conference on Wednesday, August 19, 2009 at 2 p.m. Proposers will be notified of the meeting location at least one week in advance of this date. All questions will be addressed at this conference and any available new information will be provided at that time. If you have further questions regarding the RFP, please contact the individual designated in Section VI.B.

### **B. Contract Award**

The SFMTA will select the highest ranking Proposer(s) for the existing system, expansion system, or one Proposer for the entire system with whom SFMTA staff shall commence contract negotiations. The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, which may be subject to further negotiations and approvals before the City may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time the SFMTA, in its sole discretion, may terminate negotiations with the highest ranked Proposer and begin contract negotiations with the next highest ranked Proposer.

## **VI. Terms and Conditions for Receipt of Proposals**

### **A. Errors and Omissions in RFP**

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

### **B. Inquiries Regarding RFP**

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

Tabin Chung via email: [tabin.chung@sfmta.com](mailto:tabin.chung@sfmta.com)

All questions received will be memorialized in a Questions and Answers document that will be furnished to all bidders who send an email to the above address and register to receive such document.

### **C. Objections to RFP Terms**

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

### **D. Change Notices**

The SFMTA may modify the RFP, prior to the proposal due date, by issuing Change Notices, which will be posted on the website. The Proposer shall be responsible for ensuring that its proposal reflects any and all Change Notices issued by the SFMTA prior to the proposal due date

regardless of when the proposal is submitted. All Change Notices will be sent by email to the Proposer's email address that is registered with the Program Manager in Section B. above.

**E. Term of Proposal**

Submission of a proposal signifies that the proposed services and prices are valid for 240 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

**F. Revision of Proposal**

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

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

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

**G. Errors and Omissions in Proposal**

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

**H. Financial Responsibility**

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

**I. Proposer's Obligations under the Campaign Reform Ordinance**

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

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

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

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or

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

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

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

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

#### **J. Communications Prior to Contract Award**

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

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

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

Except as expressly authorized in the RFP, where any person representing a Proposer or potential Proposer contacts any SFMTA staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the SFMTA Board of Directors, and, if required, by the San Francisco Board of Supervisors, the Proposer or potential Proposer shall be disqualified from the selection process. However, a person who represents a Proposer or potential Proposer may contact City elected officials and may contact the Executive

Director/CEO of the SFMTA if s/he is unable to reach the designated staff contact person(s) identified in the RFP or wishes to raise concerns about the competitive solicitation.

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

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

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

**K. Sunshine Ordinance**

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

**L. Public Access to Meetings and Records**

If a Proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the Proposer must comply with Chapter 12L. The Proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer's meetings and records, and (2) a summary of all complaints concerning the Proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

**M. Reservations of Rights by the City**

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



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

**N. No Waiver**

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

**O. Local Business Enterprise Goals and Outreach**

The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the “LBE Ordinance”) shall apply to this RFP.

**1. LBE Subconsultant Participation Goals**

The LBE subconsulting goal for this project is fifteen percent (15%) of the total value of the goods and/or services to be procured to take over the existing system, twenty percent (20%) of the total value of the goods and/or services to be procured to replace the existing system, and twenty percent (20%) of the total value of the goods and/or services to be procured for system expansion (note: the LBE subconsulting goal will be determined based on the finalized scope of work). The LBE subcontracting goal shall also apply to any labor value of the Additional Services authorized after issuance of the Notice to Proceed. Pursuant to Sec. 14B.9 of the Administrative Code, proposers are hereby advised that the availability of Minority Business Enterprises (MBEs), Woman Business Enterprises (WBEs) and Other Business Enterprises (OBEs) to perform subconsulting work on this project is as follows: Take Over Existing System - 9% MBE, 3% WBE, and 3% OBE; Replace Existing System - 13% MBE, 4% WBE, and 3% OBE; System Expansion - 13% MBE, 3% WBE, and 4% OBE. Proposers are further advised that they may not discriminate in the selection of sub-consultants on the basis of race, gender, or other basis prohibited by law, and that they shall undertake all required good faith outreach steps in such a manner as to ensure that neither MBEs nor WBEs nor OBEs are unfairly or arbitrarily excluded from the required outreach.

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

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

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

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

## **2. LBE Participation**

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

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

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

## **3. HRC Forms to be Submitted with Proposal**

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

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

If you have any questions concerning the HRC Forms, you may call Lome Aseron, SFMTA Contract Compliance Office, at 415-701-5332.

## **VII. Contract Requirements**

### **A. Standard Contract Provisions**

The successful Proposer will be required to enter into a contract substantially in the form of the Agreement for Professional Services, attached hereto as Appendix C. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Proposers are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§Section 34 in the Agreement); the Minimum Compensation Ordinance (§Section 43 in the Agreement); the Health Care Accountability Ordinance (§Section 44 in the Agreement); the First Source Hiring Program (§Section 45 in the Agreement); and applicable conflict of interest laws (§Section 23 in the Agreement), as set forth in paragraphs B, C, D, E and F below.

### **B. Nondiscrimination in Contracts and Benefits**

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

### **C. Minimum Compensation Ordinance (MCO)**

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

For the amount of hourly gross compensation currently required under the MCO, see [http://www.sfgov.org/site/olse\\_index.asp?id=27459](http://www.sfgov.org/site/olse_index.asp?id=27459). Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at [http://www.sfgov.org/site/olse\\_index.asp?id=27459](http://www.sfgov.org/site/olse_index.asp?id=27459).

### **D. Health Care Accountability Ordinance (HCAO)**

The successful Proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at [http://www.sfgov.org/site/olse\\_index.asp?id=27461](http://www.sfgov.org/site/olse_index.asp?id=27461).

**E. First Source Hiring Program (FSHP)**

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at [http://sfgov.org/site/onestop\\_index.asp?id=95888](http://sfgov.org/site/onestop_index.asp?id=95888) and from the First Source Hiring Administrator, (415) 401-4960.

**F. Conflicts of Interest**

The successful Proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful Proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

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

**VIII. Protest Procedures**

**A. Protest of Non-Responsiveness Determination**

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

**B. Protest of Contract Award**

## RFP for Red Light Camera Program

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

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

### **C. Delivery of Protests**

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

The Municipal Transportation Agency  
1 South Van Ness Avenue, 7<sup>th</sup> floor  
San Francisco, Ca 94103-5417  
Attn: Tabin Chung

**Appendix A**

HRC Attachment 2: Requirements for Architecture, Engineering and Professional Services Contracts, for contracts \$29,000 and over (separate document). Proposers must submit the following forms:

- Form 2A      HRC Contract Participation form
- Form 2B      HRC “Good Faith” Outreach Requirements form
- Form 3        HRC Non-discrimination Affidavit
- Form 5        HRC Employment form

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

- Form 4        Joint Venture Participation Schedule

## Appendix B

### Standard Forms

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

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

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

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

Item	Form name and Internet location	Form	Description	Return the form to; For more info
1.	Request for Taxpayer Identification Number and Certification  <a href="http://www.sfgov.org/site/oca_page.asp?id=26550">http://www.sfgov.org/site/oca_page.asp?id=26550</a>  <a href="http://www.irs.gov/pub/irs-fill/fw9.pdf">www.irs.gov/pub/irs-fill/fw9.pdf</a>	W-9	The City needs the contractor's taxpayer ID number on this form. If a contractor has already done business with the City, this form is not necessary because the City already has the number.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102  (415) 554-6702
2.	Business Tax Declaration  <a href="http://www.sfgov.org/site/oca_page.asp?id=26550">http://www.sfgov.org/site/oca_page.asp?id=26550</a>	P-25	All contractors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102  (415) 554-6702
3.	S.F. Administrative Code Chapters 12B &	HRC-12B-	Contractors tell the City if their personnel policies meet the	Human Rights Comm.

RFP for Red Light Camera Program

Item	Form name and Internet location	Form	Description	Return the form to; For more info
	<p>12C Declaration: Nondiscrimination in Contracts and Benefits</p> <p><a href="http://www.sfgov.org/site/sfhumanrights_index.asp?id=4584">http://www.sfgov.org/site/sfhumanrights_index.asp?id=4584</a></p> <p>In Vendor Profile Application</p>	101	<p>City's requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the answers on this form. Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.</p>	<p>25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500</p>
4.	<p>HRC LBE Certification Application</p> <p><a href="http://www.sfgov.org/site/sfhumanrights_page.asp?id=45141">http://www.sfgov.org/site/sfhumanrights_page.asp?id=45141</a></p> <p>In Vendor Profile Application</p>		<p>Local businesses complete this form to be certified by HRC as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by HRC by the proposal due date.</p>	<p>Human Rights Comm. 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500</p>



## RFP for Red Light Camera Program

### Where the forms are on the Internet

#### Office of Contract Administration

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

#### Human Rights Commission

HRC’s homepage: [http://www.sfgov.org/site/sfhumanrights\\_index.asp?id=4560](http://www.sfgov.org/site/sfhumanrights_index.asp?id=4560)  
Equal Benefits forms: Click on “Forms” under the “Equal Benefits” banner near the bottom.  
LBE certification form: Click on “[14B Ordinance, Attachments & Forms, Certification Application, Rules & Regulations](#)” under the “LBE” banner near the bottom

**Appendix C**

Agreement for Professional Services (form P-500)

In the interest of conservation, this form has been omitted. It is the standard format used by the City and County of San Francisco and contains all standard requirements for City contracts.

It is available for review in the Office of the Board Secretary.

This form will be included in the RFP released to the public.

**Appendix D**

**Attestation of Compliance on  
Communication Prior to Contract Award**

*To be completed by all Proposing Firms and All Individual Subcontractors*

(Please check each box, sign this form and submit it with your proposal.)

Name of individual completing this form:

\_\_\_\_\_

The form is submitted on behalf of firm:

\_\_\_\_\_

Title of RFP and RFP No.: Contract No. SFMTA 2008/09-53 - RFP

1. I attest that I and all members of the firm listed above will and have complied to date with Section VI. J of the RFP.  Yes
  
2. I understand that if my firm or any members of the firm listed above are found to be in violation of the Section VI. J of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration.  Yes

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: \_\_\_\_\_

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

**Appendix E**

**Certification Regarding Debarment, Suspension, and Other Responsibility Matters**

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

(1) \_\_\_\_\_  
(Proposer or Proposed Subcontractor Business Name)

certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from contracting with any federal, state or local governmental department or agency;
  - b. Have not within a three-year period preceding the date of this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
  - d. Have not within a three-year period preceding the date of this Proposal had one or more public contracts (federal, state, or local) terminated for cause or default.
- (2) Where the firm executing this RFP Appendix E is unable to certify to any of the statements in this certification, such firm shall attach a detailed explanation of facts that prevent such certification.
- (3) The certification in this clause is a material representation on fact relied upon by the San Francisco Municipal Transportation Agency (SFMTA).

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

Business Name: \_\_\_\_\_

\_\_\_\_\_

Authorized Representative Name (print)

Authorized Representative Title (print)

\_\_\_\_\_  
Authorized Representative Signature

\_\_\_\_\_  
Date

**Appendix F**  
**Certification Regarding Lobbying**

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(Proposer or Proposed Subcontractor Business Name)

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

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

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

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

Business Name: \_\_\_\_\_

Authorized Representative Name (print)

Authorized Representative Title (print)

---

Authorized Representative Signature

---

Date

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.14**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to issue a Request for Proposals (RFP) for Pay-By-Phone services for all on- and off-street metered parking spaces controlled by the San Francisco Municipal Transportation Agency and the Port of San Francisco.

**SUMMARY:**

- The SFMTA conducted a pilot program of pay by phone services with on- and off-street parking users.
- Based on the results of that trial, the SFMTA developed a RFP for implementing a pay by phone option for payment of both on- and off-street parking at metered parking spaces citywide.
- The SFMTA is seeking permission to issue the RFP.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Request for Proposal
3. Sample contract
4. Proposed recipients

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO Kevin Holliday

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

## **PAGE 2.**

### **PURPOSE**

The purpose of this calendar item is to seek the SFMTA Board of Directors' authorization to issue a Request for Proposals (RFP) for pay by phone services for on- and off-street metered parking citywide.

### **GOALS**

The Pay By Phone Request for Proposals shall assist the SFMTA in achieving the following strategic goals:

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

Objective 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 the SFMTA is a leader in the industry.

Objective 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.

Objective 4.1 – Increase revenue by 20% or more by 2012 by improving collections and identifying new sources.

Objective 4.2 – Financial Capacity: Ensure efficient and effective use of resources.

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

Objective 6.1 – Information and Technology Leadership: Identify, develop and deliver the enhanced systems and technologies required to support the SFMTA's 2012 goals.

### **DESCRIPTION**

The San Francisco Municipal Transportation Agency (SFMTA) conducted a pilot program of Pay by Phone (PBP) technologies involving three vendors starting in September 2007. The results were summarized in a memorandum dated April 1, 2009, and presented to the Board. The memo stated:

### **Executive Summary**

The following executive report presents the findings and recommendations of the Pay By Cell Phone Pilot Project (pilot project), an ongoing pilot project to test pay by phone technology (pay by phone) in San Francisco. Pay by phone allows drivers to pay for their parking meter space with a credit card via their cellular phones. This executive report is not an evaluation of the performance of the individual vendors participating in the pilot project, but rather an evaluation of the pay by phone technology in general. The Parking and Traffic Division of the SFMTA initiated the subject study with the goal of specifically evaluating a) the feasibility of implementing pay by phone technology, b) credit card payment alternatives, c) public usage and acceptance, d) the effect of pay by phone systems on parking behavior, and e) the potential impact on revenues.

The three vendors participating in the pilot study from September of 2007 to date, were Zipidy Inc. in the Marina test area, Verrus Mobile Technologies, Inc. in the Richmond test area, and New Parking, Inc. in the West Portal/Lakeside Village test area. Each were allocated approximately 200 on- and off-street parking spaces to demonstrate their pay by phone technology.

During the pilot period, driver usage, revenues and costs, and enforcement and maintenance were closely monitored. The pilot study revealed the following:

#### **Driver Usage**

- A total of 9,676 drivers used the pay by phone system during the pilot period, of which approximately 26% were repeat users.
- Over 40% of the driving public would consider using this new technology to pay for their parking meter.
- Approximately 80-90% of those who have used the system liked it and would use it again.

#### **Revenues and Costs**

- Pay by phone revenues, as a percentage of total meter revenues, consisted of between 1.5% and 4.3% of total revenues, depending on the month and the test area.
- Pay by phone revenues were higher in off-street metered spaces than in on-street spaces.
- No revenue increases during the pilot period could be attributed to pay by phone technology
- Drivers paid less and parked for a shorter period of time when they paid by phone.
- Pay by phone costs include approximately \$.20 per transaction in bank and credit card processing fees and approximately \$40 per month for wireless service for each handheld device used in enforcement.



Enforcement and Maintenance

- Enforcement concerns about the technology include data communication delays, reduction in citation issuance speed, and driver confusion.
- Citations issuance increased during the pilot period in the West Portal/Lakeside Village and Richmond test areas.
- There were no significant maintenance issues.

The pilot study found that pay by phone can be a viable payment alternative to pay for parking in a metered space. Although the technology has some shortcomings, the pilot showed that these shortcomings could be overcome with minimal effort, and that overall, the benefits of providing such a service to drivers outweigh the costs. The report provides recommendations to quickly address issues identified during the pilot study. Through the pilot project, SFMTA has determined that pay by phone requires minimal deployment and maintenance costs, is popular with drivers who have used the system, and is revenue neutral with little cost. As a result, the SFMTA intends to implement pay by cell phone service Citywide with an RFP anticipated to be issued by May 2009.

Upcoming SFMTA parking studies, including those under SF*park*, will continue to evaluate new parking technologies to find better solutions for San Francisco's parking environment.

Introduction

Beginning in 2007, SFMTA began inquiring about alternative credit card payment methods to improve driver compliance with meter payments. About the same time, multiple pay by phone vendors contacted SFMTA to engage in discussions on potential trials in San Francisco of their pay by phone service. In response, SFMTA decided to begin a 90-day pay by phone pilot project with the vendors that had previously contacted SFMTA, and also solicited by phone, other vendors, both in the US and abroad to participate. SFMTA selected three vendors that were deemed fully prepared and able to participate in the pay by phone pilot by September 2007, the start date of the pilot.

In September 2007, SFMTA contracted with these three vendors to demonstrate their pay by phone technologies in three different test areas of San Francisco. The three vendors participating in the pilot project were Zipidy Inc. in the Marina test area, Verrus Mobile Technologies, Inc. in the Richmond test area, and New Parking, Inc. in the West Portal/Lakeside Village test area. The vendors were allocated approximately 100 off-street metered parking spaces. In January of 2008, the pilot areas were expanded by an additional approximately 100 on-street metered parking spaces in each pilot area, and the pilot period was extended on a month-to-month basis. The selected locations were busy neighborhood commercial districts comprised of numerous restaurants, service, and retail businesses.

Throughout the pilot project period, SFMTA carefully assessed: 1) driver usage and response; 2) revenues and costs; and, 3) enforcement and maintenance. These were all essential components required for the successful deployment of future pay by phone

services. The following executive report summarizes the pilot study’s final analysis, findings and recommendations for implementing pay by phone service in San Francisco.

**How It Works**

Pay by phone allows drivers to pay for their parking meter rate using their credit card via their cellular phone. Although each pay by phone vendor has different payment models and service functions, SFMTA found the basic pay by phone technology for all three vendors to be similar. A driver’s interaction with the pay by phone system would proceed as follows. A driver parks in a metered space. He/she calls the local or toll-free number on the meter decal for a one-time registration of their credit card. The driver enters the eight digit meter number into the vendor’s interactive phone system and activates a parking session. The driver walks away. The driver may call back to add more time to his/her meter within the legal time limit.

The parking session and payment status is transmitted to the vendor’s server which then transmits payment status via a cellular network to SFMTA Enforcement handheld devices. The parking meter still flashes expired during the parking session which then requires Parking Enforcement Officers (PCO) to enforce the metered spaces using wireless handheld devices. After the initial registration, the pay by phone system links the driver’s cell phone number to his/her credit card which allows the driver to continuously use the service without re-registering his/her personal information or credit card in subsequent transactions.

**Three Business Models**

In order to effectively evaluate pay by phone technology, SFMTA specifically solicited vendors that had developed different payment models and service functions. This allowed the agency to better assess what payment model and service functions would best suit the City’s needs. The payment model and services that most significantly affected a user’s experience are compared in Figure 1 below.

Figure 1

Vendor	Payment Model	How Session Is Activated	Text Message Reminders
Verrus	\$0.35/Transaction	Driver Enters Minutes to be Used	Five minute text message reminder before time expires
New Parking	No payment for pilot. Proposed 20% of SFMTA Pay By Phone Meter Revenues	Driver Must Activate/Deactivate Session within the Time Limit.	No text message reminder
Zipidy	\$2-5 Monthly Fee	Driver Can Enter Minutes to be Used or Activate/Deactivate Session within the Time Limit	Ten minute text message reminder before time expires

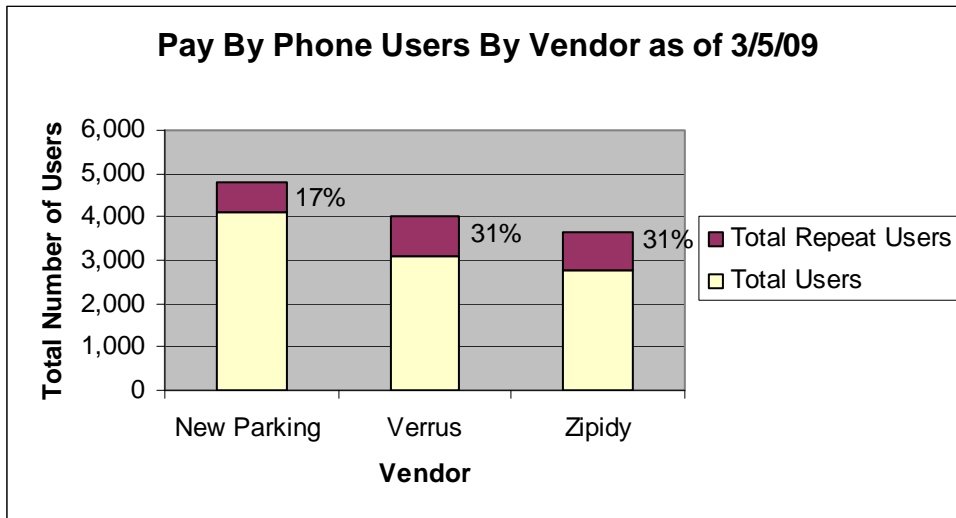
Although each vendor’s pay by phone system differed in various subtle ways, other notable differences in each vendor’s service included:

- Amount of required personal information to register for service

- Driver’s ability to pay for service via cellular phone or landline
- Availability of online account management and viewing
- Daily vs. batched monthly credit card charges for meter payments

**Driver Usage**

SFMTA has been tracking the number of new users of pay by phone service since the inception of the pilot in September 2007. As of March 2007, in all three pilot areas, a total of 9,676 drivers had used the service, of which approximately 26 percent were repeat users defined as having used the service twice or more. Figure 2 shows the breakdown of the total number of users per vendor.



Although New Parking had the highest number of new users at 4,102, it is important to note that the user count is likely influenced by the fact that the vendor is providing free pay by phone service during the pilot. This compared to Verrus with 3,081 new users and a \$0.35 per transaction fee, and Zipidy with 2,765 new users and a \$2.00-\$5.00 monthly fee. Of the total number of users, New Parking had approximately 17% repeat usage while Verrus and Zipidy both had 31% repeat usage.

Analysis of new user data show a large jump of over 200 new users each week when the pay by phone service expanded to on-street meters in January of 2008. However, this growth leveled off by July of 2008 when the number of new users began to stabilize to approximately 150 new users each week in the combined pilot areas. Although the number of new users each week did not continue its upward climb, the number of repeat users did continue to slowly climb week to week from 19 percent to 26 percent from September 2007 to March 2009.

**Driver Response**

During the pilot period, SFMTA conducted surveys of pay by phone users and non-users to evaluate their response to the service. The first survey (sample size = 100) randomly interviewed drivers that had NOT used pay by phone service to pay for their parking session,

but had paid for their parking meter by coin or parking meter card instead. The survey results were as follows:

<b>What Is Your Opinion of Pay By Phone?</b>	<b>Percentage</b>
Would never consider using the system	58%
Have not used the system, but would consider it	32%
Have used the system	10%

<b>Why Wouldn't You Consider Using Pay By Phone?</b>	<b>Percentage</b>
Too complicated/long compared to quarters and prepaid cards	37%
No cell phone/computer	16%
Fee/service charge	14%
Visitor/don't use meters often	13%
*Other	20%

\*Other includes a) not interested/not comfortable with technology, b) credit card security risk, c) short parking duration, d) limited phone minutes, and e) privacy issues

The second survey (sample size = 133) interviewed drivers that had used pay by phone. The survey results were as follows:

<b>Was the Pay By Phone Service Easy To Use?</b>	<b>Percentage</b>
Yes	79%
No	21%

<b>Explain Why the Pay By Phone Service NOT Easy to Use?</b>	<b>Percentage</b>
Took too long	23%
Too hard to set up an account	20%
Too confusing to complete my transaction	20%
Didn't know what the meter location number was	13%
Did not receive text message	10%
Interactive voice response system too difficult	7%
*Other	7%

\*Other includes a) voice recognition too difficult and b) haven't tried the system.

<b>Did You Feel Comfortable and Safe Providing Your Personal Information Over the Phone?</b>	<b>Percentage</b>
Yes	89%
No	11%

<b>Would You Use the Pay By Phone Service Again?</b>	<b>Percentage</b>
Yes	91%
No	9%

<b>If You Would NOT Use the Pay By Phone Service Again, Explain Why?</b>	<b>Percentage</b>
Too hard to use	23%
Too long	15%
Only if available in other neighborhoods	15%
Received a parking ticket despite paying by phone	15%
Don't park in the City very often	7%
Too expensive	7%
Only if change is not available	7%
Haven't tried the system	7%

<b>Would You Recommend That This Service Expand Citywide?</b>	<b>Percentage</b>
Yes	96%
No	4%

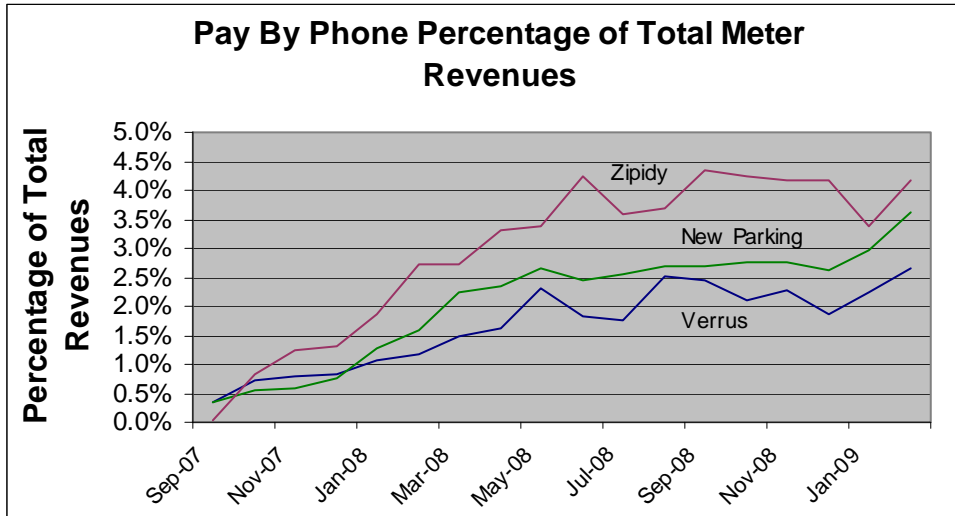
Of those that have used pay by phone, the overwhelming majority found it easy to use, felt safe in providing their personal information over the phone, would use the service again and would recommend the service be expanded Citywide. The primary reasons cited for disliking the system was that it was too hard to use/set up and it took long to use.

**Revenues and Costs**

*Revenues*

As a percentage of total revenues for the pilot area meters, pay by phone revenues for the twelve month period from March 2008 through February 2009, consisted of between an average of 1.5% and 4.3% of revenues. Figure 3 below shows that pay by phone revenues generally increased on a month-to-month basis, but never reached higher than an average of 4.3% for Zipidy, 3.6% for New Parking and 2.7% for Verrus. Pay by phone revenues were highest in off-street parking spaces, reaching 9.7% of revenues in the Marina parking lot, under Zipidy. The pay by phone usage in each pilot area can be attributed to not only vendor service, but more importantly population demographics such as age, income, cell phone ownership, and neighborhood demographics such as types of commercial businesses.

Figure 3



Because the pilot projects were contained within limited areas of only 200 parking meters each, it is probable that fewer drivers were willing to register for a service available in such a small area. It is predicted that pay by phone usage and revenues, as a percentage of total meter revenues, would likely increase as service is expanded to wider areas, or Citywide.

A comparison of total meter revenues twelve months before and after the pilot start date of September 2007 could not definitively correlate any total revenue increases to pay by phone technology. Total meter revenues increased in the pilot areas by an immaterial 2.97%, from \$2.04 million to \$2.10 million. This increase can be attributed to a number of various factors other than pay by phone such as a higher enforcement presence and changing economic conditions.

A comparison of pay by phone and coin/prepaid card payments in Figure 4 below show surprisingly that in general, drivers paid more and parked for longer periods of time when they paid by coin/prepaid card. Figure 4 shows that in total, users paid for an average of 141 minutes and \$3.52 per parking transaction with coin/prepaid card vs. an average of 109 minutes and \$2.73 per parking transaction with pay by phone in the off-street spaces. Similarly, users paid for an average of 61 minutes and \$1.54 per parking transaction with coin/prepaid card vs. 57 minutes and \$1.41 per parking transaction with pay by phone in the on-street spaces.

Figure 4

	(2) Average Paid Minutes Off-Street	(3) Average Payment Amount Off-Street	(4) Average Paid Minutes On-Street	(5) Average Payment Amount On-Street
<b>Coin/Prepaid Card</b>	141	\$3.52	61	\$1.54
<b>Pay By Phone</b>	109	\$2.73	57	\$1.41

Lower payments and shorter parking sessions by pay by phone users can be explained by the fact that a driver is less likely to overpay for a parking session with pay by phone. Pay by phone allows the driver to better match his/her parking payments to his/her parking needs with a feature that alerts the driver to a pending meter expiration and allows the driver to remotely add more time. The driver is less likely to initially overpay for their parking session at the beginning of a session if he/she knows an alert feature is available to warn the driver of an expiring meter. Likewise, an alert feature also warns the driver that it is time to move their vehicle, so the driver is less likely to overstay his/her parking session. Further, pay by phone allows the driver to deactivate his/her parking session when they return to their vehicle. This eliminates the additional revenue that may be collected when a driver has overpaid and has left a parking space.

#### *Costs*

Operational costs incurred by SFMTA to date totaled approximately \$8,136.00, or 11.7% of pay by phone revenues, paid to Bank of America, which consisted of bank fees for merchant account services and Visa/Mastercard services. The bank fee rate of 11.7% of total pay by phone revenues is expected to decline to approximately 6.0% to 8.0% as pay by phone is expanded and usage increases. Other costs paid for by the vendors included a monthly cellular service fee of approximately \$30 to \$40 for each wireless handheld device used for enforcement, paid to cellular phone service carrier companies, and a credit card processing gateway fee of approximately \$0.10 per transaction, paid to private gateway service companies.

### **Enforcement and Maintenance**

#### *Maintenance*

Maintenance of pay by phone includes maintaining meter decals and signage, and keeping vendors apprised of changes in meter drawings. There were no significant maintenance issues during the pilot period.

#### *Enforcement Mechanisms*

Enforcement is a key component in the success of any future pay by phone system in San Francisco. In a pay by phone system, payment status is wirelessly transmitted in real-time from a vendor's offsite central server to a PCO's handheld device. This technology requires PCOs to change the way they typically enforce parking meters by requiring them to check a meter's payment status on a wireless handheld device instead of by physically inspecting a meter's status via its flashing red expired light. During the first year of the pilot, PCOs were required to carry a smartphone device which was used to enforce the pilot areas, in addition to an existing handheld device used for citations issuance. Carrying two pieces of equipment proved to be burdensome for citations issuance, therefore pay by phone technology was eventually successfully integrated by two of the three vendors into the existing handheld devices.

SFMTA requested that PCOs participating in the pilot provide regular feedback to inform the agency of any enforcement concerns or other relevant issues arising during the pilot project period. Many of the issues were particular to the pilot and may not be relevant in expanded service. Some of the most significant issues were concerns raised about:

- Data communication delays in the wireless cellular network resulting in inaccurate meter payment status
- A reduction in citation issuance speed from checking pay by phone status on a handheld device
- A possible increase in customer confrontations from reduced citation issuance speed
- Driver confusion over multiple pilot area locations

*Citations Issuance*

Citations issuance activities were evaluated during the pre-pilot and pilot periods to determine if pay by phone service had an impact on enforcement behavior. Figures 5 and 6 below show that pay by phone technology did not decrease citations issuance, but rather increased citations issuance in January of 2008 in the West Portal/Lakeside Village and Richmond test areas. The increase in citations issuance can be attributed to the fact that the Richmond and West Portal/Lakeside Village areas reportedly have a high number of disabled placard usage in the off-street parking lots. Because of this and prior to the pilot period, PCOs generally limited their enforcement activities in these off-street lots. Pay by phone technology required them to be more conscientious of these areas, which likely resulted in higher citations issuance. Further, January 2008 was also the period when PCOs became more adept at using pay by phone technology.

Figure 5

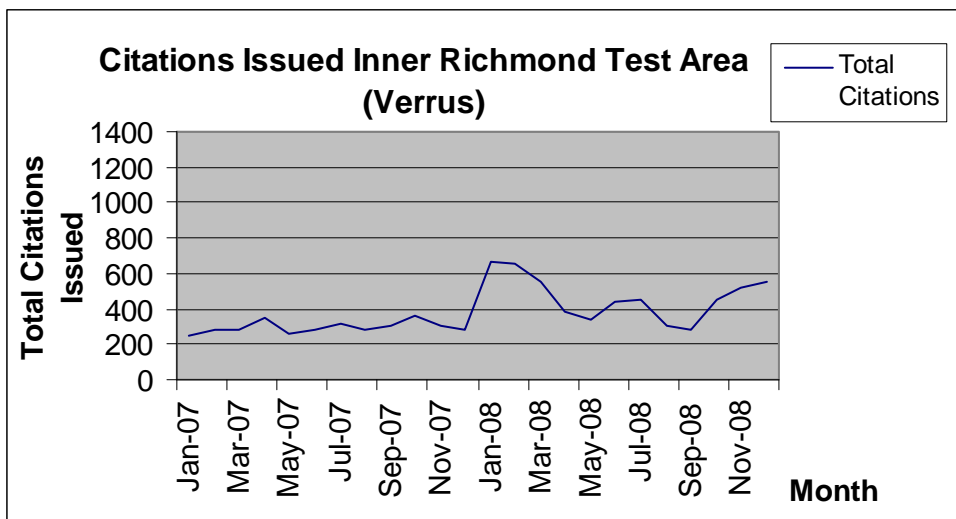




Figure 6

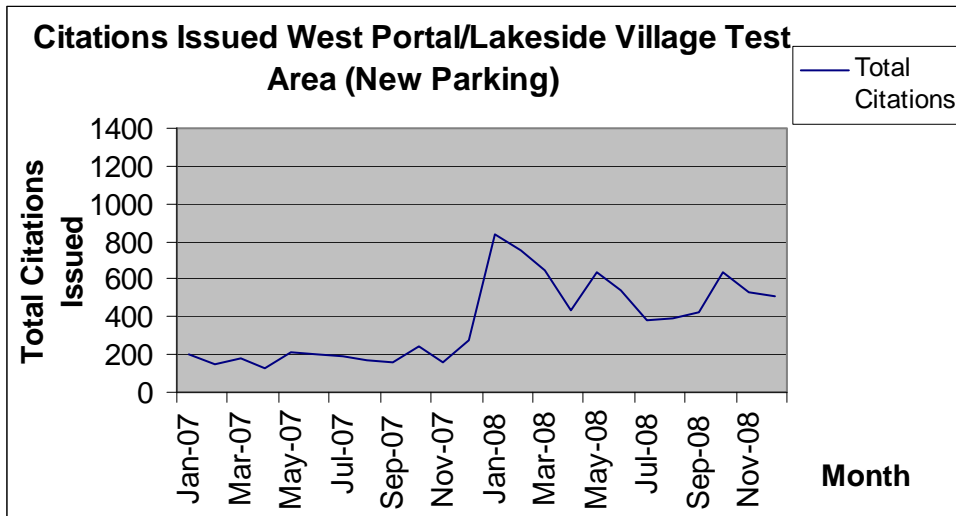
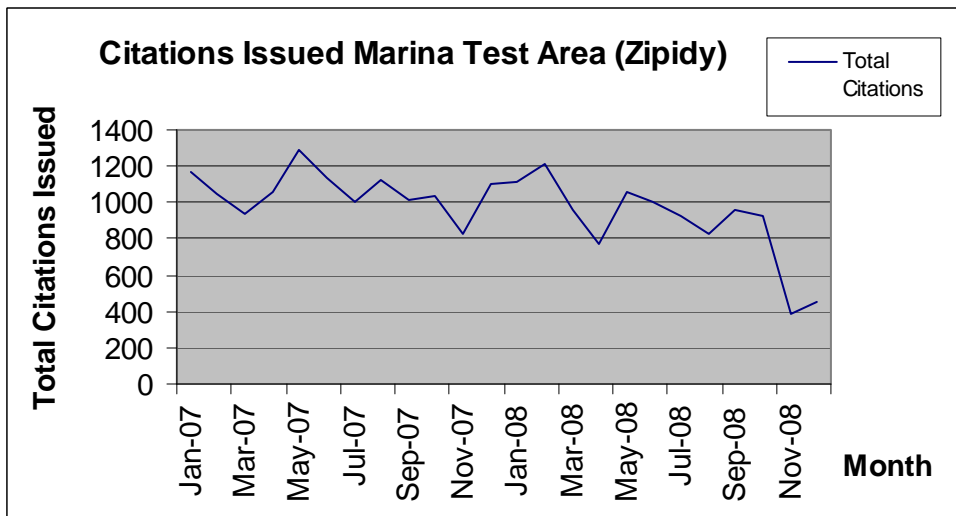


Figure 7



Citations issuance in the Marina test area, as shown in Figure 6, remained mostly stable throughout the pilot period.

**Conclusion and Recommendations**

Although pay by phone does have some shortcomings as identified in the subject report, SFMTA finds that if such shortcomings are quickly addressed, pay by phone technology can be improved and eventually implemented on a larger scale. The following recommendations have been developed to specifically address issues that have been identified in the pilot project.

- 1) It is recommended that as pay by phone is expanded, an extensive public outreach campaign be devised to increase usage by properly notifying drivers that the service is

available to them. This includes press releases, online and newspaper advertisements, billboards, banners and posters.

2) It is recommended that, to facilitate the ease of use of pay by phone:

- Meter decals be user-friendly with easy to follow directions
- An online tutorial be available to drivers
- Live customer support be available during meter hours via a toll-free or local number
- The voice response system be improved to reduce transaction time
- A cellular phone network carrier with the least delays in communication be identified to transmit pay by phone transaction data.
- Pay by cell phone service be expanded to a larger area, or Citywide
- SFMTA work with vendors to ensure a reasonable customer service fee is charged

3) It is recommended that lower bank fees, gateway fees and cellular service costs be negotiated in the future before processing large volumes of credit card transactions.

4) It is recommended that SFMTA require that the pay by phone wireless service provider provide high speed, reliable data communications with uninterrupted connectivity anywhere in the City.

5) It is recommended that SFMTA require that any Enforcement interface design be fast, simple, and user-friendly. Expansion of the pay by phone service mandates that pay by phone technology and wireless capability be integrated into all Enforcement handheld devices.

6) It is recommended that citations issuance continue to be monitored to effectively gauge the usability of the new technology in the field. Any decrease in citation issuance should be immediately investigated for periodic system interface breakdowns, equipment failures, user interface changes, or PCO training issues.

7) It is recommended that any future deployment of pay by phone include either a) the purchase of new wireless handheld devices or b) the upgrade of all handheld devices to enable wireless capability.

This successful pilot project allowed the SFMTA to better understand both the advantages and disadvantages of deploying pay by phone technology in the City. Based on the results of the pilot project, SFMTA determined that pay by phone is in fact a viable alternative payment method for parking meters. SFMTA intends to issue a Request for Proposal for Citywide pay by phone services by May of 2009 for installation rollout of pay by phone services in the Winter of 2009. With the advent of upcoming SFMTA meter equipment purchases and *SFpark* pilot projects, SFMTA intends to fully

integrate pay by phone into future metering equipment and parking systems to provide drivers with high technology solutions to their daily parking needs.

On June 2, 2009, the CFO/Director of Finance & Information Technology, Director of Security and Enforcement, and Director of Parking and Traffic, sent a memorandum to the Board outlining the challenges of PBP technology and the SFMTA's proposed solutions to those challenges. The memo stated:

The purpose of this memorandum is to advise the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors on the status of the Request for Proposal (RFP) for Citywide cell phone payment for on-street parking and summarize several issues related to this program.

### ***Background***

As the Board is aware, the SFMTA conducted a trial of Pay by Phone (PBP) technologies including three vendors starting in September of 2007 the results of which were summarized in the attached April 1, 2009 memorandum. One vendor has already exited the trial and the trial for the two remaining vendors will end as of June 30, 2009.

As a result of the PBP trial and at the request of the Board of Directors, the SFMTA is currently writing a RFP seeking a vendor to implement PBP technology throughout the City.

### ***Request for Proposal (RFP)***

The SFMTA expects to bring the finalized RFP to the SFMTAB at its August 4, 2009 meeting for approval for release. ...

### ***Summary of Issues related to a Pay by Cell Program***

The following section outlines seven issues related to a RFP for citywide PBP for the Board of Directors' information.

#### **1. Implementation Costs and User Fees**

The SFMTA determined that all costs to implement, operate, and maintain PBP technology citywide will be paid for by the vendor and passed on to users. As it stands now, the RFP requires that all users be charged the same flat fee per use and the SFMTA will receive 100 percent of the revenue owed. For example, if a PBP user wishes to purchase an hour of time at a meter that costs three dollars per hour, the user would be charged \$3.15 and the SFMTA would receive \$3.00 – assuming the vendor's fee was 15¢. The RFP will require the vendor to be responsible for all credit card transaction charges and fees. Proposals to charge a monthly fee or seek to receive a percentage of SFMTA's revenues will not be considered. While any user

fees may discourage users from trying PBP technology, the SFMTA's current budget situation leaves us no choice but to enter into a revenue neutral contract.

## **2. Wireless Communication Costs**

Since implementing PBP technology citywide will require all Parking Control Officers (PCOs) to carry a handheld device capable of Internet access, the SFMTA will have to pay a wireless provider to provide said access. The cost for a data plan suitable for a PCO handheld is estimated to be \$60 per month<sup>1</sup>. Currently, the Security & Enforcement Division has 265 handheld devices. The approximate annual cost to supply data plans for all 265 handheld devices is estimated to be just under \$200,000 per year.

The RFP requires that all costs associated with the data plans be covered by the vendor.

## **3. Dead Zones**

Parts of the City of San Francisco are known to have low, intermittent, or no, cellular telephone coverage; these areas are commonly known as "dead zones." Dead zones pose two main problems for PBP technology:

- If a particular meter is located in a dead zone a PBP user may not be able to access the vendor's PBP system; and
- If a PCO enters a dead zone that PCO would not be able to ascertain whether or not an expired meter has been paid via PBP. Moreover, of the major carriers providing cellular coverage in San Francisco, there is no consistency in the location of dead zones. For example, AT&T may have excellent coverage in an area where Verizon has none.

Therefore, the vendor will be responsible for conducting a survey of each and every metered parking space in the City using PCO handheld devices and the cellular vendor selected to provide the data plan. Should any metered space be located in a dead zone (i.e., PCO handheld device cannot consistently and easily connect to the vendor's real-time enforcement website), that metered space will be excluded from the PBP program. All excluded spaces will be marked and identified accordingly. It should be noted that since this survey will only be conducted for the one cellular vendor selected to provide the data plan, users of cellular phones with other vendors may have different experiences with dead zones.

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<sup>1</sup> The cost is calculated at a base price of \$59.99 per month plus taxes and fees less the 25% City discount. This is based on the estimate from SFMTA IT sub-division for the four internet enabled handheld devices needed to enforce the Port's new multi-space pay stations. The cost for providing internet access to all 265 handheld devices could vary.

The dead zone issue has the potential to be confusing for customers. Users may be frustrated that some metered parking spaces in the City are excluded from the PBP program, especially if their cell phone has coverage. Conversely, users may also be frustrated if their cell phone does not have coverage and they are unable to use PBP. Dead zones are an unfortunate current limitation of cellular technology that neither the SFMTA nor a PBP vendor can remedy.

#### 4. PBP Technology and PCO Efficiency

Given that our existing single space meters are not capable of receiving a transmission from a PBP company to indicate that a space has been paid by phone, the meter at that space paid by a PBP system will flash expired or “red.”<sup>2</sup> Therefore, if PBP is adopted citywide, PCOs cannot assume any meter is truly expired until they check their handheld device. In other words, PCOs will be required to check PBP payment status on their handheld devices prior to issuing a citation for an expired meter. This extra step will reduce PCOs’ citation issuing efficiency and will increase time it takes to fully cover an assigned beat. Moreover, PCOs will be dependent on, a) the wireless connectivity speed of the handheld device, b) cellular coverage and reliability, and c) the availability the PBP enforcement website.

Enforcement staff has conferred with the PCOs who were responsible for enforcing the PBP trial areas. Below is the range of estimates for time to issue citations in both a PBP pilot area and in area without PBP.

Estimated time to issue a citation

	Average Range per PCO
Time to issue a citation without PBP	15 – 45 Seconds
Time to issue a citation in a PBP area	60 – 180 Seconds

During the pilots all three vendors initially required the PCOs to use internet-enabled smart phones or PDAs in addition to their regular handheld devices used for issuing citations. This proved clumsy and difficult for the PCOs. Two vendors were able to

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<sup>2</sup> As part of *SFpark* we will be requiring parking meter vendors via our RFP to accept payments from third party vendors (e.g., PBP companies) and push those payments to their meters. In this scenario a meter would flash “green” even if a driver paid by phone instead of inserting coins. Obviously, such a system would be vastly superior to any handheld-based enforcement because it would be completely transparent to PCOs. To date, we have not seen this technology demonstrated, however at least one vendor has indicated their ability to accomplish a pushed payment to the meters on the street.

program our existing handheld device to allow PCOs to navigate to the vendor's website and toggle between the vendor's enforcement website and our ACS ticket issuing software. While this is an improvement over requiring the two devices, the toggling was still cumbersome for the PCOs.

As part of the RFP, the vendor will be required to integrate its enforcement system with our ACS ticket issuing software. This integration would end the need to toggle and would allow the PCO to carry only one device. However, SFMTA is uncertain if any PBP vendor is capable of successfully integrating with our ACS ticket issuing software.

In our initial contacts with ACS, the company has indicated a willingness to work with a PBP vendor. All other jurisdictions that have PBP technology and use ACS' software for ticketing have used a toggling approach. No existing jurisdiction has accomplished an integration of PBP enforcement and ACS' ticketing software; nor do we know if the cost of such an integration would be prohibitive. Therefore, if the integration proves impossible SFMTA would have to use the cumbersome toggling method which would create a burden on Enforcement staff.

### **5. Use of PBP Technology to avoid paying for parking**

Today, if a driver has not paid at the meter and notices a PCO on the street he can run to the meter to insert coins. This common practice observed by our PCOs requires the user not only to be able to observe the street to see the PCO but be close enough to the meter to be able to insert payment. However, with PBP technology, a parker only needs to be able to see the street to watch for a PCO and then he could pay by phone without leaving the office – even if it is not on the ground floor. A PBP program would likely make citation avoidance easier.

To address this possibility, the Board should be aware of two policy decisions which will be required and will be included in the RFP:

- PBP users will be required to make a minimum purchase of one hour of parking time or the maximum allowed time if less than one hour. The minimum purchase will at least capture a full hour of revenue for those who are seeking to game the system; and
- If a PCO issues a citation and the time stamp of that citation is before the time stamp of the PBP payment, the citation is valid. For example, suppose a PCO issues a citation at 2:03 p.m. Then, the driver sees the PCO at his car writing a citation and he quickly dials in to the PBP system to make a payment. The PBP user completes the payment and the PBP system records the transaction at 2:04 p.m. If the PBP user challenges the citation, the hearing officer will note that the payment came one minute after the citation was issued and therefore the citation will be valid.

## **6. Canceling Transactions**

Some PBP vendors allow for users to park, pay by phone, return to their vehicle and “cancel” the unused portion for which they paid. For example, a driver parks at 1:30 p.m. in a two-hour zone. The driver buys two hours of parking time. However, he returns to his vehicle at 2:45 p.m. – one hour and 15 minutes later. At that point the driver could cancel the PBP session and recoup the cost of the unused 45 minutes.

SFMTA decided, as a courtesy to our users, to allow for cancelling so long as the minimum purchase rules described above is met.

## **7. Meter Feeding**

Current SFMTA policy does not allow drivers to exceed the posted time limit regardless of payment at the meter, i.e., the SFMTA does not allow drivers to “feed the meter.”

SFMTA decided that the PBP vendor will not be allowed to accept payment from a user for the same parking space until two hours after the maximum time has expired. For example, a user parks at a metered parking space with a two hour maximum. The driver parks in a particular space on the 400 block of Hayes at 10:00 a.m. and pays for two hours. The PBP user will not be allowed to pay for parking by phone anywhere on that same block until after an additional two hours has elapsed, i.e., after 2:00 p.m. that same day.

In summary, the Board of Directors should be aware that the implementation of a PBP will present certain issues as described above.

The SFMTA drafted the attached RFP for the City’s first PBP contract.

Highlights of the RFP include:

### **Term**

- Initial term of three years
- Two one-year options to extend

### **Rights granted**

- The selected vendor will be the exclusive provider of PBP services for all on- and off-street metered parking spaces controlled by the San Francisco Municipal Transportation Agency and the Port of San Francisco
- The selected vendor will have the right to charge a convenience fee to users of the PBP service

**Costs and revenues**

- All costs will be borne by the PBP vendor
- The SFMTA will receive 100 percent of the revenue for parking time purchased by PBP users, e.g. if a PBP user purchases three dollars of parking time, the SFMTA will receive three dollars from the PBP vendor.

Timeline for the RFP:

Phase	Date
RFP is issued by the SFMTA	Wednesday, August 5, 2009
Pre-proposal conference 1 South Van Ness, San Francisco, CA 94103 7 <sup>th</sup> Floor, Union Square Conference Room	Wednesday, August 19, 2009
Deadline for submission of written questions or requests for clarification	Wednesday, August 26, 2009
Proposals due	Thursday, September 10, 2009
Oral interview of short listed firms	Monday, October 5, 2009
Notification of firm selected	Monday, October 19, 2009
Deadline for submission of protests	Monday, October 26, 2009
Installation and Contractor Configuration*	November 2009 to January 2010
Trial implementation*	February 2010
Citywide implementation*	March 2010

\*Tentative

In accordance with Chapter 14B the SFMTA Contract Compliance Office has set a 16% LBE goal on this project.

**ALTERNATIVES CONSIDERED**

The SFMTA considered not pursuing a RFP to provide a pay by phone payment option to pay for parking time at metered spaces.

Since the SFMTA intends to provide the option to pay by credit card at on-street parking meters as part of the *SFpark* pilot program and the broader citywide meter replacement, the SFMTA considered delaying the release of this RFP until after the public had an opportunity to evaluate the pay by credit card at parking meters payment option. However, since the trial was popular with the pilot program participants, the SFMTA decided to move forward with a RFP at this time.

**FUNDING IMPACT**



**PAGE 20.**

The RFP requires the PBP service to be 100 percent revenue neutral to the SFMTA. All costs associated with starting, operating, enforcing, and maintain the service are the responsibility of the selected contractor.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney's Office has reviewed the item.

**RECOMMENDATION**

Staff recommends that the SFMTA Board authorize the issuance of a Request for Proposals for Parking Meter Pay by Phone Services.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The San Francisco Municipal Transportation Agency conducted a pilot of Pay-By-Phone technology; and

WHEREAS, The SFMTA has prepared a Request for Proposals for a new contract for providing Pay-By-Phone services for on- and off-street parking at metered parking spaces controlled by the SFMTA and the Port for a term of three years with two one-year options to extend the contract; and

WHEREAS, Under the new contract, the contractor will have the right to provide Pay-By-Phone payment service for on- and off-street parking at metered parking spaces controlled by the SFMTA and the Port; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to issue a Request for Proposals for Pay-By-Phone services for on- and off-street parking at metered parking spaces controlled by the SFMTA and the Port with substantially the same terms as set forth in the RFP.

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**

**San Francisco Municipal Transportation Agency  
(SFMTA)**

**Request for Proposals for  
Parking Meter Pay By Phone Services**

**SFMTA 2009/10-59  
CCO # 09-1092**



Date issued:	August 5, 2009
Pre-proposal Conference:	10:00 A.M. PDT, August 19, 2009
Proposal due:	4:00 P.M. PDT, September 10, 2009

**San Francisco Municipal Transportation Agency (SFMTA)**  
**Request for Proposals for Parking Meter Pay By Phone Services**

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**Appendices:**

- A. HRC Attachment 2: Requirements for Architecture, Engineering and Professional Services Contracts, for contacts \$29,000 and over (separate document). Proposers must submit the following forms:

- Form 2A     HRC Contract Participation form
- Form 2B     HRC “Good Faith” Outreach Requirements form
- Form 3       HRC Non-discrimination Affidavit
- Form 5       HRC Employment form

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

- Form 4       Joint Venture Participation Schedule

- B. Standard Forms: Listing and Internet addresses of Forms related to Taxpayer Identification Number and Certification, Business Tax Declaration, and Chapters 12B and 12C, and 14B of the S.F. Administrative Code
- C. Sample Agreement for Professional Services (Form P-500)
- D. Attestation of Compliance on Communications Prior to Contract Award
- E. Certification Regarding Debarment, Suspension, and Other Responsibility

F. Matters  
Certification Regarding Lobbying

## I. Introduction and Schedule

### A. General

The San Francisco Municipal Transportation Agency (the "SFMTA") is interested in receiving proposals for a citywide program to enable drivers to pay for metered parking spaces by telephone ("pay by phone service" or the "Service") at all 26,000 on- and off-street metered parking spaces in the City and County of San Francisco (the "City"). This includes approximately 26,000 SFMTA on- and off-street metered parking spaces under the jurisdiction of the SFMTA and approximately 1,000 on- and off-street metered spaces under the jurisdiction of the Port of San Francisco ("Port"). In an effort to make parking more convenient and enhance payment options for drivers at parking meters, SFMTA has been testing various metering equipment and technologies capable of accepting payment by credit cards, pre-paid parking cards and telephone. As a result of recent experiences testing these technologies, SFMTA is soliciting proposals for citywide pay by phone service.

The Service would allow drivers to pay for metered parking using their credit card via cellular phone, Personal Digital Assistant ("PDA"), or other interactive wireless, or conventional land line telephone. A driver's interaction with the Service would proceed as follows:

1. A driver parks in a metered space.
2. He/she calls the local or toll-free number on the meter decal for a one-time registration of their credit card.
3. The driver enters the parking space number (currently 8 digits in length, potentially 10 digits in length) into the interactive phone system administered by the successful Proposer ("Contractor") and completes the transaction by activating a parking session.
4. The driver may call back to add more time to the meter up to the legal time limit for the meter.

The Service provided by the Contractor shall be fully automated and interface with the SFMTA's existing enforcement and citations issuance system. Using a handheld device, Parking Control Officers ("PCOs") must be able to query whether a driver has paid for parking in each metered parking space. Where the meter technology allows, the Service should also display the payment information on the meter to allow for visual enforcement.

The agreement for the services described in this Request for Proposal ("RFP") will have an initial term of three years. In addition, SFMTA will have two options to extend the term for a total period not to exceed two additional years. SFMTA may exercise these options in its sole and absolute discretion. The Contractor will be expected to provide for the development, implementation, and operation of the project services. Contractor must provide all necessary hardware, software, permits, decals, equipment, installation,

and personnel for the project services at no cost to the SFMTA. Contractor will be authorized to charge a convenience fee, subject to the written approval of SFMTA, to drivers making use of the Service.

## **B. Schedule**

The anticipated schedule for selecting a consultant is:

Phase	Date and time
RFP is issued by the SFMTA	Wednesday, August 5, 2009, 5:00 PM PDT
Pre-proposal conference 1 South Van Ness, San Francisco, CA 94103 7 <sup>th</sup> Floor, Union Square Conference Room	Wednesday, August 19, 2009, 2:00 PM PDT
Deadline for submission of written questions or requests for clarification	Wednesday, August 26, 2009, 4:00 PM PDT
Proposals due	Thursday, September 10, 2009, 4:00 PM PDT
Oral interview of short listed firms	Monday, October 5, 2009, (times to be scheduled)
Notification of firm selected	Monday, October 19, 2009, 4:00 PM PDT
Deadline for submission of protests	Monday, October 26, 2009, 4:00 PM PDT

Note this schedule is subject to change. All participants in the RFP process will be notified via email of any changes in deadlines.

## II. Scope of Work

A. **Definitions:** The following is a summary of terms to be used within this document:

**“Agreement”** shall mean the agreement entered between Proposer and SFMTA.

**“Business Days”** shall mean Monday through Friday, excluding City-observed holidays, see [http://www.sfgov.org/site/mainpages\\_index.asp?id=45](http://www.sfgov.org/site/mainpages_index.asp?id=45).

**“Contractor”** shall mean the successful Proposer

**“Days”** shall mean calendar days.

**“Equipment”** shall mean meters, electronic directional signs, their components and parts, operating software and any related equipment.

**“Electronic Commerce”** shall mean the ability to safely charge and process credit cards over the phone or internet in exchange for goods or services.

**“IVR”** shall mean the Interactive Voice Response software that recognizes spoken words over the telephone and translates into computer code to assist the caller with their service needs.

**“PDT or PST”** shall mean Pacific Daylight Time or Pacific Standard Time, which is the time base for any scheduling for Services under the Agreement.

**“Performance Standards”** shall mean the minimum standards acceptable for functioning of the Service.

**“Proposer”** shall mean any vendor who submits a proposal to this RFP.

**“Toll free number”** shall mean any telephone number that a caller dialing from a land line or a cellular line with a 415 area code will be billed as a local call.

**“Service”** shall mean the pay by phone service including the IVR, wireless network, servers, operating software, etc.

**“Vandalism”** shall mean any willful damage caused to the meter which affects the meter appearance or the ability of the customer to operate the meter.



## **B. Scope Overview**

The Scope of Work is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project.

Proposer shall identify and establish proposed timelines for two implementation phases for pay by phone Service: Phase 1 will include limited implementation with SFMTA staff using cell phones to test the Service; and Phase 2 will roll-out the Service to the public with a detailed marketing and signage plan. Contractor shall guarantee delivery of each implementation phase by a fixed date and ensure after completion of both phases that the Service is fully operational and, except where identified by SFMTA, fully integrated with the SFMTA's single-space and multi-space meters, enforcement and citations issuance system, and financial payment and reporting systems by that date.

Contractor shall be solely responsible for the design and delivery of the Service and for the management of all phases of the project. SFMTA reserves all rights of acceptance review and sign-off on the Service, which must comply with the SFMTA's requirements as stated below prior to being accepted and implemented. SFMTA will provide its own project support team for project decision-making, overseeing the progress and status of the project, and responding to inquiries and issues raised by Contractor's project team during the course of the project. Contractor shall assume all risk for the Service's technical and operational integration, implementation, and functionality.

In responding to this RFP, proposers shall demonstrate competency in the area of electronic commerce and network design, and show strong financial management and project management skills in at least one previous wireless payment project. The SFMTA is seeking a pay by phone technology that allows for seamless integration with other new parking technologies such as multi-space and single-space meters with credit card capabilities.

The following is a list of requirements for providing the Service citywide in San Francisco:

## **C. User Interface Requirements**

1. Interactive Voice Response ("IVR") and/or Registration Center - Contractor shall provide an IVR system and/or registration center that can fully support Service users without the need for wait times or busy signals. Contractor shall provide a toll-free telephone number that shall be minimally available from 4 a.m. to 12 midnight PST or PDT seven days per week, including holidays for Service users to create an account and/or make parking meter payments by credit card. Service users shall be able to transfer to a customer service agent at any time. The toll-free number shall be transferred to the SFMTA or any third party as designated by the SFMTA upon completion of the contract at no additional cost to the agency. Although there is currently no City policy requiring call center employees to be located in the United States, proposers are advised that this

may change in the future. Proposers shall include a sample menu tree for their IVR systems.

2. IVR Menu Design – IVR will be capable of customization according to SFMTA specifications. Contractor shall work with SFMTA to streamline IVR menus to improve customer experience including options to provide different language translations (i.e. Cantonese, Spanish) and voice recognition capability if required.
3. Online Account – Service users shall be able to create and view an account, and change account details online. Service users shall also be able to review previous parking transactions and parking payments, adjustments, and modify credit card details, online.
4. Customer Service – Contractor's toll-free number shall be minimally available from 4:00 a.m. to 12:00 midnight PDT or PST seven days a week, including holidays to track and resolve problems reported by users and the SFMTA. A live agent shall be made available within two keystrokes. Contractor shall answer all public inquiries regarding the application's functionality and electronic payment processing issues (including acceptance, reversal, duplicate and fraudulent charges, etc.)
5. Parking Confirmation – Service users shall have the option to receive a voice, text, or email message confirmation of the parking transaction which includes date of transaction, paid amount and meter number. Service users shall receive their choice of a voice, text, or email message reminder before the parking meter expires, and shall have the ability to remotely extend a parking session within the applicable time limit for the parking meter. The process to extend the time shall be the same as the initial purchase. Service users shall also receive their choice of voice, text, or email message confirmation when a parking extension occurs. All messages must be sent in real time, i.e., less than 5 second after occurrence.
6. Minimum purchase – Users will be required to pay for a minimum of one hour of parking time or the maximum time if the time limit is less than one hour.
7. Cancellation – Contractor's Service must allow users to terminate a transaction by canceling unused portions of initiated time provided that the one hour minimum has been met or exceeded. For example, if a user initiates 2 hours of parking, but only uses one hour and fifteen minutes, the user must be able to call in and terminate the charge for the unused 45 minutes.
8. Decals and Signage – Contractor shall pay for the design and production of all meter decals for all SFMTA-managed meters in the City and on Port property (approximately 26,000), signage and associated installation costs. Contractor must obtain SFMTA's written approval of all decal and signage graphics prior to production. Contractor's installation and maintenance obligation shall include reimbursing the SFMTA for a full-time position equivalent (FTE) for City job classification #7444 (Parking Meter Repairer) for the full term of the contract, at a

total annual amount not to exceed \$99,792 (including base pay and benefits) plus any City-mandated CPI adjustments. This position shall be responsible for installing, cleaning and/or replacing decal and signage damage including damage caused by intentional acts such as Vandalism or graffiti. All decals must be resistant to the environmental conditions found in the City, including but not limited to wind blown grime, rain, sun, fog, salt air, and vibrations, in a temperature range of -20 deg. F to +185 deg. F, and be clearly visible in low light situations, bright sunlight, snow, rain, fog, and day/night lighting transitions. As SFMTA installs additional meters in the City, Contractor shall pay for the design and production of any additional signage and decals.

9. Public awareness and advertisements – Proposers must submit a public awareness and advertisement plan to notify the general public of the Service, at the Proposer's expense. Contractor shall pay for all advertisements including online advertisements, radio and television advertisements, local print advertisements, banners, posters and leaflets/pamphlets. Proposer shall also include a proposed budget and timeline for the plan. Proposer shall also include a list of the unique media vehicles and the quantity of each media vehicle. For example, if a proposer plans to run ads on television, the “vehicle” would be televisions ads and the quantity may be 200.

Contractor must obtain SFMTA’s written approval on all advertising, including graphics, prior to public dissemination. Contractor shall not enter into advertising campaigns or merchant participation programs to increase usage without written approval from SFMTA.

10. Web Content – Contractor shall provide web content for SFMTA and SF*park* websites. The content shall include production of a video detailing instructions on how to set up a new account, how to use the system, pictorial examples of the decals and signage identifying those meters included in the program, and provide Contractor’s contact information for help in using the Service.
11. Announcement – At SFMTA’s sole discretion users shall hear a 30 second (or less) announcement at the beginning of the call to the Service. The content of the announcement shall be determined by the SFMTA. This announcement may include advertising by the SFMTA or third parties unrelated to the Service. Any revenues associated with the announcement shall belong to the SFMTA.
12. SF*park* notification – Those users who park in one of the eight SF*park* pilot areas shall be notified of the pilot and of the website where they can find more information. This notification shall be included in their Parking Confirmation. The text of the notification shall be “Note, your parking space is located in one of the SF*park* pilot areas. For more information about SF*park* visit our website at [www.sfmta.com/sfpark](http://www.sfmta.com/sfpark).” The SFMTA reserves the right to change this text as necessary.
13. Meter feeding – The Service shall block users from adding any additional time once the maximum time limit for the meter has been reached. Moreover, users

shall be prevented from purchasing any time at any metered space on the same block for the two hours following a maximum payment.

14. Error handling – Proposers should describe how the system will handle errors including but not limited to:

- a. If a user enters in a valid but an incorrect parking space number before completing the transaction; and
- b. If a user enters in a valid but an incorrect parking space number and then completes the transaction.

#### **D. Pricing Requirements**

1. Pricing – Contractor shall be permitted to charge users of the Service a single flat convenience fee per-transaction for each use of the Service. The convenience fee amount shall be approved in writing by the SFMTA before the Contractor enters into a contract with SFMTA. No other pricing models shall be accepted. Proposers shall include the assumptions used in calculating their proposed fee, including but not limited to the anticipated annual volume of pay by phone transaction and forecast revenue.
2. No increase to the convenience fee shall be allowed during the initial three-year term of the contract.

#### **E. System Requirements**

1. Data communications – Data communications from the Contractor’s Management System including payment authorizations and transaction data details shall be in real-time which is defined as transmission in less than 5 seconds after initial transmission of data.
2. Meter Location Number – The Service shall accommodate the current unique eight digit number assigned to each metered parking space. However, the system must also be able to accommodate up to two additional digits should the SFMTA decide to create and use longer numbers.
3. Rate Data - Contractor shall accept rate data for metered spaces that are part of the SF*park* Pilot Project (approximately 6,000 spaces) via an XML “Price Schedule” feed. Prices for metered spaces in the pilot may vary according to location, time of day, day of week, and/or length of stay. SFMTA has currently fixed the price schedule for a term of at least 30 days and will not vary the amount by time of month (e.g. Monday the 2nd will be the same as Monday the 9th, Monday the 16th, Monday the 23rd, and every Monday thereafter until the next price schedule change). The SFMTA will transmit the new Price Schedule to the Contractor at least 72 hours prior to the effective date of the Price Schedule. The Contractor shall implement the price schedule prior to the effective date of the Price Schedule. SFMTA reserves the right to submit new Price Schedules more frequently than once per 30 days. The final required

format for the XML feed will be determined before execution of the contract between Contractor and SFMTA, and will likely be similar to the format found in Appendix H. The SFMTA reserves the right to expand the areas included in SFpark to include any other metered space in the City.

4. Real Time Transaction Feed – Contractor shall provide for transmission of parking payment event data for each pay by phone transaction, be it an initial transaction or an add time transaction, to the SFMTA’s Transactional System as a “pushed” continuous real-time XML data transmission, i.e., the Contractor’s server will send the XML transmission to the SFMTA server with any request from the SFMTA server. All events recorded by Contractor must be transmitted to SFMTA in real-time which is defined as transmission in less than 5 seconds after occurrence. The final required format for the XML feed will be determined before execution of the contract with SFMTA and will likely be similar to the format found in Appendix G.
5. If SFMTA’s Transactional System is unable to accept transmissions, messages should be stored and sent as soon as the SFMTA’s Transactional System comes online. This data will be part of the SFMTA unified enforcement platform and combined with data from single-space and multi-space meter vendors to provide a single enforcement view for Parking Control Officers. The data may also eventually be pushed out to single- or multi-space meters that provide for visual enforcement.
6. Hosting – Contractor shall provide secure hosting and support for all payment processing functions at its own hosting facilities ensuring availability through phone or other wireless devices. Proposals must affirmatively state that they own their servers. Contractor shall provide redundant connectivity and a fully redundant hosting environment with automatic fail-over to the redundant system in the event of failure. Contractor shall develop full business continuity and recovery plans, and shall obtain SFMTA’s approval on such plans prior to their adoption. Proposers shall include a draft of their continuity and recovery plan in their proposals. Proposers shall include the locations of the servers that will be used for the Service in their proposals.
7. Service Levels – Except for scheduled maintenance, the SFMTA’s goal is to ensure that the Service is operational, available and reliable 4 a.m. to 12 midnight PST or PDT, seven days a week, including holidays.
8. Security – Contractor shall implement highly secure systems to manage its data for the Service. Contractor shall restrict and secure administrative access to its data with login IDs and passwords, and shall restrict physical access to Contractor’s computer and data storage facilities to authorized persons. Contractor shall use firewall software to protect the Service’s databases from unauthorized access, and ensure that sensitive data are accessed and exchanged on restricted Virtual Private Networks. Proposers shall describe their security procedures in their proposals.

9. Time Syncing – Before executing a contract, SFMTA will identify the time source with which Contractor shall synch its server clock once per day. The server time shall deviate no more than two seconds from the identified time source over a 24-hour period.

## **F. Data Requirements**

1. Data Privacy – Contractor shall encrypt all user data and shall work with the SFMTA to minimize the collection of personal information such as users' telephone numbers or other private data. Contractor shall safeguard and protect the confidentiality of all data, and in no event share data collected with any third party except as required by law. Contractor is expressly forbidden from selling, leasing, distributing, publishing or otherwise sharing any personal information of Service users including, but not limited to, transaction history, address, phone number, and credit card number. Proposers shall describe their privacy policy in their proposals.
2. Data Ownership – The SFMTA will be the exclusive owner of all data and rights to the data generated from the System (whether direct or derived/calculated/modeled) as a result of any contract entered into as a result of this RFP. The SFMTA will not own nor be held responsible for safeguarding any personal data, including names, addresses, phone numbers, or credit card numbers. Contractor will be expressly prohibited from transmitting any credit card data (other than the last 4 digits of the account number) to the SFMTA.
3. Archived Data - Contractor shall archive all transaction data during the contract period and for a minimum of five years after the termination of the contract. Contractor must deliver copies of all system data upon request of the SFMTA and the termination of the contract. The SFMTA shall have the option to receive copies of all archived data stored in a mutually-acceptable medium such as DVD+R or Blu-ray Disc (BD-R). Proposers shall describe their archiving procedures in their proposals.

## **G. Payment Processing Requirements**

1. Registration – Contractor shall collect the following pieces of information from the customer:
  - a. Credit Card Number
  - b. Three or four digit CVV security number
  - c. Telephone Number
  - d. Credit card expiration date
  - e. The numeric portion of the billing street address
  - f. Billing zip code
  - g. Other information as required by the credit card companies now or in the future.

2. Customer Payment – Contractor shall provide a toll-free number that will guide the driver through the payment process. Any associated fees to the cardholder must be clearly stated prior to confirming the payment transaction and allow the cardholder to discontinue and cancel the transaction. All payment processing and authorization will be in real-time (less than 5 seconds after transmission of data). Batched credit card approval processing and authorization will not be accepted.
3. Payment Processing Standards – Contractor shall be capable of processing transactions for Visa, MasterCard, Discover and American Express. Credit card data transmission shall meet the Level 1 Payment Card Industry (PCI) Data Security Standard (<https://www.pcisecuritystandards.org/index.shtml>) and comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs. As the PCI Data Security Standard evolves, the Contractor shall be responsible for maintaining its compliance at its sole expense.
4. Credit card security – Contractor shall be solely responsible and shall indemnify the SFMTA against any claim arising from lost or stolen personal information including but not limited to credit card information.
5. Rejected Credit Cards – Contractor’s payment processing system shall detect and reject credit cards in real-time. System user shall be provided a second opportunity to use a different credit card. No parking transaction shall be allowed for rejected credit cards. Contractor shall also allow SFMTA to create its own “Hot list” of cards that it can customize to block known fraudulent card holders from attempting to use the Service.
6. Processing Fees – Contractor shall pay for all associated payment processing fees including, but not limited to, gateway company fees, card issuing bank fees, card association dues and assessments, and Contractor’s merchant account bank fees. All such fees shall be in addition to the payment of the meter rate. For example, if a customer purchases \$3.00 worth of parking Contractor will owe the SFMTA \$3.00, regardless of additional fees.
7. Settlement of Funds – Contractor shall transmit by electronic means all transactions to designated processing centers as the transactions occur and deposit the parking revenues collected to the SFMTA’s designated bank accounts. Contractor shall settle the collected funds within (24) hours of the occurrence of the transactions via Automated Check Handling or Automated Clearing House (“ACH”) transfer to designated bank accounts. Note that revenues from some metered spaces may be deposited into different accounts as determined by the SFMTA. For example, revenue from the spaces at the Port may be deposited directly into a Port account.
8. Chargebacks and Refunds – Contractor shall be responsible for managing, processing, and paying for, all chargebacks and refunds as they occur.

## **H. Project Management Requirements**

1. Methodologies – Contractor shall adopt disciplined project management, development, and change management methodologies to ensure the successful operations of the Service. Contractor shall provide SFMTA with documentation explaining the adopted methodologies.
2. Issue Resolution – Contractor shall be expected to provide and implement a process for tracking and reporting on issues and/or change requests reported by users or SFMTA employees. Proposers shall describe their Issue Resolution process in their proposals.
3. Testing – SFMTA will test and accept the Service before it is made available to the public.
4. City Policy Compliance – Proposer must be able to comply with the City's contract requirements as outlined in Section VII. Proposers shall affirmatively indicate in their proposals that they are prepared to comply with contract requirements as outlined in Section VII

## **I. Reporting Requirements**

1. Reporting – Contractor shall transmit electronically, in Comma Separated Value (CSV) file format files, the following daily transaction detail and summary reports to SFMTA, both a) as sent in an email and b) made available for SFMTA to download no later than 5:00 A.M. PST or PDT the next business day after a credit card transaction. In the event reports are not available, Contractor must send an error message via email at or before the deadline.
  - a. Daily transaction log certifying all credit card transactions per meter number including the start date and time, the end date and time, SFMTA space identifier, credit card type, receipt number, rate charged per hour, transaction amount, convenience fee, total charged, and date of deposit.
  - b. Daily credit card summary totaling the number of transactions, transaction amount, and convenience fees for all transactions per day.
  - c. Monthly meter service report showing the exact minutes per day each meter is unable to service a Pay By Phone request with explanation such IVR down or network down.
  - d. Customer service log detailing number and types of customer calls.
  - e. Daily deposit report showing the total amount deposited into the SFMTA bank account per day.
2. Contractor shall provide a web-based reporting system which shall deliver customized reports as requested by SFMTA.
3. Citation Adjudication – Contractor shall provide a simple web-based query system which delivers transaction searches by day and meter number for citation



adjudication purposes. All transaction data will be maintained and made available to an unlimited number of SFMTA employees for up to five years.

4. Records – Contractor shall maintain and make available to SFMTA during regular business hours, accurate paper and electronic books and accounting records relating to the Service.
5. Agency level reporting -- All metered spaces will be assigned an agency code and all reports should be able to be run for each agency code separately or summed up. There shall be no limit to the number of agency codes. However, the SFMTA expects that less than 100 codes will be created. Currently there are only two agency codes, SFMTA and Port.

## **J. Integration Requirements**

1. Enforcement Handheld Upgrade – Contractor shall pay the SFMTA's current provider of handheld devices to accelerate the selection and purchase of the new handheld enforcement devices ("handhelds") that will accommodate the Service, including associated pilot programs. The SFMTA's Citation Processing Contractor is scheduled to purchase new handhelds by July 2010. SFMTA's Citation Processing Contractor has confirmed that it is willing to accelerate this replacement process at a cost of \$5,000 per month accelerated (e.g. if the Service begins on October 1, 2009, the cost would be \$45,000, or nine months acceleration). The handheld replacement process must be complete before the SFMTA will allow the Service to be activated.

**Enforcement approaches relying on smart phones or on any wireless device other than SFMTA's Enforcement handhelds will not be accepted.**

2. Contractor shall be responsible for paying the monthly data communications cost for all handheld devices for the length of the contract. Currently the SFMTA has 265 handhelds however SFMTA reserves the right to put up to 350 handhelds into service. The current cost is approximately \$60 per device, however, this is subject to change by the communications provider. The data communication provider selected by the Contractor is subject to the written approval of the SFMTA. Proposers shall identify their preferred cellular provider in their proposals. Include the preferred cellular provider's coverage map for the City.
3. Contractor shall also be responsible for configuring the handheld devices to limit the web sites visible on the device and to program any toggle keys for movement between Contractor's software and Citations Issuance software programs, as required by the SFMTA.
4. Citations Issuance System – Contractor shall be financially and technically responsible for the integration of the Contractor's pay by phone enforcement system with SFMTA's existing citations issuance system. The citations

issuance system software is licensed to the SFMTA by SFMTA's Citation Processing Contractor and the Contractor will be responsible for contracting directly with SFMTA's Citation Processing Contractor for the creation of the necessary interface. The main purpose of the interface is to provide for seamless enforcement of parking violations on a wireless handheld device through one software program. The Contractor will be solely responsible for specifying and contracting for this interface directly with SFMTA's Citation Processing Contractor to ensure that there are no additional license or maintenance fees payable by the SFMTA to SFMTA's Citation Processing Contractor in connection with the Contractor's use or the SFMTA's indirect use of the interface.

5. New Parking Technologies – Contractor shall be financially and technically responsible for the seamless integration with the *SFpark* system. This will enable combined enforcement with other new parking technologies such as multi-space meters and single-space meters with credit card capabilities.
6. Dead zones – Contractor shall provide a detailed plan for conducting a survey of each metered space in the City to verify adequate cellular coverage both for drivers and SFMTA Enforcement. This survey plan must be executed prior to the Service being accepted by the SFMTA. Those metered spaces found to be in areas of little or no cellular coverage will be excluded from the service. The Contractor shall identify excluded spaces with a sticker explaining that particular space is excluded from the Service due to poor cellular coverage.

## **K. Staff Training Requirements**

Staff Training – Contractor shall provide all necessary enforcement training on applications and usage of handheld devices, and management training on using and administering the management system. Contractor will provide a local or toll-free number for SFMTA employees to obtain technical assistance during the hours of 9:00 AM and 5:00 PM PST or PDT. This provision extends to any subcontractors or service providers, (e.g., credit card gateway companies), on which the Contractor relies to deliver the Service.

## **L. Use of SFMTA Branding**

Contractor shall not use the City and County of San Francisco or the SFMTA as a reference or use the City and County of San Francisco or the SFMTA or the *SFpark* logo or name, without written permission from both the Chief Financial Officer of the SFMTA and the Director of Parking and Traffic. Further, Contractor shall not issue press releases or other official communications which mention the SFMTA, *SFpark*, or other San Francisco parking programs, including pilot programs, without written permission from both the aforementioned officials.

### **III. Submission Requirements**

#### **A. Time and Place for Submission of Proposals**

**Proposals must be received by 4:00 P.M. PDT on September 10, 2009.**

Postmarks will not be considered in judging the timeliness of submissions. Proposals may be delivered in person and left with the receptionist on the third floor of One South Van Ness Avenue (at Market Street), San Francisco, CA or mailed or sent via messenger service to:

SFMTA Contracts & Procurement  
Attn: Mikhael Hart  
1 S Van Ness Ave Fl 3  
San Francisco, CA 94103-5417

Proposers shall submit seven printed copies of the proposal and two printed copies, separately bound, of required HRC Forms in a sealed envelope clearly marked "Parking Meter Pay By Phone RFP Response" to the above location, along with one electronic copy each of the proposal and required HRC forms. Proposals that are submitted by fax will not be accepted. Late submissions will not be considered.

#### **B. Format**

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

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

If your response is more than 9 pages, please include a Table of Contents.

You must also submit an electronic version of the proposal in Word 2003 (or earlier) Document Format (.doc) with a maximum size of 10 megabytes.

#### **C. Content**

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

## **1. Introduction and Executive Summary**

Submit a letter of introduction and executive summary of the proposal. The letter must be signed by a person authorized by your firm to obligate your firm to perform the commitments contained in the proposal. Submission of the letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the proposal. The letter must also include a statement that your firm is able to comply with the City's contract requirements set forth in Section VII (Contract Requirements).

## **2. Approach**

Describe in detail how your firm proposes to provide the Service requested by SFMTA. In particular, your proposal must describe in detail how your company will satisfy each of the requirements outlined in Section II: Scope of Work of this RFP.

## **3. Firm Qualifications**

Provide information on your firm's background and qualifications which addresses the following:

- a. Name, address, and telephone number of a contact person;
- b. A brief description of your firm and its ownership structure, the background and relevant experience (including resumes) of key members of the project team, which members of the project team will be available locally (as defined by working out of an office within 40 mile radius of the corner of Market Street and Van Ness in San Francisco), the number of employees, and how any joint venture or association would be structured;
- c. Number of on- and off-street parking spaces currently in live use in other jurisdictions, number of US/abroad locations currently in live use, number of public clients, number of private clients, number of registered users, and number of years the proposer has offered pay by phone service;
- d. A description of at least one, but not more than two projects for pay by phone services implemented by your firm including, client and telephone numbers, schedule and project summary. Descriptions should be limited to one page for each project. If joint consultants or subconsultants are proposed provide the above information for each; and
- e. Attached copies of audited or certified financial or filed income tax, statements for the last three years.

## **4. References**

Provide references for the lead consulting firm, lead project manager, and all subconsultants, including the name, address and telephone number of at least one but no more than four recent clients (preferably other public agencies).

## **5. Fee Proposal**

SFMTA does not intend to pay a fee to the selected proposer. Instead, the selected proposer will be authorized to collect a fee (“convenience fee”) from drivers using the Service. SFMTA intends to award this contract to the firm that it considers will provide the best overall program with the lowest convenience fees. Provide a convenience fee cost proposal showing the convenience fee per transaction based on an assumption of 10,000 transactions per month, 50,000 transactions per month, 100,000 transactions per month, 250,000 transactions per month, 500,000 transactions per month, and 1,000,000 transactions per month. Calculating the fee proposal will be the responsibility of the Contractor. As previously stated in the Scope of Work, and the proposed fee should include all processing fees including gateway fees and bank fees in a single proposed convenience fee.

## IV. Evaluation and Selection Criteria

### A. Minimum Qualifications

Any proposal that does not demonstrate that the Proposer meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be eligible for award of the contract.

1. Proposer must have completed at least one implementation of a pay by phone parking system for a public sector client in the United States and / or abroad. Pilot projects may be included. The Proposer must provide client contact names, titles, and phone numbers. Any references provided regarding a contract with the Proposer that expired more than five years prior to the date this RFP is issued will be excluded.

### B. Selection Criteria

The proposals will be evaluated by a selection committee comprised of parties with expertise in parking meter installation and repair, parking enforcement, traffic engineering, and parking policy. SFMTA intends to evaluate the proposals generally in accordance with the criteria itemized below. Selected firms may be asked to participate in an oral interview.

1. **Approach and Fee Proposal** (40 points)
  - a. Completeness of proposed approach.
  - b. Detail about the proposed pay by phone system.
  - c. Lowest convenience fee charge to drivers at the different levels of transactions set forth in Section III.C.5. above.
  - d. Ease of use for drivers.
  - e. Quality of reporting delivered to SFMTA Accounting.
  - f. Ease of enforcement.
  - g. Security procedures and qualifications
2. **Firm Qualifications** (30 points)
  - a. Expertise of the firm in the fields necessary to complete the tasks;
  - b. Firm's viability in terms of financial strength and market reputation;
  - c. Firm's experience in completing similar projects, especially in the public sector (include a description of any integration(s) with citation issuance systems, including the names of any vendors involved).
  - d. Firm's existing number of active clients and active parking spaces; and
  - e. Result of reference checks.

**3. Oral Interview (30 points)**

- a. Understanding of the scope and requirements;
- b. Experience with government sector and market's best practices;
- c. Payment solutions knowledge and experience; and
- d. Ability to provide appropriate support for System users and the SFMTA.

Following the evaluation of the written proposals, the Selection Committee, at its option, may invite all or some of the responsive proposers within the competitive range based on their written proposals to an oral interview. In general, the oral interview, if held, will consider the proposer's overall presentation, communication skills and ability to explain and answer questions from the Selection Committee. The Selection Committee will evaluate the oral interview based on the quality of responses provided and the quality of the team attending and presenting at the interview, including their expertise, communication skills, knowledge of the proposal, and the overall quality of their presentation. The interview will consist of a brief presentation by the proposer, standard questions asked of each of the proposers, and possibly follow-up questions to clarify the content of the proposal.



## **V. Pre-proposal conference and Contract award**

### **A. Pre-Proposal Conference**

Proposers are encouraged to attend a pre-proposal conference on August 19, 2009, at 2:00 pm PDT to be held at One South Van Ness Avenue, Seventh Floor, San Francisco, CA 94103. All questions will be recorded and noted at this conference and any available new information will be provided at that time. If you have further questions regarding the RFP, please contact the individual designated in Section VI.B.

### **B. Contract Award**

SFMTA will select a proposer with whom SFMTA staff shall commence contract negotiations. The selection of any proposal shall not imply acceptance by the SFMTA of all terms of the proposal, which may be subject to further negotiations and approvals before the SFMTA may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time, then SFMTA, in its sole discretion, may terminate negotiations with the highest ranked proposer and begin contract negotiations with the next highest ranked proposer.

## **VI. Terms and Conditions for Receipt of Proposals**

### **A. Errors and Omissions in RFP**

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

### **B. Inquiries Regarding RFP**

Inquiries regarding the RFP and all oral notifications of an intent to request written modification or clarification of the RFP, must be directed to Mikhael Hart, 415-701-4429; [Mikhael.Hart@sfmta.com](mailto:Mikhael.Hart@sfmta.com), or in Mikhael's absence to Ashish Patel, 415-701-4297; [Ashish.Patel@sfmta.com](mailto:Ashish.Patel@sfmta.com).

### **C. Objections to RFP Terms**

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

### **D. Change Notices**

SFMTA may modify the RFP, prior to the proposal due date, by issuing Change Notices via email, to a list of businesses that have notified SFMTA that they have downloaded the RFP. The proposer shall be responsible for ensuring that its proposal reflects any and all Change Notices issued by SFMTA prior to the proposal due date regardless of when the proposal is submitted. Therefore, SFMTA recommends that proposers notify SFMTA that they have downloaded the RFP to ensure that they are placed on the email list.

### **E. Term of Proposal**

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

### **F. Revision of Proposal**

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

or before the proposal due date.

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

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

#### **G. Errors and Omissions in Proposal**

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

#### **H. Financial Responsibility**

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

#### **I. Proposer's Obligations under the Campaign Reform Ordinance**

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

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

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

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

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a

potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

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

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

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

## **J. Communications Prior to Contract Award**

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

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

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

members of the SFMTA Board of Directors and the designated staff contact person(s) identified in the RFP.

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

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

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

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

#### **K. Sunshine Ordinance**

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

#### **L. Public Access to Meetings and Records**

If a proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the proposer must comply with Chapter 12L. The proposer must include in its proposal (1) a statement describing

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

#### **M. Reservations of Rights by the City**

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

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

#### **N. No Waiver**

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

#### **O. Local Business Enterprise Goals and Outreach**

The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance") shall apply to this RFP.

##### **1. LBE Subconsultant Participation Goals**

The LBE sub consulting goal for this contract is Sixteen (16) % of the total labor value of the services to be provided. The LBE sub goal shall also apply to any labor value of the Additional Services authorized after issuance of the Notice to Proceed. Pursuant to Sec. 14B.9 of the Administrative Code, proposers are hereby advised that the availability of Minority Business Enterprises (MBEs), Woman Business

Enterprises (WBEs) and Other Business Enterprises (OBEs) to perform sub-consulting work on this project is as follows: eight (8) % MBE, four (4) % WBE, and four(4) % OBE. Proposers are further advised that they may not discriminate in the selection of sub-consultants on the basis of race, gender, or other basis prohibited by law, and that they shall undertake all required good faith outreach steps in such a manner as to ensure that neither MBEs nor WBEs nor OBEs are unfairly or arbitrarily excluded from the required outreach. (LBE Certified firms may be found at: [http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS\\_1.htm](http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm))

Each firm responding to this solicitation shall demonstrate in its response that it has used good-faith outreach to select LBE subcontractors as set forth in S.F. Administrative Code §§14B.8 and 14B.9, and shall identify the particular LBE subcontractors solicited and selected to be used in performing the contract. For each LBE identified as a subcontractor, the response must specify the value of the participation as a percentage of the total value of the goods and/or services to be procured, the type of work to be performed, and such information as may reasonably be required to determine the responsiveness of the proposal. LBEs identified as subcontractors must be certified with the San Francisco Human Rights Commission at the time the proposal is submitted, and must be contacted by the proposer (prime contractor) prior to listing them as subcontractors in the proposal. Any proposal that does not meet the requirements of this paragraph will be non-responsive.

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

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

## **2. LBE Participation**

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

- a. A 10% discount to an LBE; or a joint venture between or among LBEs; or
- b. A 5% discount to a joint venture with LBE participation that equals

or exceeds 35%, but is under 40%; or

c. A 7.5% discount to a joint venture with LBE participation that equals or exceeds 40%; or

d. A 10% discount to a certified non-profit entity.

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

### **3. HRC Forms to be Submitted with Proposal**

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

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

If you have any questions concerning the HRC Forms, you may call Maria Cordero, SFMTA Contract Compliance Office at (415) 701-5239.



## **VII. Contract Requirements**

### **A. Standard Contract Provisions**

The successful proposer will be required to enter into a contract substantially in the form of the Agreement for Professional Services, attached hereto as Appendix C. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. SFMTA, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Proposers are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§34 in the Agreement for Professional Services); the Minimum Compensation Ordinance (§43 in the Agreement); the Health Care Accountability Ordinance (§44 in the Agreement); the First Source Hiring Program (§45 in the Agreement); and applicable conflict of interest laws (§23 in the Agreement), as set forth in paragraphs B, C, D, E and F below.

### **B. Nondiscrimination in Contracts and Benefits**

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

### **C. Minimum Compensation Ordinance (MCO)**

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

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

Additional information regarding the MCO is available on the web at <http://www.sfgov.org/olse/mco>.

#### **D. Health Care Accountability Ordinance (HCAO)**

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

#### **E. First Source Hiring Program (FSHP)**

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

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at [www.sfgov.org/moed/fsHP.htm](http://www.sfgov.org/moed/fsHP.htm) and from the First Source Hiring Administrator, (415) 401-4960.

#### **F. Conflicts of Interest**

The successful proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

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

#### **G. Administrative Performance Criteria and Liquidated Damages/Credit Assessments**

The contract with the successful proposer will include specific administrative performance criteria for the Service, as well as liquidated damages and credit assessments that may be imposed for failure to meet those criteria. These provisions

are set forth in Appendix B to the Model Agreement accompanying this RFP. In addition, the successful proposer will be required to deliver to SFMTA an irrevocable letter of credit in the amount of \$200,000, and deposit into a City-controlled account the amount of \$20,000 to guarantee the performance of its obligations under the Agreement. These requirements are set forth in Sections 19 and 62 of the Model Agreement.

## VIII. Protest Procedures

### A. Protest of Non-Responsiveness Determination

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

***The SFMTA reserves the right to proceed the proposal selection process with the responsive proposers during the five-day protest period. The SFMTA will cease the proposal selection process only when it receives a notification of decision that is in favor of the protester.***

### B. Protest of Contract Award

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

***The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.***

***The SFMTA reserves the right to proceed the contract negotiation with the highest scored proposer during the five-day protest period. The SFMTA will cease contract negotiation only when it receives a notification of decision that is in favor of the protester.***

C. *Delivery of Protests*

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

SFMTA Contracts & Procurement  
Attn: Mikhael Hart  
1 S Van Ness Ave Fl 3  
San Francisco, CA 94103-5417

*Appendix A*

**City and County of San Francisco  
Human Rights Commission**

**HRC Attachment 2**

***Requirements for Architecture, Engineering and Professional Services Contracts,  
for contacts \$29,000 and over***

## Appendix B

### Standard Forms

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

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

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

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

Item	Form name and Internet location	Form	Description	Return the form to; For more info
1.	Request for Taxpayer Identification Number and Certification <a href="http://www.sfgov.org/oca/purchasing/forms.htm/">www.sfgov.org/oca/purchasing/forms.htm/</a> <a href="http://www.irs.gov/">www.irs.gov/</a>	W-9	<i>The City needs the contractor's taxpayer ID number on this form. If a contractor has already done business with the City, this form is not necessary because the City already has the number.</i>	Vendor File Support, 1 Carlton B. Goodlett Pl. Ste. 484, San Francisco, CA 94102-4685 (415) 554-6702 <a href="mailto:Vendor.File.Support@sfgov.org">Vendor.File.Support@sfgov.org</a>

Item	Form name and Internet location	Form	Description	Return the form to; For more info
2.	Business Tax Declaration <a href="http://www.sfgov.org/oca/purchasing/forms.htm">www.sfgov.org/oca/purchasing/forms.htm</a>	P-25	All contractors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as “conducting business in San Francisco” must register with the Tax Collector.	Vendor File Support, 1 Carlton B. Goodlett Pl. Ste. 484, San Francisco, CA 94102-4685 (415) 554-6702 Vendor.File.Support@sfgov.org
3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits <a href="http://www.sfgov.org/oca/purchasing/forms.htm">www.sfgov.org/oca/purchasing/forms.htm</a> – In Vendor Profile Application	HRC-12B-101	Contractors tell the City if their personnel policies meet the City’s requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the answers on this form. <b>Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.</b>	SF Human Rights Commission, 25 Van Ness Ave. Ste. 800, San Francisco, CA 94102-6059 (415) 252-2500
4.	HRC LBE Certification Application <a href="http://www.sfgov.org/oca/purchasing/forms.htm">www.sfgov.org/oca/purchasing/forms.htm</a> – In Vendor Profile Application		Local businesses complete this form to be certified by HRC as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by HRC by the proposal due date.	SF Human Rights Commission, 25 Van Ness Ave. Ste. 800, San Francisco, CA 94102-6059 (415) 252-2500

**Where the forms are on the Internet**



## **Office of Contract Administration**

Homepage: [www.sfgov.org/oca/](http://www.sfgov.org/oca/)

Purchasing forms: Click on “Required Vendor Forms” under the “Information for Vendors and Contractors” banner.

## **Human Rights Commission**

HRC’s homepage: [www.sfgov.org/sfhumanrights/](http://www.sfgov.org/sfhumanrights/)

Equal Benefits forms: Click on “Forms” under the “Equal Benefits” banner near the bottom.

LBE certification form: Click on “Forms” under the “LBE” banner near the bottom

*Sample Agreement for Professional Services (Form P-500)*

## Appendix D

### Attestation of Compliance on Communication Prior to Contract Award

***To be completed by all Proposing Firms and All Individual Subcontractors***

(Please check each box, sign this form and submit it with your proposal.)

Name of individual completing this form:

\_\_\_\_\_

The form is submitted on behalf of firm:

\_\_\_\_\_

Title of RFP and RFP No.: Parking Meter Pay By Phone Services, SFMTA  
2009/10-59, CCO # 09-1092

1. I attest that I and all members of the firm listed above will and have complied to date with Section VI. J of the RFP.

Yes

2. I understand that if my firm or any members of the firm listed above are found to be in violation of the Section VI. J of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration.

Yes

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: \_\_\_\_\_

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

## Appendix E

### Certification Regarding Debarment, Suspension, and Other Responsibility Matters

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

(1)

\_\_\_\_\_  
(Proposer or Proposed Subcontractor Business Name)

certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from contracting with any federal, state or local governmental department or agency;
  - b. Have not within a three-year period preceding the date of this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
  - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
  - d. Have not within a three-year period preceding the date of this Proposal had one or more public contracts (federal, state, or local) terminated for cause or default.
- (2) Where the firm executing this RFP Appendix E is unable to certify to any of the statements in this certification, such firm shall attach a detailed explanation of facts that prevent such certification.
- (3) The certification in this clause is a material representation on fact relied upon by the San Francisco Municipal Transportation Agency (SFMTA).

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

Business Name:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Authorized Representative Name (print)

Authorized Representative Title (print)

---

Authorized Representative Signature

Date

**Appendix F**  
**Certification Regarding Lobbying**

---

(Proposer or Proposed Subcontractor Business Name)

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

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

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

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

Business Name: \_\_\_\_\_

Authorized Representative Name (print)      Authorized Representative Title  
(print)

---

Authorized Representative Signature

---

Date

## Appendix G Format for XML Feed for Transaction Data

The following XML is the format in which the successful Contractor will deliver real time parking information:

```

<payment>

    <vendor_ID>ID number assigned to each vendor by SFMTA</vendor_ID>
    <transmission_ID>Transaction number generated by vendor for this message</transmission_ID>
    <transmission_datetime>Date and time of transmission from vendor in standard Oracle format to the second </transmission_datetime>

    <event_type>NEW_SESSION,ADD_TIME</event_type>

    <metered_space>

        <Parking_Space_ID>Parking Space Number</Parking_Space_ID>
        <session_ID>unique_ID_number</session_ID>
        <amount_paid_by_driver>price in dollars</amount_paid_by_driver>
        <amount_received_by_SFMTA>price in dollars</amount_received_by_SFMTA >

    </metered_space>

    <start_time>time in standard Oracle format to the second.</start_time>
    <end_time>time in standard Oracle format to the second.</end_time>

</payment>

```

Descriptions:

XML Code:	Shall Be:
Vendor_ID	Assigned by SFMTA to a pay by phone company, parking meter companies, etc.
Transmission_ID	Unique and generated by Vendor
transmission_datetime	Given by Vendor



XML Code:	Shall Be:
event_type	Given by Vendor  NEW_SESSION: A customer initiates a new session ADD_TIME: A customer adds time to an existing session
metered_space	
Parking_Space_ID	Shall be a unique identifier for the metered parking space assigned by SFMTA
Session_ID	Generated by Vendor. A new session_ID shall be generated for each new NEW_SESSION event. If a customer adds time to a session that same session_ID will be sent along with any ADD_TIME event(s).
amount_paid_by_driver	The total amount paid by the customer including any fees.
amount_received_by_SFMTA	The total amount owed the SFMTA.
start_time	Given by Vendor. For the NEW_SESSION event, the initial start time for the parking session. For the ADD_TIME event, the new start time for the parking session.
end_time	Given by Vendor. For a NEW_SESSION event, the initial end time for the parking session. For the ADD_TIME event, the new end time for the parking session.

## Appendix H Format for XML Feed for Rate Changes

<price\_schedule>

<City\_ID>**ID number assigned by Contractor to SFMTA**</City\_ID>  
 <Effective\_Date> **Date and time the effective date in standard Oracle format to the second** </ Effective\_Date >

<transmission\_datetime>**Date and time of transmission from City in standard Oracle format to the second** </transmission\_datetime>

<metered\_space>

    <Parking\_Space\_ID>**SFMTA assigned parking space number**</Parking\_Space\_ID>  
     <Start\_DOW>**First Day of the Week this price is effective**</Start\_DOW>  
     <End\_DOW>**Last Day of the Week this price is effective**</End\_DOW>  
     <Price\_Start\_time>**Start time for price in standard Oracle format to the second** </Price\_Start\_time>  
     <Price\_End\_time>**End time for price in standard Oracle format to the second** </Price\_end\_time>  
     <Legnth\_of\_stay\_schedule>  
         <Hour>**Hour in whole numbers**</Hour>  
     <Price\_Premium\_pct>**Price premium percentage**</Price\_Premium\_pct>  
         ....  
     </Legnth\_of\_stay\_schedule>  
     <Price>Decmial value of the prince in dollars</price>

</metered\_space>

</price\_schedule>

XML Code:	Shall Be:
City_ID	Assigned by Vendro to SFMTA
Effective Date	Date and time the this price schedule will be effective
transmission_datetime	Given by SFMTA
metered_space	
Parking_Space_ID	Shall be a unique identifier for the metered parking space assigned by SFMTA

XML Code:	Shall Be:
Start_DOW	Given by SFMTA, it represents the first day of the week this price is valid
End_DOW	Given by SFMTA, it represents the last day of the week this price is valid
Price_Start_Time	Given by SFMTA, it represents the beginning of the time period for this price
Price_End_Time	Given by SFMTA, it represents the end of the time period for this price
Length-Of_Stay_Schedule	
Hour	1 is the hour after the first full hour a driver is parked. 2 is the second hour after the first full hour a driver is parked.
Price_Premium_Percentage	Percentage premium over the regular price
Price	This is the regular price per hour in dollars

Examples:

```
<price_schedule>
```

```
<City_ID>1001</City_ID>
```

```
<Effective_Date>2009/05/04:12:00:00AM</Effective_Date>
```

```
<Transmission_datetime>2009/04/15:12:00:00AM</Transmission_datetime>
```

```
<metered_space>
```

```
<Parking_Space_ID>111-11111</Parking_Space_ID>
```

```
<Start_DOW>Monday</Start_DOW>
```

```
<End_DOW>Friday</End_DOW>
```

```
<Price_Start_time>09:00 AM</Price_Start_time>
```

```
<Price_End_time>05:00 PM</Price_end_time>
```

```
<Max_Time>4</Max_Time>
```

```
<Legnth_of_stay_schedule>
```

```
<Hour>1</Hour><Price_Premium_pct>50</Price_Premium_pct>
```

```
<Hour>2</Hour><Price_Premium_pct>100</Price_Premium_pct>
```

```
<Hour>3</Hour><Price_Premium_pct>150</Price_Premium_pct>
```

```
</Legnth_of_stay_schedule>
```

```
<Price>3.25</price>
```

```
</metered_space>
```

```
<metered_space>
  <Parking_Space_ID>111-11111</Parking_Space_ID>
  <Start_DOW>Monday</Start_DOW>
  <End_DOW>Friday</End_DOW>
  <Price_Start_time>05:00 PM</Price_Start_time>
  <Price_End_time>10:00 PM</Price_end_time>
  <Max_Time>5</Max_Time>
  <Price>2.00</price>
</metered_space>
```

```
<metered_space>
  <Parking_Space_ID>111-11111</Parking_Space_ID>
  <Start_DOW>Saturday</Start_DOW>
  <End_DOW>Saturday</End_DOW>
  <Price_Start_time>09:00 AM</Price_Start_time>
  <Price_End_time>10:00 PM</Price_end_time>
  <Max_Time>12</Max_Time>
  <Price>1.00</price>
</metered_space>
```

```
</Price_schedule>
```

### ENCLOSURE 3

**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave. 7<sup>th</sup> floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
[insert name of contractor]  
for [insert name of project]**

**Contract No. [insert Contract # from SFMTA Contracts and Procurement Office  
(CPO)]**

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

#### **Recitals**

- A. The SFMTA wishes to enable motorists to pay for parking at metered parking spaces on City streets and in off-street metered lots using wireless technology such as cellphones.
- B. A Request for Proposals ("RFP") was issued on August 5, 2009, and City selected Contractor as the highest ranked proposer.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.
- D. Approval for this Agreement was obtained when the Civil Service Commission approved contract number **[insert PSC number]** on **[insert date of Civil Service Commission action]**.

Now, THEREFORE, the parties agree as follows:

- 1. Left Blank by Agreement of the Parties.**
- 2. Term of the Agreement.** The term of this Agreement shall be from **[insert beginning date]** to **[insert termination date]**.
- 3. Effective Date of Agreement.** This Agreement shall become effective upon execution by all parties.

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

**5. Compensation.** Contractor shall receive no compensation from the SFMTA for Contractor's performance of this agreement. Contractor is authorized to charge a transaction fee of [INSERT AMOUNT] per transaction to persons using the Service set forth in Appendix A.

**6. Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of 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. 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. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

**7. Left Blank by Agreement of the Parties.**

**8. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**9. Left Blank by Agreement of the Parties.**

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

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

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

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

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

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

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

supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

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

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

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

**b. Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court,



arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

## **15. Insurance.**

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

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

(2) Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence, \$2,000,000 aggregate for bodily injury, Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

(4) 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.

(5) Evidence of Crime Insurance with an Employee Dishonesty limit of not less than \$1,000,000. The City and County of San Francisco shall be named as a loss payee by endorsement.

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.

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

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

**16. Indemnification.** Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising

directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

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

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

**19. Liquidated Damages and Credit Assessments.**

a. By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are not in compliance with the Administrative Performance Criteria set forth in Appendix B, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor further agrees that the liquidated damages set forth in Section B of Appendix B for non-compliance with the Administrative Performance Criteria may be assessed to Contractor

under this Agreement. Contractor agrees that the amount of liquidated damages are not penalties, but are reasonable estimates of the damages the City will incur, in light of the circumstances existing at the time this Agreement was approved by the parties, due to failure of the Service to meet the Administrative Performance Criteria. City may deduct a sum representing the liquidated damages from any money due to Contractor.

b. In addition to liquidated damages, Contractor agrees that in certain instances of failure of performance of the Service, the City will suffer loss of revenue in an amount that can be calculated. The Contractor agrees that such loss of revenue ("credit assessments") as set forth below shall be credited to the City/SFMTA and deducted from any payments to Contractor as they accrue.

c. Contractor agrees that if it fails to remit liquidated damages or credit assessment amounts imposed by City under this Section 19 or under any other section of this Agreement, City may deduct such damages from Contractor's Security Fund provided under Section 62(b) below. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's default failure to perform this Agreement in compliance with specified performance criteria.

**20. Default; Remedies.** Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

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

- |   |                                       |
|---|---------------------------------------|
| 8. Submitting false claims                          | 37. Drug-free workplace policy,       |
| 10. Taxes   | 53. Compliance with laws              |
| 15. Insurance                                       | 55. Supervision of minors             |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment                                      | 58. Graffiti removal                  |

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

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

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

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.

## **21. Termination for Convenience**

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

c. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City. 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.

**22. Rights and Duties upon Termination or Expiration.** This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

- |   |   |
|---|---|
| 8. Submitting false claims                                      | 24. Proprietary or confidential information of City     |
| 9. Disallowance   | 26. Ownership of Results                                |
| 10. Taxes   | 27. Works for Hire                                      |
| 11. Payment does not imply acceptance of work                   | 28. Audit and Inspection of Records                     |
| 13. Responsibility for equipment                                | 48. Modification of Agreement.                          |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 49. Administrative Remedy for Agreement Interpretation. |
| 15. Insurance   | 50. Agreement Made in California; Venue                 |
| 16. Indemnification   | 51. Construction  |
| 17. Incidental and Consequential Damages                        | 52. Entire Agreement                                    |
| 18. Liability of City   | 56. Severability  |
|   | 57. Protection of private information                   |

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

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

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

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

To City:           **[insert title of the project contact person]**  
                          **[insert name of subdivision]**  
                          **[insert name of division]**  
                          **San Francisco Municipal Transportation Agency**  
                          **One South Van Ness Avenue**  
                          **San Francisco, CA 94103**  
                          **Fax: 701-xxxx**

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

Any notice of default must be sent by registered mail.

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

**27. Works for Hire.** If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that

any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

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

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

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

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

**32. Earned Income Credit (EIC) Forms .** Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below.

Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. 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. 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. 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. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

### **33. Local Business Enterprise Utilization; Liquidated Damages**

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

#### **b. Compliance and Enforcement**

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

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any

liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

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

**(2) Subcontracting Goals.** The LBE subcontracting participation goal for this contract is 16%. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

**(3) Subcontract Language Requirements.** Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

**(4) Payment of Subcontractors.** Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to

provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

### **34. Nondiscrimination; Penalties**

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

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

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

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

**e. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco

Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

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

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

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

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

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

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

provided which is covered by this paragraph will be made available to the public upon request.

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

**42. Limitations on Contributions.** Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or 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.

**43. Requiring Minimum Compensation for Covered Employees.**

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

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

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

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

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

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

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

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

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with the SFMTA 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 the SFMTA to exceed \$25,000 in the fiscal year.

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

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

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

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

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

comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

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

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

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

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

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

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

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

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

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

#### **45. First Source Hiring Program**

##### **(a) Incorporation of Administrative Code Provisions by Reference.**

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as



though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

**(b) First Source Hiring Agreement.**

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

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

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

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

before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

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

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

(vi) Set the term of the requirements.

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

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

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

(c) **Hiring Decisions**

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

(d) **Exceptions**

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

(e) **Liquidated Damages.**

Contractor agrees:

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

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

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

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

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

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

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.

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

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

**(f) Subcontracts.**

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

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

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

**48. Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

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

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

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

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

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

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

**55. Left Blank by Agreement of the Parties.**

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

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

**58. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the

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

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

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

**60. Left Blank by Agreement of the Parties.**

**61. 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.

**62. Security Deposits; Requirement to Provide Financial Guarantees.** Upon the Effective Date of this Agreement, Contractor shall provide, and shall maintain for the time periods specified herein, financial instruments and funds described in this Section 62 as security to ensure Contractor's performance of all terms and conditions of this Agreement and to compensate for any damage to City property and/or other actual costs to City for Contractor's violation of the terms of this Agreement, as further described below.

a. Letter of Credit

(i) Requirements. No later than [DATE], Contractor shall provide to City and shall maintain, throughout the term of this Agreement and for 90 Days after the expiration or termination of this Agreement or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs later, a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, in the amount of [INSERT AMOUNT]. The letter of credit must have an original term of one year, with automatic renewals no later than July 1 of each Fiscal Year in the same amount throughout the term of the Agreement. If Contractor fails to deliver the letter of credit as required, City may deem Contractor to be in default in the performance of its obligations hereunder. In such event, City, in addition to all other available remedies, may terminate the 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 Director of Transportation of the San Francisco Municipal Transportation Agency on behalf of the City and County of San Francisco.

(ii) 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, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating.

(iii) Demand on Letter of Credit. The letter of credit will constitute a security deposit guaranteeing faithful performance by Contractor of the following terms, covenants, and conditions of this Agreement, including all monetary obligations set forth in such terms: (a) failure to transmit all parking revenues collected by Contractor; (b) failure to replenish the Security Fund under Section 62(b); and (c) termination of this Agreement due to the default of the Contractor, in which case the City shall be entitled to the full amount of the Letter of Credit. Under any of the above circumstances, SFMTA may make a demand under the letter of credit for all or any portion of the Letter of Credit to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty; 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.

(iv) Expiration or Termination of Letter of Credit. 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.

(v) Return of Letter of Credit. The letter of credit will be returned within 90 Days after the end of the term of this Agreement, 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 30, 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.

(vi) 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.



b. Security Fund. Contractor shall deposit into a City-controlled account the amount of \$[AMOUNT] to guarantee the performance of its obligations under the Agreement not secured by the Letter of Credit under Section 62(a). These obligations shall include, but not be limited to, failure to pay liquidated damages as provided in Section 19. Prior to withdrawal of any amounts from the Security Fund, SFMTA shall notify Contractor of its intent to withdraw and the circumstances requiring such withdrawal. Contractor shall have one business day to cure any default. After any withdrawal by City of amounts from the Security Fund, Contractor shall restore the Security Fund to its full amount within five business days. City shall return any amounts remaining in the Security Fund within 60 Days of the expiration or termination of this Agreement, or correction of any audit deficiencies after completion of a final audit, whichever is later.

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

<p><b>CITY</b></p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Nathaniel P. Ford, Sr. Executive Director/CEO</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By:</p> <hr/> <p>David A. Greenburg Deputy City Attorney</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____</p> <p>Secretary to the SFMTA Board of Directors</p>	<p><b>CONTRACTOR</b></p> <p><b>[company name]</b></p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <hr/> <p><b>[name of authorized representative]</b> <b>[title]</b> <b>[address]</b> <b>[city, state, ZIP]</b></p> <p>City vendor number:</p>
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**Appendices**

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: Insurance Waiver, if applicable

## **Appendix A**

### **Services to be provided by Contractor**

#### **1. Description of Services**

Contractor agrees to perform the following services:

"Contractor's proposal, dated **[insert date]** is incorporated by reference as though fully set forth. In the event of any conflict, the documents making up the Agreement between the parties shall govern in the following order of precedence: 1) this Agreement and its appendices, 2) the Request for Proposals dated **[insert date]**, 3) Contractor's Proposal, dated **[insert date]**."

#### **2. Reports**

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

#### **3. SFMTA Liaison**

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be **[insert name of contact person at SFMTA]**.

## **Appendix B**

### **Administrative Performance Criteria; Liquidated Damages; Credit Assessments**

**A. Definitions:** The following is a summary of terms to be used within this document:

**“Agreement”** shall mean the agreement entered between [INSERT NAME OF CONTRACTOR] and SFMTA.

**“Business Days”** shall mean Monday through Friday, excluding City-observed holidays, see [http://www.sfgov.org/site/mainpages\\_index.asp?id=45](http://www.sfgov.org/site/mainpages_index.asp?id=45).

**“Contractor”** shall mean the successful Proposer

**“Days”** shall mean calendar days.

**“Electronic Commerce”** shall mean the ability to safely charge and process credit cards over the phone or internet in exchange for goods or services.

**“IVR”** shall mean the Interactive Voice Response software that recognizes spoken words over the telephone and translates into computer code to assist the caller with their service needs.

**“PDT or PST”** shall mean Pacific Daylight Time or Pacific Standard Time, which is the time base for any scheduling for Services under the Agreement.

**“Performance Standards”** shall mean the minimum standards acceptable for functioning of the Service.

**“Service”** shall mean the pay by phone service including the IVR, wireless network, servers, operating software, etc.

**“Calendar Quarter”** shall mean any one of the following three-month periods, January to March, April to June, July to September, and October to December.

#### **B. Administrative Performance Criteria**

1. (a) If the Service is unable to take calls or process transactions in excess of 5 minutes but less than 60 minutes at any point during the expected operating hours, Contractor shall be liable for liquidated damages to SFMTA that are the greater of \$1,000 or the average hourly income from the previous quarter. The average hourly income will be calculated by using the total Pay by Phone revenue for that quarter as the numerator and the weighted average operating hours of all the meters participating in the Pay by Phone Service multiplied by the number of operating days in that quarter as the denominator.

For every additional hour, or fraction thereof, the Service is unable to take calls

or process transactions then Contractor will be additionally assessed greater of \$1,000 or the average hourly income as defined above.

(b) Should the Service be down for more than 24 consecutive hours, Contractor shall be liable to SFMTA for an additional surcharge of 25% over the damages calculated under (a) above.

(c) Should the Service be down for more than 168 consecutive hours, Contractor shall be liable to SFMTA for an additional surcharge of 50% over the damages calculated under (a) above.

2. (a) If the SFMTA is unable to discern the paid status of any metered space due to the failure of the enforcement system in excess of 5 minutes but less than 60 minutes at any point during the expected operating hours, Contractor shall be liable for liquidated damages to SFMTA that are the greater of \$15,000 or the average hourly income from expired meter related citations the previous quarter. The average hourly income will be calculated by using the total expired meter related citation revenue for that quarter as the numerator and the weighted average operating hours of all the meters participating in the Pay by Phone Service multiplied by the number of operating days in that quarter as the denominator.

For every additional hour, or fraction thereof, the SFMTA is unable to discern the paid status of any metered space due to the failure of the enforcement system then Contractor will be additionally assessed greater of \$15,000 or the average hourly income as defined above.

(b) Should the SFMTA be unable to discern the paid status of any metered space due to the failure of the enforcement system for more than 24 consecutive hours, Contractor shall be liable to SFMTA for an additional surcharge of 25% over the damages calculated under (a) above.

(c) Should the SFMTA be unable to discern the paid status of any metered space due to the failure of the enforcement system for more than 168 consecutive hours, Contractor shall be liable to SFMTA for an additional surcharge of 50% over the damages calculated under (a) above.

3. If more than 1 out of 3 calls to the Service to buy parking result in a busy signal on any given day, the Contractor shall be liable to SFMTA for liquidated damages of \$500 per day. For example, if the SFMTA makes 50 test calls in the period from 4:00:00 AM to 11:59:59 PM on any day, and 17 or more of those calls result in a busy signal the Contractor will be liable for these damages.

4. If Contractor fails to transmit evidence of a paid transaction to either a meter vendor or the SFMTA transactional system, Contractor shall be liable to SFMTA for liquidated damages of \$2 per incident. However, if the Contractor's failure to transmit a transaction results in a parking citation, Contractor shall be liable to SFMTA for additional liquidated damages of the cost of the citation plus \$200 per incident.

5. If Contractor fails to deliver a fully operable system meeting all of the SFMTA's customization requirements including but not limited to, all decals, web content, integration with the citation issuance system, delivery of the cellular handheld devices and handheld programming as described Paragraph J, Numbers 1 and 3, compliance with all City's contract requirements as outlined in Section VII of the RFP, and web-based reporting systems as required by Paragraph I, Number 2 and 3 of the scope of work, by the contractually agreed upon deadline, Contractor shall be liable to SFMTA for liquidated damages of \$2,500 per business day of delay.
6. If Contractor fails to maintain Payment Card Industry Data Security Standards, Contractor shall be liable to SFMTA for liquidated damages equal to the greater of \$10,000 or liquidated damage calculation as stated in Appendix B, Section B, Number 1.
7. If the Contractor provided cellular handheld fails to form and maintain a connection with the enforcement application within 50 linear feet of every metered parking space participating in the Service, Contractor shall be liable to SFMTA for the liquidated damages \$50 per meter, per week that the problem persists.
8. If Contractor fails to 1) to accurately process a Price Schedule, 2) to program accurate pricing levels, time limits, meter rates, operating hours; or 3) maintain the accuracy of the server time as defined by being off by more than two seconds on any given day, Contractor shall be liable to SFMTA for the greater of liquidated damages of \$5,000 per day or a credit assessment of two times the difference between the correct amount that should have been charged and the amount that was actually collected.
9. If Contractor fails to settle 100 percent the collected funds by 12:00 PM PDT or PST on the first business day after collection via automated check handling or Automated Clearing House transfer to the designated bank account, Contractor shall be liable to SFMTA for liquidated damages calculated at 18% annual interest rate of the collected funds owed compounded daily plus \$250 per incident. SFMTA reserves the right to terminate the contract if payments are delayed more than five business days after collection.
10. If Contractor violates Paragraph L of the Scope of Work, governing the use of SFMTA branding, Contractor shall be liable to SFMTA for liquidated damages of \$10,000 for the first violation; upon a second violation Contractor shall be liable to SFMTA for liquidated damages of \$25,000 and the SFTMA will have the right to unilaterally terminate the contract.
11. In the event that the sum of any owed liquidated damages and credit assessments is greater than \$20,000 in any single calendar month, the SFTMA shall have the right to unilaterally terminate the contract.

12. If Contractor fails to transmit evidence of a paid transaction (the confirmation message) to user within 5 seconds of the completion of the transaction, Contractor shall be liable to SFMTA for liquidated damages of \$100 per incident.
13. If Contractor transmits evidence of a paid transaction (the confirmation message) to user by any other method than the one selected by the user, Contractor shall be liable to SFMTA for liquidated damages of \$100 per incident. For example, if the user chose for the confirmation to be delivered via email and the Contractor send the confirmation via text message, the Contractor would owe \$100.
14. If Contractor fails to enforce the minimum purchase requirement, Contractor shall be liable to SFMTA for liquidated damages of the greater of the difference between what user was charged and what they should have paid or \$50 per incident.
15. If Contractor fails to allow a user to cancel the unused time in a transaction, Contractor shall be liable to SFMTA for liquidated damages of the greater of the value of the unused time or \$50 per incident.
16. If Contractor fails to complete the agreed upon public awareness campaign, Contractor shall be liable to SFMTA for liquidated damages of the greater of the value of the unperformed work or \$500 per day of delay.
17. If Contractor fails to play either the announcement or the *SFpark* notification, Contractor shall be liable to SFMTA for liquidated damages of \$50 per incident.
18. If Contractor allows users to feed the meter as described in Paragraph C, number 13 of the Scope of Work, Contractor shall be liable to SFMTA for liquidated damages of \$200 per incident.
19. If contractor sells, leases, distributes, publishes, or otherwise shares any personal information of Service users to any third party, except as required by law, Contractor shall be liable to SFMTA for liquidated damages of \$100 per user per incident.
20. If Contractor fails to deliver requested archival data within three Business Days after a written request by the SFMTA, Contractor shall be liable to SFMTA for liquidated damages of \$500 per day of delay.
21. If Contractor fails to collect all information as required in Paragraph G, number 1 from a new user, Contractor shall be liable to SFMTA for liquidated damages of \$50 per incident.
22. If Contractor fails to notify the users of the fee associated with using the Service, Contractor shall be liable to SFMTA for liquidated damages of \$50 per incident.
23. If Contractor fails to authorize credit card transactions in real time, Contractor shall be liable to SFMTA for liquidated damages of \$50 per incident.

24. If Contractor fails to reject a purchase from a credit card account number the SFMTA has added to its customized Hot List, Contractor shall be liable to SFMTA for liquidated damages of \$50 per incident.
25. If Contractor fails to process any chargeback or if the Contractor erroneously debits a charge back from fund owed to the SFMTA, Contractor shall be liable to SFMTA for liquidated damages of \$200 per incident.
26. If Contractor fails to deliver any report as requires in Paragraph I, Numbers 1 and 4 of the Scope of work, Contractor shall be liable to SFMTA for liquidated damages of \$100 per report per day.
27. If Contractor fails to pay for cellular service for any handheld, Contractor shall be liable to SFMTA for liquidated damages of \$60 per month per handheld plus \$1,000 per incident.
28. If Contractor fails to answer or return customer service call from SFMTA within 15 minutes during the hours of 8:00 AM to 5:00 PM PDT or PST, Contractor shall be liable to SFMTA for liquidated damages of \$100 per 15 minutes of delay



Enclosure 4  
Proposed Recipient List

<b>Vendor</b>	<b>Contact Email(s)</b>
8D Technologies	<a href="mailto:jessie.foo@8D.com">Jessie Foo [jessie.foo@8D.com]</a> ; <a href="mailto:ibettez@8D.com">ibettez@8D.com</a> ;
ACS Inc	<a href="mailto:scott.love@acs-inc.com">scott.love@acs-inc.com</a> ; <a href="mailto:tim.schmoll@acs-inc.com">tim.schmoll@acs-inc.com</a> ; <a href="mailto:rona.schmidt@acs-inc.com">rona.schmidt@acs-inc.com</a> ;
Amano McGann	<a href="mailto:sales@amanomcgann.com">sales@amanomcgann.com</a> ; <a href="mailto:mike.patience@amanomcgann.com">mike.patience@amanomcgann.com</a> ;
APARC	<a href="mailto:kemmons@aparcsystems.com">Kris Emmons [kemmons@aparcsystems.com]</a> ; <a href="mailto:robert@aparcsystems.com">robert@aparcsystems.com</a> ; <a href="mailto:simon@aparcsystems.com">simon@aparcsystems.com</a> ;
Bay Cities Automatic Gates	<a href="mailto:peter.hartzell@bcautogates@sbcglobal.net">Peter Hartzell [bcautogates@sbcglobal.net]</a> ; <a href="mailto:jeremy.bcag@yahoo.com">jeremy.bcag@yahoo.com</a> ; <a href="mailto:donna.bcag@yahoo.com">donna.bcag@yahoo.com</a> ;
BBDO	<a href="mailto:leona.wong@bbdowest.com">leona.wong@bbdowest.com</a> ;
Cale Parking Systems	<a href="mailto:rbonardi@caleparkingusa.com">rbonardi@caleparkingusa.com</a> ;
DCA International	<a href="mailto:Daryl.Marshall@data.com.au">Daryl Marshall [DMarshall@data.com.au]</a> ; <a href="mailto:JuliePaul@data.com.au">JuliePaul@data.com.au</a> ; <a href="mailto:tasneem@data.com.au">tasneem@data.com.au</a> ; <a href="mailto:jcarson@dcaintl.com">jcarson@dcaintl.com</a> ;
Digital Pay Tech	<a href="mailto:kel.parry@digitalpaytech.com">kel.parry@digitalpaytech.com</a> ;
Duncan Solutions	<a href="mailto:Gavin.Jones@DuncanSolutions.com">Gavin Jones [gjones@DuncanSolutions.com]</a> ;
Eberle Design Inc	<a href="mailto:info@editraffic.com">info@editraffic.com</a> ;
Engineered Sales Products	<a href="mailto:John.Dillon@sbcglobal.net">John Dillon [jffdillon@sbcglobal.net]</a> ;
Hectronic	<a href="mailto:West.Dan@hectronic.com">West, Dan [West@hectronic.com]</a> ;
Ibersegur Systems	<a href="mailto:RBolwijn@mabyc-ibersegur.es">RBolwijn@mabyc-ibersegur.es</a> ;
Integrated Parking Solutions	<a href="mailto:William.Dugan@comcast.net">William Dugan [wpdugan@comcast.net]</a> ; <a href="mailto:scalpone@ipspark.com">scalpone@ipspark.com</a> ;
IPS Group	<a href="mailto:Chad.Randall@ipsgroupinc.com">Chad Randall [chad@ipsgroupinc.com]</a> ; <a href="mailto:Dave.King@ipsgroupinc.com">Dave King [dave@ipsgroupinc.com]</a> ;
IPS Park	<a href="mailto:Rich.Malcolm@ipspark.com">Rich Malcolm [rmalcolm@ipspark.com]</a> ; <a href="mailto:mbarron@ipspark.com">mbarron@ipspark.com</a> ;
MacKay Meters	<a href="mailto:Tom.Curry@mackaymeters.com">Tom Curry [tom.curry@mackaymeters.com]</a> ;
Magnetic Automation Corp	<a href="mailto:info@magnetic-usa.com">info@magnetic-usa.com</a> ;
McCain Inc	<a href="mailto:Dan.Ferson@mccain-inc.com">Dan Ferson [dferson@mccain-inc.com]</a> ;
Metric	<a href="mailto:psirois@metricparking.com">psirois@metricparking.com</a> ;
Mobilenow!	<a href="mailto:krista.tassa@mobilenowsolutions.com">krista.tassa@mobilenowsolutions.com</a>
Netlogix	<a href="mailto:edaversa@netlogix.com">edaversa@netlogix.com</a> ;
New Parking	<a href="mailto:tjanacek@new-parking.com">tjanacek@new-parking.com</a>
Pacific Park Management	<a href="mailto:robertstang@gmail.com">robertstang@gmail.com</a> ;
Park Assist USA	<a href="mailto:Josh.Eisen@parkassist.com">Josh Eisen [josh.eisen@parkassist.com]</a> ; <a href="mailto:Daniel.cohen@parkassist.com">Daniel.cohen@parkassist.com</a> ;
Park Mobile North America	<a href="mailto:albert.bogaard@parkmobile.com">albert.bogaard@parkmobile.com</a> ;

<b>Vendor</b>	<b>Contact Email(s)</b>
Parkeon	inewberg@parkeon.com; adraa@moorestown.parkeon.com;
ParkingCarma	Kari Novatney [kari@novatney.com]; Rick.Warner@ParkingCarma.com;
ParkMagic Mobile Technology Inc.	mark.celli@ParkMagicUSA.com
ParkSmart Inc	<a href="mailto:parksmart@coinamatic.com">parksmart@coinamatic.com</a> ;
POM	<a href="mailto:sfountain@pom.com">sfountain@pom.com</a> ;
Reno A&E	<a href="mailto:sales@renoae.com">sales@renoae.com</a> ;
Scheidt & Bachman USA Inc	<a href="mailto:info@scheidt-bachmann-usa.com">info@scheidt-bachmann-usa.com</a> ;
SenSource	Lauren Gallo [lgallo@Sensource.Biz]; kstefko@sensource.biz; jvaracalli@sensource.biz;
Sensys Networks	Mike Malcuit [mmalcuit@sensysnetworks.com]; benouar@sensysnetworks.com;
Service Tracking Systems	<a href="mailto:andy@servicetrackingsystems.net">andy@servicetrackingsystems.net</a> ;
Siemens	Randall, Jeff SEA [jeff.randall@siemens.com]; warren.tighe@siemens.com; christy.peebles@siemens.com;
SKIDATA, Inc	<a href="mailto:info@skidatausa.com">info@skidatausa.com</a> ;
Street Smart Technology	Kirby Andrews [kandrews@streetmarttechnology.com]; truss@streetmarttechnology.com; egroft@streetmarttechnology.com;
Streetline Networks	Michele Senders [michele@streetlinenetworks.com]; tod@streetlinenetworks.com; Mikki@streetlinenetworks.com; Caroline@streetlinenetworks.com;
Transcore	<a href="mailto:contactus@transcore.com">contactus@transcore.com</a> ;
Vehicle Monitoring Systems	Saxon Hill [shill@vmsys.com]; fwelch@vmsys.com;
Vehicle Sense	Kareem Howard [khoward@vehiclesense.com];
Verrus	dspittel@verrus.com
Zipidy	cspera@aol.com

Figure 5

This chart shows the citations issued in the Inter Richmond Test Area. The vendor was Varrus. The range is from January 2007 to November 2008.

Here are the values:

Month	Total Citations
Jan-07	243
Feb-07	284
Mar-07	284
Apr-07	345
May-07	259
Jun-07	283
Jul-07	313
Aug-07	280
Sep-07	301
Oct-07	363
Nov-07	301
Dec-07	279
Jan-08	666
Feb-08	651
Mar-08	551
Apr-08	383
May-08	335
Jun-08	441
Jul-08	455
Aug-08	309
Sep-08	282
Oct-08	457
Nov-08	524
Dec-08	554

Figure 6

This chart shows the citations issued in the West Portal/Lakeside Village Test Area. The vendor was New Parking. The range is from January 2007 to November 2008.

Here are the values:

Month	Total Citations
Jan-07	199
Feb-07	146
Mar-07	176
Apr-07	132
May-07	211
Jun-07	204
Jul-07	193
Aug-07	175
Sep-07	163
Oct-07	246
Nov-07	164
Dec-07	279
Jan-08	841
Feb-08	757
Mar-08	645
Apr-08	430
May-08	638
Jun-08	539
Jul-08	383
Aug-08	389
Sep-08	425
Oct-08	635
Nov-08	533
Dec-08	512

Figure 7

This chart shows the citations issued in the Marina Test Area. The vendor was Zipidy. The range is from January 2007 to November 2008.

Here are the values:

Month	Total Citations
Jan-07	1174
Feb-07	1047
Mar-07	935
Apr-07	1062
May-07	1293
Jun-07	1135
Jul-07	1000
Aug-07	1123
Sep-07	1013
Oct-07	1035
Nov-07	827
Dec-07	1107
Jan-08	1108
Feb-08	1209
Mar-08	957
Apr-08	775
May-08	1058
Jun-08	1004
Jul-08	923
Aug-08	824
Sep-08	956
Oct-08	929
Nov-08	382
Dec-08	451

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.15**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Office of the Board of Directors

**BRIEF DESCRIPTION:**

Determining that Director Heinicke's representation of Five Star Parking in matters unrelated to the SFMTA and to garages under the management of the SFMTA, and Munger Tolles & Olson's representation of Five Star Parking in all matters, do not conflict with the mission of the SFMTA, do not impose excessive time demands, are not subject to review by the Department, and are not otherwise incompatible and therefore prohibited by section III of the Statement of Incompatible Activities.

**SUMMARY:**

- When Director Heinicke was appointed to the SFMTA Board in early 2008, Director Heinicke and his law firm were already representing the L & R Group of Companies including Five Star Parking. Five Star Parking had, and currently has, a contract to run the Golden Gateway Garage.
- In 2008, the Ethics Commission issued a revised Statement of Incompatible Activities (SIA) that states that no officer or employee may engage in an outside activity that conflicts with his or her City duties unless an advance written determination concludes that such activities are not incompatible.
- Upon issuance of the SIA, Director Heinicke took steps to forfeit his portion of his firm's partnership distribution attributable to his firm's work for Five Star Parking and he recused himself from participating in any decision that could generate a conflict of interest.
- Director Heinicke's outside activity does not conflict with the mission of the San Francisco Municipal Transportation Agency nor does it impose excessive time demands.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Letter from Director Heinicke requesting a written determination.

**APPROVALS:**

**DATE**

FINANCE \_\_\_\_\_

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

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO Roberta Boomer

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

## **PURPOSE**

Approve a determination that Director Heinicke's representation of Five Star Parking in matters unrelated to the SFMTA and to garages under the management of the SFMTA, and Munger Tolles & Olson's representation of Five Star Parking in all matters, do not conflict with the mission of the SFMTA, do not impose excessive time demands, are not subject to review by the Department, and are not otherwise incompatible and therefore prohibited by section III of the Statement of Incompatible Activities.

## **GOAL**

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

Goal 5 – SFMTA Workforce: To provide a flexible, supportive work environment and develop a workforce that is capable of leading the agency into the ever-evolving technology driven future that takes pride and ownership of the agency's mission and vision.

Objective 5.5 – Improve SFMTA's ability to grow and retain strong leadership.

## **DESCRIPTION**

### **Background:**

At the time Director Heinicke was appointed to the SFMTA Board in early 2008, Director Heinicke and his law firm, Munger Tolles & Olson, LLP were already representing the L & R Group of Companies. The L & R Group runs several parking lot companies, including Five Star Parking. At that time, Five Star Parking had, and currently has, a contract with the SFMTA to run the Golden Gateway Garage in San Francisco. The Golden Gateway Garage is one of the garages that is under the jurisdiction of the SFMTA. In addition, Five Star Parking has competed for and will continue to compete for other contracts that may be awarded.

Director Heinicke's firm represents Five Star Parking on a variety of matters, including matters related to the Golden Gateway Garage. But Director Heinicke's work on behalf of Five Star Parking does not involve their contract with the SFMTA. Because of Director Heinicke and his firm's representation of Five Star Parking, Director Heinicke, with guidance from the City Attorney, declined to participate in SFMTA or Parking Authority Commission decisions that involve Five Star Parking.

In late 2008, a Statement of Incompatible Activities (SIA) for the SFMTA was issued by the Ethics Commission.

The SIA provides, in pertinent part that:

“No officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that conflicts with his or her City duties. An outside activity conflicts with City duties when the ability of the officer or employee to perform the duties of his or her City position is materially impaired. Outside activities that materially impair the ability of an officer or employee to perform his or her City duties include, but are not limited to, activities that disqualify the officer or employee from City assignments or responsibilities on a regular basis. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

*a. No officer or employee may be employed by, or receive compensation from, an individual or entity that has a contract with the Department or that has had a contract with the Department during the past twelve (12) months. This prohibition does not apply to employment of or compensation received by an officer’s or employee’s spouse or registered domestic partner....”*

It is not clear whether a lawyer who personally represents a client on behalf of a law firm in which the lawyer has a minority ownership stake “is employed by” the client for purposes of the SIA. Upon issuance of the SIA, Director Heinicke took steps to forfeit his portion of his firm’s partnership distribution attributable to his firm’s work for Five Star Parking.

Director Heinicke has requested that the SFMTAB issue an advance written determination that his continued presentation of Five Star Parking is not incompatible with his service on the SFMTA Board of Directors. If the SFMTA Board were to issue such a determination, Director Heinicke would continue to recuse himself from participating in any decision that could generate a conflict of interest. He would also continue to decline to receive any partnership share that would otherwise accrue based on his and his firm’s representation of Five Star Parking.

The SFMTA Board of Directors may issue a written determination that Director Heinicke’s activities are not incompatible with service to the SFMTA:

“When making such a determination the [SFMTA Board] may consider any relevant factors including, but not limited to, the impact on the requestor’s ability to perform his or her job, the impact upon the Department as a whole, compliance with applicable laws and rules and the spirit and intent of this Statement. The [SFMTA Board] shall consider all relevant written materials submitted by the requestor. The [SFMTA Board] shall also consider whether the written material provided by the requestor is sufficiently specific and detailed to enable the decision-maker to make a fully informed determination. The [SFMTA Board] may request additional information from the requestor if the [SFMTA Board] deems such information necessary.”

#### **ALTERNATIVES CONSIDERED**



No alternatives were considered.

**FUNDING IMPACT**

None

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

None

**RECOMMENDATION**

Since Director Heinicke's and his law firm's representation of Five Star Parking in matters unrelated to the SFMTA and to garages under the management of the SFMTA does not conflict with the mission of the SFMTA, does not impose excessive time demands, are not subject to review by the Department, and are not otherwise incompatible and therefore prohibited by section III of the Statement of Incompatible Activities, the SFMTA recommends approval of the resolution.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, Director Malcolm Heinicke was appointed to the San Francisco Municipal Transportation Agency Board of Directors in early 2008; and,

WHEREAS, Director Heinicke and his law firm, Munger Tolles & Olson were already representing the L & R Group of Companies at the time of appointment; and,

WHEREAS, The L & R Group runs several parking lot companies, including Five Star Parking which currently has a contract with the SFMTA to run the Golden Gateway Garage in San Francisco and has competed and intends to compete for other contracts to manage garages overseen by the SFMTA; and,

WHEREAS, In late 2008, a Statement of Incompatible Activities (SIA) for the SFMTA was issued which states in pertinent part that “No officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that conflicts with his or her City duties. An outside activity conflicts with City duties when the ability of the officer or employee to perform the duties of his or her City position is materially impaired. Outside activities that materially impair the ability of an officer or employee to perform his or her City duties include, but are not limited to, activities that disqualify the officer or employee from City assignments or responsibilities on a regular basis;” and

WHEREAS, The SIA further states that “Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section. No officer or employee may be employed by, or receive compensation from, an individual or entity that has a contract with the Department or that has had a contract with the Department during the past 12 months;” and,

WHEREAS, Director Heinicke has forfeited and will continue to forfeit his portion of his firm’s partnership distribution attributable to their work for Five Star Parking and will continue to recuse himself from SFMTA decisions that would create a conflict of interest because of his presentation of Five Star parking; and,

WHEREAS, Director Heinicke’s outside activity does not conflict with the mission of the San Francisco Municipal Transportation Agency nor does it impose excessive time demands; now therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors does hereby determine that Director Heinicke's representation of Five Star Parking in matters unrelated to the SFMTA and to garages under the management of the SFMTA, and Munger Tolles & Olson's representation of Five Star Parking in all matters, do not conflict with the mission of the SFMTA, do not impose excessive time demands, are not subject to review by the Department, and are not otherwise incompatible and therefore prohibited by section III of the Statement of Incompatible Activities.

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

The Honorable Tom Nolan  
Chairman, Board of Directors  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
mtaboard@sfmta.com

Dear Chairman Nolan:

I am writing to apprise you of my law firm's legal representation of an entity that is a contractor with the San Francisco Municipal Transportation Agency (SFMTA) and request an advance written determination that further representation of this client, per the restrictions described below, does not constitute a violation of the SFMTA's Statement of Incompatible Activities (SIA).

The SIA provides, in pertinent part that:

No officer or employee may engage in an outside activity (regardless of whether the activity is compensated) that conflicts with his or her City duties. An outside activity conflicts with City duties when the ability of the officer or employee to perform the duties of his or her City position is materially impaired. Outside activities that materially impair the ability of an officer or employee to perform his or her City duties include, but are not limited to, activities that disqualify the officer or employee from City assignments or responsibilities on a regular basis. Unless (a) otherwise noted in this section or (b) an advance written determination under subsection C concludes that such activities are not incompatible, the following activities are expressly prohibited by this section.

*a. No officer or employee may be employed by, or receive compensation from, an individual or entity that has a contract with the Department or that has had a contract with the Department during the past twelve (12) months. This prohibition does not apply to employment of or compensation received by an officer's or employee's spouse or registered domestic partner....*

As the above language suggests, the Board may issue a written determination that activities are not incompatible with service to the SFMTA:

[A]n employee of the Department or the director or a member of the Board may seek an advance written determination whether a proposed outside activity conflicts with the mission of the Department, imposes excessive time demands, is subject to review by the Department.

\*\*\*\*

When making a determination under this subsection, the decision-maker [in this case, the Board] may consider any relevant factors including, but not limited to, the impact on the requestor's ability to perform his or her job, the impact upon the Department as a whole, compliance with applicable laws and rules and the spirit and intent of this Statement. The decision-maker shall consider all relevant written materials submitted by the requestor. The decision-maker shall also consider whether the written material provided by the requestor is sufficiently specific and detailed to enable the decision-maker to make a fully informed determination. The decision-maker may request additional information from the requestor if the decision-maker deems such information necessary. For an advance written determination request from an employee, if the director delegates the decision-making to a designee and if the designee determines that the proposed activity is incompatible under this Statement, the employee may appeal that determination to the director.

I am partner with the law firm Munger Tolles & Olson, LLP. At the time I was appointed to the SFMTA Board in early 2008, my firm was already representing a company called the L & R Group of Companies, which runs several parking lot companies, including Five Star Parking. At that time, Five Star Parking had, and it currently has, a contract with the MTA to run the Golden Gateway Garage here in the City.

When (and indeed before) I was appointed to the SFMTA Board, I made the San Francisco City Attorney's Office aware of both my firm's and my personal representation of Five Star Parking, which continues to the present, and I asked for the City Attorney's assistance in making sure took all appropriate steps with respect to this representation, including a request that it assist me to recuse myself from any votes involving or directly affecting Five Star Parking. Based on Ms. Julia Friedlander's advice and with her ongoing input and counsel, I have recused myself from all votes that could create the perception of a conflict of interest, and I will continue to do so. Prior to the issuance of the SIA, my understanding from the City Attorney's office was that I was taking proper measures to address this issue.

In late 2008, a Statement of Incompatible Activities for the SFMTA was issued. Because the SIA states that officers or employees of the MTA may not be employed or receive compensation from entities with a contract with the SFMTA, I immediately asked the City Attorney to review my situation again in light of this newly issued SIA. The City Attorney has since advised me on this, and per that direction, I have taken two steps to ensure compliance with the SIA as well as other now relevant provisions of law, which were first raised with me after I requested guidance on the SIA. Specifically, these are the steps I have taken:

1. *Recusal from Votes Involving or Directly Affecting Five Star Parking.* As I have done since I joined the Board, I am currently recusing, and will continue to recuse myself, with

guidance from the City Attorney's Office, on any votes that may create a conflict of interest. While it is impossible to imagine all situations where recusal will be possible, I will continue to seek the City Attorney's advice on this as my tenure on the SFMTA Board continues. For example, as long as Five Star Parking is an SFMTA contractor, I will recuse myself on votes relating to the advertising or award of parking contracts by the SFMTA.

2. *Forfeiture of Partnership Income.* As I did in 2008 (the first year of my tenure), in 2009 and all other years during which I am on the Board and Five Star Parking remains an SFMTA contractor, I will forfeit my portion of my firm's partnership distribution attributable to our work for Five Star Parking. Specifically, at the end of the year, I will ask that my firm's Chief Financial Officer calculate the percentage of my firm's gross income that came from Five Star Parking and all affiliates, and I will then forfeit the corresponding percentage of the partnership draw otherwise due to me. These forfeited profits will be distributed to my firm's charitable foundation with no attribution or tax benefit to me. Again, I have already taken this step for 2008 and forfeited significant income otherwise due to me.

While some might feel that I am being overly conservative here, I want to err on the side of caution and full disclosure.

In light of these steps, I feel that my representation of Five Star Parking is not incompatible with the SIA. As such, I respectfully request that when next possible to do so, that an item be placed on the Board or Parking Authority Commission's agenda so that I can place this letter in the record, answer any questions the Board may have and then request a vote on a determination to this effect.

Thank you for your attention to this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

Malcolm A. Heinicke

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.16**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Parking and Traffic

**BRIEF DESCRIPTION:**

Authorizing the San Francisco Municipal Transportation Agency ("SFMTA"), through its Executive Director/CEO (or his designee), to accept a gift from the Chrisp Company to re-mark two streets for no charge. The equivalent cost of the work is approximately \$8,000.

**SUMMARY:**

The Chrisp Company, a pavement marking contractor, has offered through Supervisor Carmen Chu's office to re-mark two streets for SFMTA free of charge.

- The streets are Sunset Boulevard from Irving Street to Ocean Avenue, and Junipero Serra Boulevard from 19<sup>th</sup> Avenue to Sloat Boulevard.
- They are making this offer in an attempt to develop future business.
- The equivalent cost is approximately \$8,000 which the SFMTA can accept as a gift without Board of Supervisors approval.
- The City Attorney has drafted a formal agreement regarding the gift with Chrisp to cover indemnity, work quality assurance, and all legal issues.
- We expect the work to be done during the summer.

**ENCLOSURES:**

1. Agreement Regarding Gift of Re-Striping of Lanes on Sunset Blvd. and Junipero Serra Blvd.
2. Resolution approving the Agreement (item 1 above), and acceptance of the gift.

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION TO BE RETURNED TO Jack Fleck

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

## **PAGE 2.**

### **PURPOSE**

SFMTA Board approval of this resolution would authorize the SFMTA through its Executive Director/CEO (or his designee) to accept the gift of pavement markings valued at about \$8,000.

### **GOAL**

The SFMTA will further the following goals of the Strategic Plan through the execution of this agreement:

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

Objective 1.1 - Improve safety and security across all modes of transportation

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

Objective 4.2 - Ensure efficient and effective use of resources

### **DESCRIPTION**

This agreement will allow the City to accept pavement markings for no charge from the Chrisp Company, a pavement marking contractor. The streets are Sunset Boulevard from Irving Street to Ocean Avenue, and Junipero Serra Blvd. from 19<sup>th</sup> Avenue to Sloat. The equivalent cost is approximately \$8,000 which the SFMTA can accept as a gift without approval by the Board of Supervisors.

The union did not have any objections to the SFMTA accepting this one-time offer. The City Attorney has drafted a formal agreement regarding the gift with Chrisp to cover indemnity, work quality assurance, and all legal issues. We expect the work to be done during the summer. Chrisp is very experienced and did the pavement markings on Sunset Boulevard when the street was resurfaced some time ago as part of a contract with the City.

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

### **ALTERNATIVES CONSIDERED**

The alternative of turning down their offer was considered, but the City would lose the benefit of the gift, so this alternative was rejected.

### **FUNDING IMPACT**

The value of the gift is approximately \$8,000. This gift will allow our resources to be deployed in other areas.



**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

None required.

**RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorize the SFMTA, through its Executive Director/CEO or his designee, to execute an agreement with the Crisp Company to accept the gift as described above.

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

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

WHEREAS, The Chrisp Company is a licensed contractor, experienced in applying pavement markings; and,

WHEREAS, The Chrisp Company has offered to install lane lines on Sunset Boulevard between Ocean Avenue and Irving Street and on Junipero Serra Boulevard from 19<sup>th</sup> Avenue to Sloat Boulevard without charge to the City: and,

WHEREAS, This work will improve public safety, save the City approximately \$8,000, and is acceptable to the painter's union; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO or his designee to execute an agreement with Chrisp Company regarding a gift to the City and County of San Francisco of re-stripping lane lines on Sunset Boulevard between Ocean Avenue and Irving and on Junipero Serra Boulevard from 19th Ave. to Sloat Boulevard, valued at approximately \$8,000.

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

\_\_\_\_\_  
Secretary, Municipal Transportation Agency Board

**AGREEMENT REGARDING  
GIFT OF RE-STRIPING OF LANES  
ON SUNSET BLVD. AND JUNIPERO SERRA BLVD.**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, in San Francisco, California, between the City and County of San Francisco, a municipal corporation ("City"), by and through its Municipal Transportation Agency ("SFMTA"), and Chrisp Company, a California corporation ("Chrisp").

**RECITALS**

- A.** Chrisp is a licensed California contractor in the business, among other things, of performing highway improvements, including striping traffic lanes.
- B.** In a letter sent to the SFMTA dated March 10, 2009, Chrisp offered, as a gift to the City and County of San Francisco, to perform re-striping of the existing white dash lines on the northbound and southbound lanes of Sunset Blvd. between Irving St. and Ocean Ave. in San Francisco, and on the northbound and southbound lanes of Junipero Serra Blvd, between Sloat and 19<sup>th</sup> Ave. in San Francisco (the "Project"). The value of the gift is approximately \$8,000.
- C.** The SFMTA is agreeable to accepting the gift of the Project, subject to the terms and conditions set forth below.

**AGREEMENT**

**1. Term.** The Agreement shall commence as of \_\_\_\_\_, 2009, and terminate upon completion and acceptance by SFMTA of the Project.

**2. Project**

**2.1. Description of Project.** Re-striping of the existing white dash lines on the northbound and southbound lanes of Sunset Blvd. between Irving St. and Ocean Ave. in San Francisco, and on the northbound and southbound lanes of Junipero Serra Blvd, between Sloat Blvd. and 19<sup>th</sup> Ave.

**2.2. Costs for Project.** Chrisp agrees to bear all costs related to the Project, including, but not limited to, costs of all labor, materials and insurance required for the Project (the "Costs").

**2.3. Performance of Work.** Chrisp agrees to cause the Project to be performed in accordance with the all material requirements of the SFMTA, and subject to final inspection and acceptance by the SFMTA.

**3. City Responsibilities.** City agrees to the following tasks:

- 3.1.** To issue any required permits for the Project without charge.
- 3.2.** To perform construction inspection during Chrisp's performance of the Project.

#### **4. Insurance.**

**4.1.** 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:

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

**4.1.2.** 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

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

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

**4.2.1.** Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

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

**4.2.3.** All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the address in Section 9 below:

**4.2.4.** 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.

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

**4.2.6.** 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.

**4.2.7.** 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.

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

**4.2.9.** 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.

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

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

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

## **6. Default; Remedies.**

**6.1. Default.** A default shall occur if either party fails or refuses to perform or observe any material term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice to cure such default.

**6.2. Default of Chrisp.** On and after any default on the part of the Association that is not cured within the time period specified in Section 6.1, the City will have the right to exercise all legal and equitable remedies, including, without limitation, the right to terminate this 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.

**6.3. Default of City.** On and after any default on the part of City with respect to City's obligations under Section 3 that are not cured within the time period specified in Section 6.1, Chrisp's sole remedy is to exercise its rights to terminate this Agreement as set forth in Section 8 below.

**6.4. 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.

**7. Modification of Agreement.** The City and the Association reserve the right to amend or supplement this Agreement by mutual consent. It is agreed and understood that no alteration or variation to the terms of this Agreement shall be valid unless made in writing and signed by the authorized representatives of the parties, and that separate oral agreements or understandings shall not be binding on any of the parties.

**8. Termination.** Either party has the right to terminate this Agreement upon thirty (30) days written notice to the other party.

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

To SFMTA:      Municipal Transportation Agency  
                         Parking and Traffic  
                         901 Rankin Street  
                         San Francisco, CA 94124-1626  
                         Attn: Toni Coe, Manager of Field Operations  
                         Fax: (415) 431-7140

To Chrisp:      Chrisp Company  
                         43650 Osgood Road  
                         Fremont, CA 94538-0136  
                         Attn: Paul Anderson  
                         Fax: (510) 490-2703

**10. Agreement Binding on Successors.** This Agreement shall be binding on the heirs, successors and assigns of Chrisp.

**11. Assignment.** The services to be performed by the parties are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by either party unless first approved by written instrument executed and approved as required by applicable City law.

**12. Liability of City.** 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.

**13. 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.

**14. 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.

**15. 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 7.

**16. Compliance with Laws.** Chrisp 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.

**17. 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.

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

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers, duly authorized, on the date written above.

CITY AND COUNTY OF SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY

CHRISP COMPANY

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

By \_\_\_\_\_  
Paul Anderson  
Marketing & Development Manager

Approved as to Form:

Dennis J. Herrera  
City Attorney

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

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

Attest:

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



SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: ADMINISTRATION DIVISION

BRIEF DESCRIPTION:

Adopting the proposed federal fiscal year 2009-2010 Annual Overall Goal of 22 percent for participation by Disadvantaged Business Enterprises in contracts financed with assistance from the Federal Transit Administration.

SUMMARY:

- The U.S. Department of Transportation (DOT) issued a Disadvantaged Business Enterprise (DBE) Program Final Rule on March 4, 1999, which is contained in Part 26 of Title 49 of the Code of Federal Regulations (Part 26). On August 17, 1999, the Public Transportation Commission adopted a DBE Program for implementation in its DOT-assisted contracts. On May 30, 2003, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted a revised DBE Program, taking into consideration legislative and regulatory changes affecting the DBE Program.
- On May 9, 2005, the U.S. Court of Appeals for the Ninth Circuit issued a decision in *Western States Paving Co. v. Washington State Department of Transportation, et al.* (9<sup>th</sup> Cir. 2005). Although the federal circuit court upheld Part 26 of DOT's DBE regulations, the court struck down Washington's DBE program as unconstitutional.
- In response to *Western States Paving*, on March 23, 2006, the Federal Transit Administration (FTA) published DOT's guidance concerning the federal DBE program that applies to grant recipients in states within the Ninth Circuit, including California. The guidance instructed that a recipient who does not currently have sufficient evidence of discrimination or its effects within the relevant local market, must use race-neutral means as opposed to race-and gender-conscious goals on contracts to attain its annual overall DBE goal.
- In compliance with the regulations and guidance, the SFMTA proposes a federal fiscal year (FFY) 2009-2010 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 annual overall goal to the FTA, along with a description of the methodology used to establish the goal. The report on the methodology used is enclosed with this calendar item.
- A disparity study is being prepared on behalf of SFMTA and the San Francisco Airport to determine whether the agencies may return to using race-conscious efforts to reach the overall annual goal. SFMTA has been implementing a race- and gender-neutral small business program while the disparity study is being prepared and will continue to implement an aggressive outreach program.

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 SFMTA CALENDAR DATE \_\_\_\_\_

**PURPOSE:**

The San Francisco Municipal Transportation Agency (SFMTA) of the City and County of San Francisco is a recipient of federal financial assistance from the Federal Transportation Administration (FTA) of the U.S. Department of Transportation (DOT). SFMTA must comply with the federal funding regulations, in Title 49, Part 26.45, by having an approved Disadvantaged Business Enterprise (DBE) Program and setting an overall goal for DBE participation in DOT-assisted contracts. This annual DBE goal must be submitted by August 1 to the FTA.

**GOAL:**

Benefit to the SFMTA 2008 – 2012 Strategic Plan

The SFMTA will further the following goal of the Strategic Plan through adoption of the Annual Overall DBE Goal for FTA funded contracts:

- Goal 3: External Affairs-Community Relations.  
To improve the customer experience, community value and enhance the image of the SFMTA, as well as to ensure SFMTA is a leader in the industry.
  - Objective 3.1 – Improve economic vitality by growing relationships with businesses, community and stakeholder groups

**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. The DBE Regulations are intended to remedy past and current discrimination against DBEs, ensure a “level playing field,” and foster equal opportunity in DOT-assisted contracts.

On August 17, 1999, in compliance with Part 26, the Public Transportation Commission (PTC) adopted a DBE Program for implementation by SFMTA in FTA-assisted contracts. Under the DBE Program, SFMTA sets an annual overall goal based on demonstrable evidence of “ready, willing and able” DBEs that are available to work on FTA-assisted contracts. SFMTA’s DBE program employs one of the specific methodologies for goal-setting sanctioned by DOT in Part 26.

Under the current DBE regulations, eligible DBE owners must prove that their personal net worth is equal to or less than \$750,000 in order to be certified as DBEs.

Part 26 also requires that all recipients of DOT funds in each state agree on a Unified Certification Program (UCP) in order to have a uniform system for certifying DBEs within the state. California was the first state to have its UCP approved by DOT. SFMTA is one of the local agencies in California’s UCP that is eligible to certify firms as DBEs.

SFMTA’s DBE Program

On May 30, 2003, the SFMTA Board adopted a revised DBE Program. The revised DBE Program features both programmatic and administrative changes incorporating amendments to Part 26: (1) DBE certification requirements consistent with the California’s UCP; (2) prompt payment and liquidated damages provisions; (3) requirements for contractors to notify the agency when adding subcontractors and suppliers; and (4) program forms to improve the monitoring of DBE participation.

### Annual Goal

Part 26 requires the SFMTA Board to approve an overall annual goal for DBE participation in FTA-assisted contracts. The annual goal tracks the federal fiscal year, which starts on October 1 and ends on September 30. The overall annual goal must be based on demonstrable evidence of the relative availability of DBEs ready, willing and able to participate in FTA-assisted contracts. Part 26 requires that the goal reflect SFMTA's determination of the level of DBE participation expected absent the effects of discrimination.

After adoption by the SFMTA Board, the SFMTA must submit its overall annual goal to the FTA by August 1, 2009, for review, along with a description of the methodology used to establish the goal. The FTA has granted SFMTA an extension until August 7, 2009 to submit the Annual DBE Goal documents.

The Contract Compliance Office (CCO) calculated availability estimates for minority-owned and/or women-owned business enterprises (MWBES) 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 estimates of availability for Construction, Transportation, Professional and Other Services. The overall annual goal reflects greater weight to availability in those industries that receive a larger share of SFMTA's federal contract dollars.

Following the methodology prescribed in Part 26, the Contract Compliance Office arrived at a proposed overall annual goal of 22 percent of DBE participation in projected new FTA-assisted contracts for 2009-2010. A description of the methodology and the annual goal is enclosed. As discussed below, SFMTA intends to use race-neutral means to achieve the goal.

As required under Part 26, SFMTA will publish a notice announcing its proposed DBE Goal for FFY 2009-2010. The notice will appear in the following local and minority focused-publications: The Bay Area Reporter, China Press, El Mensajero, El Reportero, San Francisco Bay Times, San Francisco Bay View, Sing Tao, and World Journal. The notice informs the public of the proposed goal, and that the rationale for the goal will be available for inspection and review at the CCO during normal business hours for 30 days from the first publication date. SFMTA accepts comments on the proposed DBE goal up to 45 days from the date of first publication of the notice.

### The *Western States Paving* Decision

On May 9, 2005, the United States Court of Appeals for the Ninth Circuit issued a decision in *Western States Paving Co. vs. Washington State Department of Transportation, et al.* (9<sup>th</sup> Cir. 2005) 407 F.3d 983. The court upheld DOT's DBE regulations on their face; however, the court struck down the Washington Department of Transportation's (WSDOT) DBE program as unconstitutional. The court held that WSDOT's DBE program was not narrowly tailored because it was not based on evidence of discrimination in the Washington State marketplace. The court also suggested that a remedial program, such as the DBE program, is only narrowly tailored if it is limited to those minority groups that have actually suffered discrimination within the relevant local market.

DOT Guidance in Response to the *Western States Paving Decision*

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 within the relevant local market, the recipient must meet its annual overall DBE goal solely through race-neutral measures. <sup>1</sup>Since the SFMTA does not currently have sufficient evidence of discrimination or its effects to justify submission of race-conscious goals, the SFMTA has been using race neutral measures to achieve the annual goal.

SFMTA's Small Business Enterprise (SBE) Program

In 2006, the SFMTA Board approved a race-neutral 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 2010 to achieve the DBE goal at least until its disparity study is completed and evaluated.

Disparity Study

DOT's guidance also requests that recipients submit, along with their annual goal, a description of any plans to conduct a study to determine the existence of discrimination or its effects in the marketplace. The San Francisco City Attorney's Office has retained Berkeley Economic Consulting (BEC), which is currently conducting a study for the SFMTA and the San Francisco International Airport (SFO) to determine whether race- and gender-based disparities exist in the sectors of the public contracting industry that typically receive federal transportation funds. BEC is working closely with staff from the SFMTA, SFO, and the Human Rights Commission on this study. It is anticipated that the study will be completed within the next few months.

**FUNDING IMPACT:**

SFMTA must comply with the DBE regulations by having an approved DBE Program and setting an overall goal for DBE participation in DOT-assisted contracts in order to qualify to receive federal funds.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED:**

In accordance with Title 49 Part 26.45 (f)(1), SFMTA's FFY 2009-2010 overall DBE goal must be submitted to the FTA for review.

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

**RECOMMENDATION:**

Approving the proposed federal fiscal year 2009-2010 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, The Regulations require the SFMTA to (1) set an annual overall goal for DBE participation in its DOT-assisted contracts; and (2) base the annual overall goal on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on DOT-assisted contracts; and

WHEREAS, DOT regulations set forth a choice of methodologies that the SFMTA must use to determine, achieve and count its annual overall DBE Participation goal for federal-fiscal year (FFY) 2009-2010; 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 2009-2010; and

WHEREAS, As required under the Regulations, the proposed annual overall DBE goal will be advertised on August 7, 2009 for a 30-day public review period, and a concurrent 45-day comment period; and

WHEREAS, On May 9, 2005, the U.S. Court of Appeals for the Ninth Circuit issued a decision in *Western States Paving Co. v. Washington State Department of Transportation, et al.* (9<sup>th</sup> Cir. 2005) 407 F.3d 983; and

WHEREAS, The Ninth Circuit upheld DOT's DBE regulations, but struck down the Washington State Department of Transportation 's DBE program as unconstitutional because Washington did not have sufficient evidence of discrimination in the relevant local market 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 according to the requirements of the *Western States Paving decision*, the recipient must meet its annual overall DBE goal solely through race-neutral measures; and

WHEREAS, The guidance also instructs that such recipients should undertake a rigorous and valid study to determine whether there is evidence of discrimination or its effects sufficient to meet the requirements of the *Western States Paving* decision; and

WHEREAS, The City has retained Berkeley Economic Consulting to conduct a disparity study for the SFMTA and the San Francisco International Airport (SFO) to determine whether they have adequate evidence of discrimination or its effects to meet the standards of *Western States Paving* for; and

WHEREAS, Berkeley Economic Consulting is working closely with SFMTA, SFO, City Attorney's Office and Human Rights Commission staff to complete the study; and

WHEREAS, Because the SFMTA does not currently have sufficient evidence of discrimination or its effects in the local market to justify race- and gender-conscious contracting under the *Western States Paving standards*, the SFMTA will seek to meet its goal exclusively by race- and gender-neutral measures; and

WHEREAS, In 2006, the SFMTA Board approved a Small Business Enterprise (SBE) program to encourage greater participation by small business firms, including DBEs, in SFMTA contracting; and

WHEREAS, The SFMTA has been taking affirmative steps to use race- and gender-neutral means to achieve DBE participation by putting SBE goals on federally assisted contracts and utilizing methods identified in 49 CFR Section 26.51(b); now, therefore, be it

RESOLVED, That the SFMTA Board of Directors has reviewed the methodology used to determine the proposed FFY 2009-2010 annual overall DBE goal for contracting by the SFMTA, and adopts an overall annual goal of 22 percent for DBE participation in FTA-assisted contracts for FFY 2009-2010; 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 2009-2010 overall DBE annual goal report to the Federal Transit Administration.

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

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

# SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

## FY 2009 – 2010 OVERALL DBE GOAL ANALYSIS REPORT FOR FEDERAL TRANSIT ADMINISTRATION

### INTRODUCTION

In Part 26 of Title 49 of the Code of Federal Regulations ("Part 26"), the Department of Transportation (DOT) sets forth regulations regarding Disadvantaged Business Enterprise (DBE) participation in federally assisted programs. The regulations include provisions pertaining to how a recipient should establish an annual overall goal. These provisions are intended to provide the maximum flexibility for recipients while ensuring that the recipients' goals are based on the relative 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 year (FFY) 2009-2010. SFMTA submits the following report describing its overall goal and the methodology used to establish the goal. The SFMTA will seek to attain the overall goal through race-neutral measures.

In compliance with Part 26, the SFMTA has chosen the following methodology:

**STEP 1-CALCULATE BASE FIGURE:** Determine a base percentage figure for relative availability of DBEs in specific areas of expertise using the national 2002 U.S. Census Bureau (Table Four Availability by Minority Group and Industry for San Francisco CMSA, All firms, Survey of Business Owners). This figure will generally represent the DBEs ready, willing and able to work on SFMTA FFY 2009-2010 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 FFY 2009-2010 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 relevant sectors of the local market to the total number of businesses in the relevant market (see subsection 3 below for description of relevant market). SFMTA had access to all of the required data for this calculation, and was confident that the analysis would most accurately provide a base figure of the relative availability of DBEs to participate in its FTA-assisted contracts.

## **2. Evidence Used to Calculate Base Figure**

SFMTA's required DBE goal analysis uses only data from those contracts projected to be awarded under the procurement requirements of the FTA.

SFMTA gathered data on the types of contracts, the dollar amount of each contract, the nature of work for each contract, and the appropriate North American Industry Classification System (NAICS) for that work. SFMTA assigned a two-digit NAICS Code for every contract for FFY 2009-2010 FTA-assisted contracts.

As mentioned above, the annual DBE goal includes only contracts that SFMTA, at the time it sets the goal, expects to award during FFY 2010. 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

### **STEP 1 – *BASE FIGURE***

SFMTA expects to award a total of 15 contracts during Federal Fiscal Year 2009-2010.

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 2009-2010 FTA Contracting Opportunities**

Item #	Project Name	Target Date	Commercial & Institutional Building Construction	Other Heavy & Civil Engineering construction	Electrical	Heavy Duty Truck Mfg	Railroad Rolling Stock Mfg	General Freight Trucking, Local	Support Activities for Rail Transportation	Professional, Scientific & Technical Services	Fiscal Year 2009-2010 Total	% of Contracts
			NAICS 23622	NAICS 23799	NAICS 23821	NAICS 336120	NAICS 336510	NAICS 484110	NAICS 488210	NAICS 54		
1	Historic Vehicle Rehabilitation	Nov-09							7,650,000	850,000	8,500,000	5.7%
2	Wayside/Central Train Control	Nov-09			8,437,500					937,500	9,375,000	6.3%
3	Treasure Island Ferry Terminal project	Oct-09	2,098,750								2,098,750	1.4%
4	SFgo	Oct-09		3,989,999	997,500						4,987,499	3.3%
5	Glen Park Facility Improvement	May-10	1,724,250		431,063						2,155,313	1.4%
6	SFMTA Project Control Software System	Oct-09								10,000,000	10,000,000	6.70%
7	St. Francis Circle Rail Replacement Project	Apr-10	7,533,446		2,152,413					1,076,207	10,762,065	7.21%
8	No. 21 Hayes Pole Replacement	Apr-10	13,706,000		500,000						14,206,000	9.51%
9	Duboce & Church	Jul-10	12,800,000		3,200,000						16,000,000	10.71%
10	LRV Doors and Steps Reconditioning and Systems Rehabilitation (ARRA)*	Oct-09					26,726,214			3,303,240	30,029,454	20.11%
11	Motor Coach: Component Life Cycle Rehabilitation (ARRA)*	Oct-09				9,872,903	0				9,872,903	6.61%
12	Fare Collection Equipment Replacement (ARRA)*	Oct-09			1,222,650	0	0	94,050			1,316,700	0.88%
13	Infrastructure & Facility Enhancement & Maintenance (ARRA)*	Oct-09	4,050,001								4,050,001	2.71%
14	Paratransit Broker	Oct-09								16,000,000	16,000,000	10.71%
15	Moscone Station and Portal Utilities Relocation	Oct-09		10,000,000							10,000,000	6.70%
<b>TOTAL:</b>			\$41,912,447	\$13,989,999	\$16,941,125	\$9,872,903	\$26,726,214	\$94,050	\$7,650,000	\$32,166,946	\$149,353,684	100.0%
<b>PERCENTAGE:</b>			28.1%	9.4%	11.3%	6.6%	17.9%	0.06%	5.12%	21.5%	100.0%	

**SUMMARY OF PROJECTED FTA FUNDING AVAILABILITY PER NORTH AMERICAN INDUSTRIAL CLASSIFICATION (NAICS) CATEGORIES**

**TABLE TWO  
FFY 2009-2010 FTA Dollars by NAICS Code**

Item #	Project Name	Target Date	Construction	Manufacturing	Transportation & Warehousing	Professional, Scientific & Technical Services	Fiscal Year 2009-2010 Total
			NAICS 23	NAICS 31-33	NAICS 48-49	NAICS 54	
1	Historic Vehicle Rehabilitation	Nov-09			\$ 7,650,000	\$ 850,000	\$ 8,500,000
2	Wayside/Central Train Control	Nov-09	\$ 8,437,500			\$ 937,500	\$ 9,375,000
3	Treasure Island Ferry Terminal project	Oct-09	\$ 2,098,750				\$ 2,098,750
4	SFgo	Oct-09	\$ 4,987,499				\$ 4,987,499
5	Glen Park Facility Improvement	May-10	\$ 2,155,313				\$ 2,155,313
6	SFMTA Project Control Software System	Oct-09	\$ -			\$ 10,000,000	\$ 10,000,000
7	St. Francis Circle Rail Replacement Project	Apr-10	\$ 9,685,859			\$ 1,076,207	\$ 10,762,065
8	No. 21 Hayes Pole Replacement	Apr-10	\$ 14,206,000				\$ 14,206,000
9	Duboce & Church	Jul-10	\$ 16,000,000				\$ 16,000,000
10	LRV Doors and Steps Reconditioning and Systems Rehabilitation (ARRA)*	Oct-09		\$ 26,726,214		\$ 3,303,240	\$ 30,029,454
11	Motor Coach: Component Life Cycle Rehabilitation (ARRA)*	Oct-09		\$ 9,872,903			\$ 9,872,903
12	Fare Collection Equipment Replacement (ARRA)*	Oct-09	\$ 1,222,650		\$ 94,050		\$ 1,316,700
13	Infrastructure & Facility Enhancement & Maintenance (ARRA)*	Oct-09	\$ 4,050,001				\$ 4,050,001
14	Paratransit Broker	Oct-09				\$ 16,000,000	\$ 16,000,000
15	Moscone Station and Portal Utilities Relocation	Oct-09	\$ 10,000,000				\$ 10,000,000
<b>TOTAL:</b>			\$ 72,843,571	\$ 36,599,117	\$ 7,744,050	\$ 32,166,946	\$ 149,353,684
<b>PERCENTAGE:</b>			48.77%	24.50%	5.19%	21.54%	100.0%

\* American Recovery and Reinvestment Act of 2009

In establishing the Base Figure for the relative availability of DBEs in the San Francisco CMSA, SFMTA relied on the following information:

- 2002 US Census Bureau
- 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	46.1%	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

*Notes:*

1) This table represents data from the San Jose-San Francisco-Oakland, CA Combined Statistical Area (CSA) which is composed of the following core-based statistical areas (CBSAs): Napa, CA Metropolitan Statistical Area (MSA), San Francisco-Oakland-Fremont MSA, San Jose-Sunnyvale-Santa Clara MSA, Santa Cruz-Watsonville MSA, Santa Rosa-Petaluma MSA, Vallejo-Fairfield MSA.

2) Numbers for MBE/WBE include firms that are either minority-owned OR woman-owned firms.

3) MBE availability was calculated for each industry using the following formula:  $[E]=[A] + [B] + [C] + [D]$

4) MBE/WBE availability was calculated for each industry using the following formula:  $[G] = ([A] + [B] + [C] + [D]) * (1-[F]) + [F]$

\* The percentage of Hispanic-owned professional services firms reflects the percentage of these firms in the SF CSA, Sacramento County, and San Joaquin County. Data for the SF CSA alone are suppressed by the Census Bureau to maintain confidentiality.

*Sources:*

1) Survey of Business Owners, 2002.

2) Data for Hispanic-owned professional services firms were created by the U.S. Census Bureau as a special request.

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 2009–2010 Summary of DBE Availability**  
**By NAICS Code and Weighted By FTA Dollars**

	NAICS CODE	Scope of Work	TOTAL DBES	US CENSUS (all firms)	% of DBE Availability	% of Dollar	Weighted % of DBE Availability
1	23	Construction	13,238	50,130	26.4%	48.8%	12.9%
2	31-32	Manufacturing	6,151	18,132	33.9%	24.5%	8.3%
3	48-49	Transportation & Warehousing	10,028	18,005	55.7%	5.2%	2.9%
4	54	Professional, Scientific, & Technical Assistance	64,930	151,135	43.0%	21.5%	9.3%
<b>TOTAL:</b>			<b>133,701</b>	<b>298,966</b>		<b>100.0%</b>	<b>33.3%</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=**

$$\begin{aligned}
 &13,238 \text{ construction DBEs} / 50,130 \text{ All construction firms} \times .488 \\
 &+ \\
 &6,151 \text{ Manufacturing DBEs} / 18,132 \text{ All Manufacturing firms} \times .245 \\
 &+ \\
 &10,028 \text{ Transportation \& warehouse DBEs} / 18,005 \text{ All Transportation \& warehouse firms} \times .052 \\
 &+ \\
 &64,930 \text{ Professional \& Technical DBEs} / 151,135 \text{ All Professional \& Technical firms} \times .215
 \end{aligned}$$

**BASE FIGURE=**

$$(.264)(.488) + (.339)(.245) + (.557)(.052) + (.430)(.215) = \text{relative availability}$$

**BASE FIGURE=**

$$(.129) + (.083) + (.029) + (.093) = 33.3\% = 33\%$$

Therefore, SFMTA's Base Figure is: 33 percent relative availability of DBE firms. This means that the relative availability of DBE firms in the San Francisco CMSA is 33 percent.

## **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 – 2009 as follows:

FY 2008-09: Annual DBE goal was 29%, actual DBE commitments equaled **11%** (1<sup>st</sup>, 2<sup>nd</sup>, Quarters)  
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%**

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 11 percent. In using this figure to determine the adjustment for past participation, the following formula was used:

### **Steps:**

1. Base Figure = 33%
2. Median Past Participation = 11%
3. Adjustment factor =  
(base figure 33%) + (median past participation 11%) divided by 2 = 22%

An impact of past DBE participation has resulted in an adjustment to the base figure of 33% DBE participation for FTA-assisted contracts to be awarded in FFY 2009-2010. The adjusted DBE participation goal is 22% for FFY 2009-2010. Please note, this year’s annual goal is lower than the goal in prior years due to major anticipated commitments for ARRA – funded projects with limited DBE opportunities, most notably Motor Coach: Component Life Cycle Rehabilitation and LRVs Doors and Steps Reconditioning and System Overhaul.

### **Means to Achieve Goal; Disparity Study**

The City has retained Berkeley Economic Consulting (BEC) to conduct a study for the SFMTA and the San Francisco International Airport (SFO) to determine whether they have adequate evidence of discrimination or its effects to meet the standards set forth in *Western States Paving*. BEC is working closely with SFMTA, SFO, the City Attorney's Office and the City's Human Rights Commission to complete this study. The study will take into consideration the guidance FTA published on March 23, 2006.

Since the SFMTA does not currently have sufficient evidence of discrimination or its effects to justify use of race- and gender-conscious goals on individual contracts under the standards set forth in *Western States Paving*, the agency. is establishing an annual DBE goal for FFY 2010 to be met exclusively through race-neutral measures

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 SBE program is race-neutral and complies with the legal requirements set forth in the federal DBE regulations, the Ninth Circuit's decision in *Western States Paving*, and DOT's guidance concerning the federal DBE program that applies to grant recipients in states within the Ninth Circuit. Under the SFMTA SBE program, small business firms may qualify for the program by being certified in either the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE program ("City Program"), or the California Unified Certification Program ("Federal DBE program").

Initially, the SBE program applied to the following types of contracts: Architecture & Engineering Services (surveying and mapping); Drafting (design services); Computer Programming and Design Landscape Architecture; Building Inspection; Machinery and Equipment Rental (construction); Public Relations; and Telecommunications. These categories will be included in the SBE program to ensure that the program is race-neutral. In these categories, the federal average annual gross receipts cap for each business category does not exceed the gross receipts cap for similar businesses under the State Program. For example, a white

male majority-owned business enrolled in the State Program or the City and County of San Francisco LBE Program, is able to participate in the SFMTA SBE program on the same basis as a minority business that is certified as a federal DBE. The SFMTA intends to set contract goals for SBE participation for these types of FTA-funded contracts.

The following types of contracts have been added to the SFMTA SBE program: Construction—Building (Heavy); Construction—Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection; Trucking; Transportation and other types of contracts in which existing federal DBE business caps are higher than either the State Program or the City Program.

## **II. Public Participation Process**

To provide for public participation in this goal-setting process, the SFMTA, working in concert with the California Department of Transportation (Caltrans) and the members of the Business Outreach Committee (BOC) conducted a public participation session on April 22, 2009 at the Metropolitan Transportation Commission (MTC) auditorium. The BOC membership is comprised of Central Contra Costa Transit Authority, Golden Gate Bridge, Highway & Transportation District, MTC, San Francisco Bay Area Rapid Transit District (BART), San Francisco Bay Area Water Emergency Transportation Authority, San Mateo County Transit District (SamTrans), SFMTA, Alameda County Congestion Management Agency, Rio Vista Delta Breeze, and the Santa Clara Valley Transportation Authority. The session was conducted to obtain pertinent input from businesses and organizations that are most impacted by the DBE goals established for DOT-assisted contracts.

The session provided DBEs and other small businesses the opportunity to provide information about the availability of certified and potential DBEs ready, willing and able to compete for DOT-assisted contracts, to discuss their concerns, and to provide their perspectives on how DOT recipients might more effectively administer their programs to improve DBE participation. The BOC and participating agencies emailed/mailed out over 2000 invitations to small and DBE businesses, and business support organizations.

During the public participation session, the SFMTA, as did the other agencies, presented its DOT-assisted contracting opportunities for FFY2009-2010.

Business owners that addressed the BOC expressed their concern about how DOT recipients are not breaking down their large contracts, thus reducing the number of opportunities for DBE businesses to participate. DBE businesses stated that some of them could bid as primes on smaller contracts if they could obtain bonding, but they are unable to qualify. They expressed the need for recipients and/or DOT to provide bonding assistance that would help them qualify for bonding. Concerns were expressed about how more technical assistance is needed by DBE businesses, so that they can more effectively bid on projects. Some DBE businesses stated that advance notice of projects prior to being advertised would assist them with getting on consultant teams. They explained that prime consultants establish their teams prior to the advertising of requests for proposals, thus leaving virtually no opportunity for them to participate. Vendors asked that more outreach be conducted to provide them with information on how to do business with recipients.

In response to the comments expressed during the public participation session, SFMTA will continue to review contracts to determine the benefits of unbundling large contracts to make them more accessible to small and DBE businesses, and encourages prime contractors to subcontract portions of the work that they might otherwise perform with their own forces.

SFMTA has significantly increased its DBE outreach activities working independently, with the BOC, and other public agencies. Outreach activities include providing advance notice of upcoming projects; three months to one year in advance. 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.

SFMTA will publish a notice on August 7, 2009, announcing its DBE Goal for FFY 2009-2010 in the following local and minority focused-publications: The Bay Area Reporter, China Press, El Mensajero, El Reportero, San Francisco Bay Times, San Francisco Bay View, Sing Tao, and World Journal. The notice informs the public of the proposed goal and the rationale supporting the proposed goals will be available for inspection and review at SFMTA's Contract Compliance Office during normal business hours for 30 days following the date of the beginning of publication of the notice. SFMTA will accept comments on the proposed DBE goal up to 45 days from the commencement of advertising.

### **Conclusion:**

The San Francisco Municipal Transportation Agency has prepared this methodology report for submission to Region IX of the Federal Transit Administration, in compliance with the procedures outlined in 49 CFR Part 26. The annual overall goal has been narrowly tailored based on the 2002 minority and women census data available for SFMTA's geographical market and has been adjusted to reflect local spending patterns.

A 22 percent overall annual DBE goal has been established for all FTA-funded contracts anticipated to be awarded for FFY 2009-2010.

SFMTA will monitor its DBE annual goals by tracking each individual contract throughout the term of the contract for DBE participation and payments respective to the federal fiscal year of award.



**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Muni Operations

**BRIEF DESCRIPTION:**

Requesting authorization to: (1) execute a Final Modification and Closeout Agreement to adjust the final contract amount and accept the work performed under Contract No. MR-1138, by which Nextbus, Inc. implemented the AVLS; and (2) award and execute Contract No. SFMTA 2009/10-60, Software and Equipment Maintenance Services Agreement for AVLS, with NextBus, Inc., in an amount not to exceed \$1,977,429 per year and an initial term of two years.

**SUMMARY:**

- NextBus, Inc. supplied the Automatic Vehicle Location System (“AVLS”) to the SFMTA under Contract No. MR-1138. NextBus has completed the work under that contract; SFMTA is ready to accept that work, release retention, adjust final contract amount to \$12,347,536. The AVLS has been in full service since March 2009.
- The AVLS provides real-time information to SFMTA as to transit vehicle location. The AVLS also provides arrival prediction data to the public via the City's NextMuni.com website, NextBus' own website, the MTC’s 511 service, and via electronic displays in stations, transit shelters, and boarding platforms.
- Contract No. SFMTA 2009/10-60 is a new maintenance services agreement under which NextBus will provide the SFMTA professional services and software to maintain and operate the AVLS. NextBus will provide software updates and upgrades, vehicle equipment maintenance and repair, software, system and web support and maintenance services, and system reports. NextBus will also provide training to SFMTA personnel in AVLS operation, and maintenance, so that SFMTA staff may eventually perform maintenance of the AVLS vehicle equipment. The amount of the contract is not to exceed \$1,977,429 per year. The term of the contract is two years, with options to extend the term for up to two additional years. The contract is awarded without competitive bid, because the software and equipment is proprietary to the vendor.
- Staff seeks from the Board of Directors authority to close Contract MR-1138 and approval of a maintenance services agreement, Contract No. SFMTA 2009/10-60, with NextBus, Inc.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Modification and Close-Out Agreement for Contract MR-1138
3. Contract No. SFMTA 2009/10-60

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE

\_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO: \_\_\_\_\_ Trinh Nguyen

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

## **PAGE 2**

### **PURPOSE**

The AVLS project goal is a state-of-the art fully automated vehicle location system to provide real-time transit management tools and real-time passenger information that was implemented under Contract No. MR-1138 by NextBus, Inc. NextBus has completed work under that contract. Staff and NextBus have negotiated a final contract modification and close-out agreement to adjust the final contract amount to \$12,347,536.97 for work actually performed and to release retention and clarify warranty obligations. The purposes of the new Maintenance Services Contract are: (1) to maintain the AVLS in a good state of repair, current with system upgrades as technology evolves and as changes to SFMTA's operating environment are implemented; and (2) to train SFMTA staff in the operation of the AVLS and the repair and maintenance of AVLS equipment.

### **GOAL**

The objectives of closing out Contract No. MR-1138 and implementing the new maintenance agreement is to provide real-time transit information to patrons, to provide continued real-time transit management tools to transit managers, and to provide transit system performance reports. The overall goal of the new maintenance agreement supports SFMTA's 2008 to 2012 Strategic Plan as follows:

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

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

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

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

Objective 6.1 – Information and Technology Leadership: Identify, develop and deliver the enhanced systems and technologies required to support SFMTA's 2012 goals

**PAGE 3.**

## **DESCRIPTION**

### **Automatic Vehicle Location System**

On December 18, 2001, the SFMTA Board of Directors adopted Resolution No. 01-030, which authorized the award of Contract MR-1138, Automatic Vehicle Location System to

NextBus Information Systems, Inc. at a cost not to exceed \$9,565,057 and for a term not to exceed five years. The Contract was executed by the parties in July 2002.

The work under Contract MR-1138 included system design, purchase, and installation services for the integrated Global Positioning System (GPS) based Automatic Vehicle Location and customer information system. Contract MR-1138 was amended nine times to add scope of work and time. Work under that contract is complete. The AVLS has been in full service since March 2009.

The base system of SFMTA's AVLS consists of hardware and software that provides real-time global position satellite (GPS) tracking of SFMTA revenue and non-revenue vehicles, and provides real-time information for fleet management and passenger information. The inventory of AVLS hardware and software includes the followings:

- 1121 units of revenue vehicle GPS trackers with charge-guard power supply
- 50 units of nonrevenue vehicle GPS trackers with charge-guard power supply
- 833 units LED displays with wireless communication link
- 18 units LCD subway platform monitors with computers and WI-FI network
- 9 units Agent booth computers with passenger information monitors
- 67 units of Push-to-Talk speakers
- One Primary NextMuni server
- One off-line standby NextMuni server
- Up-to-date NextMuni system application software suite
- Up-to-day NextMuni system application software source code suite
- SFMTA customized application software suite

SFMTA's AVLS, also known as "NextMuni," was the first transit agency entry to the toll free MTC 511 regional real-time information system, which was officially launched in August 2008. SFMTA has a long standing commitment to support the 511 services and provide transit arrival information for all Muni service routes and stops. The AVLS currently serves all 80 Muni service routes and over 4,000 Muni stops. The City receives a daily average of 1500 phone inquiries for transit information through the City's 311 and MTC's 511 information systems, and an average of 70,000 internet hits. Muni's 700, 000 daily riders have also come to rely on the 860 information display signs located at stations, transit stops, and boarding platforms.

**PAGE 4.**

**Closeout Agreement**

The Final Modification and Closeout Agreement will reduce the total value of the contract to \$12,347,536.97, to adjust final amounts for work performed and equipment delivered. That agreement also provides for release of five percent retention.

NextBus achieved the 15 percent DBE goal set for Contract MR-1138.

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

**SFMTA's Needs for AVLS Equipment, Software and Associated Professional Services**

The AVLS System is a state-of-the-art GPS based vehicle tracking and real-time information system. The Executive Director/CEO authorized staff to negotiate this sole-source contract because some AVLS System hardware and all AVLS System software are proprietary technology of NextBus, Inc. The proprietary AVLS replacement parts and all software upgrades can only be purchased from NextBus, Inc., as there is no other supplier. AVLS hardware and equipment must be regularly serviced, and the AVLS software and computer servers and related hardware must be maintained and periodically upgraded to maintain the AVLS service. During the term of the maintenance service contract, NextBus will supply those necessary services and will also train SFMTA staff to perform maintenance and replacement of AVLS on-board vehicle equipment. Eventually SFMTA staff will perform all on-board equipment maintenance, while NextBus will continue to provide back-end computer, server, and software support to the AVLS. The new maintenance agreement has a SBE goal of 3.2 percent.

**ALTERNATIVES CONSIDERED**

NextBus is the vendor of the current AVLS System. The AVLS is a proprietary system that no other vendor can provide the system hardware and software to operate and maintain the system.

The work under Contract No. MR-1138 has been completed. There is no alternative to closing out that contract.

**FUNDING IMPACT**

Close-out of Contract No. MR-1138 will save \$39,071.03 in capital funds.

The funding source for this maintenance service contract is included in the FY10 operating budget.

**PAGE 5.**

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

Final approval of this Contract No. SFMTA 2009/10-60 is contingent upon approval by the Civil Service Commission.

Approval for a sole source waiver will be sought from the Human Rights Commission.

**RECOMMENDATION**

Staff recommends that the SFMTA accept the work performed by NextBus under Contract No. MR-1138 to design and implement an Automatic Vehicle Location System for SFMTA transit vehicles and release retention and authorize the Executive Director/CEO to execute the Final Modification and Contract Closeout Agreement. Staff further recommends that the SFMTA Board of Directors approves and authorizes the Executive Director/CEO to execute the Contract No. SFMTA 2009/10-60, for Software and Equipment Maintenance Services Agreement for the SFMTA's Automatic Vehicle Location System, with NextBus, Inc., in an amount not to exceed \$1,977,429 per year and an initial term of two years with options to extend the term up to an additional two years.

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

WHEREAS, NextBus, Inc., formerly NextBus Information Services, Inc. ("Nextbus") was awarded Contract No. MR-1138 on December 18, 2001 to provide the San Francisco Municipal Transportation Agency (SFMTA) an Automatic Vehicle Location System ("AVLS") including associated vehicle hardware, passenger information display signs and proprietary predictive software; and

WHEREAS, NextBus has completed the work under Contract No. MR-1138; and

WHEREAS, The SFMTA wishes to obtain software, hardware, and related professional services for ongoing maintenance, operations, and improvement of the AVLS; and,

WHEREAS, SFMTA seeks to maintain the AVLS in a good state of repair, current with system upgrades as technology evolves and as changes to SFMTA's operating environment are implemented; and,

WHEREAS, SFMTA seeks to train SFMTA staff in operating, maintenance, and repair of the system under that agreement; and,

WHEREAS, SFMTA has committed to support the Metropolitan Transportation Commission's regional 511 real-time transit information system; and,

WHEREAS, This contract will assist SFMTA in meeting the goals and objectives of the agency's Strategic Plan: to improve service delivery, to improve communication to patrons, to provide an improved transit management tool, and to improve service by leveraging technology; and,

WHEREAS, Contract No. SFMTA 2009/10-60 is contingent upon approval by the Civil Service Commission; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors accepts the work performed under Contract MR-1138 by NextBus and authorizes the Executive Director/CEO to execute the Final Modification and Close-out Agreement with NextBus, Inc.; and be it further

RESOLVED, That the SFMTA Board of Directors approves and authorizes the Executive Director/CEO to execute the Contract No. SFMTA 2009/10-60, Software and Equipment Maintenance Services Agreement for Automatic Vehicle Location System, with NextBus, Inc., for an amount not to exceed \$1,977,429 per year and an initial term of two years with options to extend the term for up to an additional two 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

**Agreement between the City and County of San Francisco and NextBus, Inc.  
for Software and Equipment Maintenance Services  
for the San Francisco Municipal Transportation Agency's  
Automatic Vehicle Location System**

**Contract No. SFMTA 2009/10-60**

This Agreement for Software and Equipment Maintenance Services for the San Francisco Municipal Transportation Agency's Automatic Vehicle Location System ("Maintenance Agreement") is dated for convenience as August 1, 2009, in the City and County of San Francisco, State of California, by and between: NextBus, Inc. ("Contractor") and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

**RECITALS**

In 2002 the City issued a Request for Proposals for technology vendor to provide the SFMTA an Automatic Vehicle Location System ("AVLS"). As a result of a competitive process, on or about July 15, 2002, the SFMTA awarded Contract MR-1138 (the "AVLS Contract") to Next Bus Information Services, Inc. for the purchase and implementation of an AVLS for the SFMTA's bus and rail transit fleet.

On or about January 27, 2004, under a Software License and Maintenance Agreement that amended the AVLS Contract and in exchange for the SFMTA's agreement to a reduction in bonds and other security to guarantee the performance of NextBus Information Services, Inc. and a waiver of the software escrow requirement required under the AVLS Contract, the City received complete copies of the software, including object and source codes, and the system was installed on a server owned wholly by the SFMTA. The City has possession and the right by license to use the AVLS and all of its associated proprietary software if Contractor is unable to provide the SFMTA necessary support services. But at this time the SFMTA does not have the personnel or expertise necessary to maintain the AVLS without procuring services from the Contractor.

On or about July 2005, certain assets of NextBus Information Services, Inc. were acquired by Grey Island Systems International, Inc. ("Grey Island"). On or about July 27, 2005, by amendment to the AVLS Contract, the SFMTA approved the assumption and assignment of the AVLS Contract to NextBus, Inc., a wholly owned subsidiary of Grey Island. NextBus, Inc. ("Contractor") completed the remaining work under the AVLS Contract and the AVLS has passed SFMTA's acceptance testing.

The SFMTA determined that Contractor has met its obligations under the AVLS Contract to provide and implement an AVLS for the SFMTA's bus and rail transit vehicle fleet. The SFMTA accepted the work performed by the Contractor under the AVLS Contract, and with the exception of certain provisions of the AVLS Contract specified in that agreement and in the acceptance agreement, the City and the Contractor were released from their respective obligations under the AVLS Contract. The SFMTA's acceptance of the AVLS was documented in the Final Modification of and Contract Closeout Agreement between Contractor and the City, dated for convenience as August 1, 2009.

As anticipated and provided for in the Original Agreement, the SFMTA wishes to procure and the Contractor wishes to provide on-going software and equipment maintenance services and training for the AVLS, as specified in this Maintenance Agreement, to ensure the continued operation of the AVLS for the benefit of the SFMTA and the public.

This Maintenance Agreement is awarded without competitive process because the AVLS is a proprietary system. The City has the license authority to operate and maintain the AVLS, but the SFMTA currently does not have the necessary personnel or expertise to do the work.

Contractor represents and warrants that it is qualified to perform the services required by City as described in this Maintenance Agreement.

Approval for this Agreement was obtained when the Civil Service Commission approved contract number \_\_\_\_\_ on \_\_\_\_\_, 2009.

The foregoing Recitals are incorporated into this Agreement.

Now, therefore, In consideration of the facts recited above, the premises and the mutual undertakings of the Parties herein contained, the Parties agree as follows:

## **SUMMARY OF AGREEMENT**

In exchange for the SFMTA's payment of agreed maintenance fees, Contractor shall provide during the term of this Maintenance Agreement professional services to maintain the SFMTA's AVLS Base System, including but not limited to software updates and non-custom upgrades, and Equipment maintenance and repair and related System Support Services. Contractor shall also provide training to SFMTA personnel in Equipment maintenance and repair, both as part of Basic Maintenance Services and for additional charge as requested by the SFMTA. The term of this Maintenance Agreement is two years; this Maintenance Agreement may be extended by two additional one-year periods. The parties intend that during the course of this Maintenance Agreement, SFMTA personnel will be trained so that SFMTA technicians will perform diagnostics, removal and replacement of on-board AVLS equipment. The parties further intend that Contractor shall continue to maintain the AVLS software and Equipment not resident on SFMTA property.

## **DEFINITIONS**

For the purposes of this Maintenance Agreement, the following words and expressions shall have the meanings set forth herein below:

"Accepted System Parameters" means the AVLS functionality and availability as of the date the SFMTA accepted the Base System delivered by Contractor under the AVLS Contract, as amended.

"Agreement" and "Maintenance Agreement" means this Agreement for Software and Equipment Maintenance Services for the San Francisco Municipal Transportation Agency's Automatic Vehicle Location System and its Included Appendices.

"AVLS" means the Automatic Vehicle Location System provided by the Contractor under the AVLS Contract as it is configured and operates as of the Effective Date of this Agreement and as it will be configured and operated under this Agreement and subsequent agreements between the Parties. The AVLS includes the Equipment and the following systems and functions:

- Internet-based Map Displays with local-street maps and route system overlay.
- Transit management reports via the Internet.



- Real time bus arrival information for passengers.
- Integration of third party systems to the AVLS
- Integration of third party schedule data to the AVLS

"AVLS Contract" means Contract MR-1138, the agreement between Contractor and City, dated July 15, 2002 and as subsequently amended for the purchase and implementation of an AVLS for the SFMTA's bus and rail transit fleet.

"Base System" means the Equipment and Software and the products of Contractor's services to implement and configure the AVLS under the AVLS Contract as amended.

"Confidential Information" means any and all information, whether disclosed orally, visually, in machine-readable or written form, that the disclosing Party identifies as proprietary or confidential in writing at the time of disclosure or is subsequently specified and confirmed in writing by the disclosing Party at the latest within thirty (30) Days following oral and/or visual disclosure. The Documentation, Software and Software Updates and Software Upgrades are Confidential Information.

"Contract Year" means August 1 to July 31.

"Daily Repair Log" means the report prepared by Contractor identifying Problems with AVLS Equipment and/or software.

"Days" means consecutive calendar days, including weekends and holidays, unless otherwise specified.

"Director" means the Director of Transportation, also known as the Executive Director/Chief Executive Officer of the Municipal Transportation Agency of the City and County of San Francisco.

"Documentation" means the instruction manuals, consisting of the user documentation, maintenance documentation and Equipment and Software documentation.

"DRI Unit" means the dead reckoning GPS on-board device used for vehicle location identification and/or correction that the AVLS relies upon but is not supplied by Contractor.

"Effective Date" means the date when i) authorized officers of both Parties have executed this Agreement.

"Equipment" means the AVLS on-board vehicle Trackers, computers, servers, Passenger Information Display signs, push-to-talk systems, auxiliary power supplies, antennas, and other AVLS hardware, components, diagnostic and simulation tools, spare parts and other parts and electronic, mechanical or electrical components Contractor has provided or is contracted to provide to the SFMTA as part of the AVLS.

"Force Majeure" means any act of God or any other cause beyond a Party's control (including, but not limited to, any restriction, strike, lock-out, plant shutdown, material shortage, delay in transportation or delay in performance by its suppliers or subcontractors for any similar cause).

"Included Appendices" are those documents attached to the Agreement, listed above the signature page, and that are incorporated into this Agreement by reference.

"Maintenance Services" means collectively the Included Maintenance Services and Additional Maintenance Services, as fully described in Section C to this Agreement.

"Passenger Information Display" means the Equipment used to display prediction and message information to passengers, which include:

- Shelter LED Displays
- Platform LED Displays
- AMS Platform LED Displays
- Agent Booth AMS LED Displays
- Subway LCDs
- Push-to-talk (PTT) Speakers (Excludes Clear Channel's PTT Implementation)
- Talking Signs (Infrared Transmitters)

"Party" or "Parties": when appropriate herein, SFMTA and Contractor are individually hereinafter referred to as "Party" and collectively referred to as "Parties".

"Problem" means any disturbance or malfunction of Equipment and/or Software of the AVLS.

"Repair Log" means a report generated by Contractor every day reporting defective or otherwise inoperable Trackers, Display Signs, and other Equipment and tracking the repair of that Equipment.

"Software" means the AVLS software licensed or provided by Contractor to the SFMTA under the AVLS Contract or the or which Contractor has since licensed or is contracted to license to the SFMTA as part of the AVLS, whether as a stand-alone product or pre-installed on Equipment.

"Software Update" means a Software correction without change of features or functions of the Software.

"Software Upgrade" means an enhancement by new features or functions of the Software.

"Spares" means Equipment listed in Appendix A, section 1.1.5.

"Systems Maintenance Reports" means reports generated by the AVLS and Contractor identifying defective Equipment and/or otherwise reporting availability, functions and operation of the AVLS. System Maintenance Reports include but are not limited to: GPS Quality of Vehicle reports, Custom AVL/GPS reports, GPS reports, Trains Scheduled and Running reports, and other reports necessary to identify malfunctioning Trackers.

"Systems Manager" means the individual designated by City to be the primary liaison to Contractor for the purposes of this Agreement.

"System Parameters" means the specifications and function requirements for the AVLS established under the AVLS Contract, as amended.

"System Support Services" means and includes the following services to ensure the continued functioning of the AVLS within the system specifications set out in the AVLS Contract, as amended:

- System Administration
- On-going Monitoring of System Using Automatic Alerts and Web Access
- Wireless Communication Monitoring
- Minor Product Enhancement Releases
- Existing Route/Stop/Schedule Changes

"Tracker Suite" means the AVLS Equipment installed on a transit vehicle comprising of the following components:

- Tracker and cable (includes GPS receiver, wireless modem, and serial interface)

- GPS antenna and cable (Internal Units)
- Radio antenna and cable
- Charge guard

"Urgent Problem" means a Problem that affects the entire AVLS, such as a down website or an outage of cell service.

## **CONTRACTOR'S RESPONSIBILITIES**

In exchange and as consideration for SFMTA's payment of the quarterly Maintenance Services Fees paid in advance set forth in Appendix B, Contractor shall provide the SFMTA the Included Services and as described in this Maintenance Agreement. As Included Services, Contractor shall provide the SFMTA software updates, non-custom software upgrades that Contractor provides to other customers, Equipment repair and maintenance, System Support Services necessary to maintain the operations of the Base AVLS in accordance with the operating standards and specifications set out in this Maintenance Agreement. Contractor shall also provide the SFMTA with Additional Services as requested by the Agency, payment for which shall be on a time and materials or negotiated lump sum. Contractor's responsibilities are more specifically described in Appendix A to this Maintenance Agreement, attached hereto and incorporated by reference as fully set out here. Contractor shall render all services with the highest degree of care.

## **SFMTA'S RESPONSIBILITIES**

### **1.1. SFMTA Contact Personnel.**

**1.1.1.** SFMTA will assign individuals from its IT department as a contacts to assist Contractor in resolving SFMTA data and software integration Problems in the AVLS that Contractor cannot resolve on its own and that are within the SFMTA's control.

**1.1.2.** SFMTA will assign personnel from SFMTA Operations to represent all maintenance yards and facilities (including Cable Car, Flynn, Geneva, Green, Kirkland, Portrero, Presidio, Woods, Muni Metro East, and yards that may be utilized in the future) for the purpose of assisting Contractor in resolving Problems with on-board vehicle equipment installed or maintained by SFMTA, including DRI devices. Assigned SFMTA personnel will also assist in scheduling and coordinating Contractor's onsite repairs to on-board AVLS Equipment.

**1.2. Spare Parts.** SFMTA will make available the spare parts for the AVLS in SFMTA's possession, including Trackers Suites, displays, subway LCDs and charge guards that are currently stored at various SFMTA maintenance and storage facilities. Contractor may access said spares at their current locations or Contractor may take possession of them for the sole purpose of maintaining the SFMTA's AVLS. If Contractor takes possession of the spare parts or other AVLS equipment, Contractor shall be fully responsible for and shall safeguard said materials against loss and damage.

**1.3. Hardware Maintenance.** SFMTA will perform the following hardware maintenance to support the AVLS:

**1.3.1.** Ensure the timely repair of DRI units. SFMTA shall repair or replace non-operating DRI Units within 72 hours of receipt of notice from Contractor that it has diagnosed that a Problem is due to a malfunction in said DRI Unit.

**1.3.2.** Provide or cause to be provided hardware necessary for supporting Subway LCD Signs.

**1.3.3.** Provide support to trouble-shoot defective hardware that is otherwise covered under this Maintenance Agreement.

**1.3.4.** Purchase and maintain in inventory necessary spare parts.

**1.4. Software Support.** SFMTA will do the following to support Contractor's maintenance of the AVLS software:

**1.4.1.** Provide Contractor necessary data related to route/job/schedule changes.

**1.4.2.** Provide timely information concerning holiday or other special dates or events and times that impact publicly available passenger information to allow Contractor sufficient time to implement those changes in the AVLS. SFMTA will submit all schedule revisions and updates to Contractor three (3) weeks before the changes are to become effective. SFMTA must submit the holiday schedule of the following year to Contractor on or before November 15th.

**1.4.3.** Maintain SFMTA's software and hardware such as VCC/SMC I/F and SFMTA's data warehouse.

**1.4.4.** SFMTA shall provide first level of support to the City's 311 customer care service.

**1.4.5.** Provide timely QA of schedule imported data on the AVLS test system after Contractor has informed SFMTA of the contractor's completion of their QA.

**1.4.6.** Provide timely revisions and updates to fix problems found in the import of third party (Trapeze) data.

**1.5. Third Party Systems.** SFMTA will maintain the following data feeds to the AVLS and will perform any necessary quality assurance tasks to verify the accuracy of the data before authorizing Contractor to incorporate the data into the AVLS:

**1.5.1.** Advanced Train Control System (ATCS)

**1.5.2.** Vehicle Assignments

**1.5.3.** Trapeze Schedules

**1.6. Access to Vehicles.** SFMTA Operations shall make a vehicle available for diagnosis and repair of Trackers within 30 hours from the time the Contractor identifies and submits a request for access to the SFMTA.

## **GENERAL PROVISIONS**

**1.7. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

**1.8. Term of the Agreement.** Subject to Section 1, the Term of this Agreement shall be from August 1, 2009 to July 31, 2011. The SFMTA's Executive Director, in his sole discretion, may extend this Agreement for up to two additional years. The Agreement may not be extended further without the approval of the SFMTA Board of Directors.

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

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

**1.11. Compensation.** The SFMTA shall pay Annual Service Fees to Contractor as compensation for Included Services in equal quarterly installments paid in advance, as provided for in Appendix B to this Maintenance Agreement. The SFMTA shall pay Contractor the first quarterly installment within 45 days of final approval of this Maintenance Agreement. No later than 45 from receipt of invoice, the SFMTA shall pay Contractor for Additional Services, as provided in Appendix B to this Maintenance Agreement, that the SFMTA's Executive Director/CEO, in his sole discretion, concludes have been performed. Contractor shall not bill the SFMTA for Additional Services more often than monthly. In no event shall the amount of this Agreement exceed **Three Million Nine Hundred Fifty Four Thousand Eight Hundred Fifty Four Dollars (\$3,954,858)**. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by SFTMA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

**1.12. Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of 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. 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. 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.

**1.13. Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

**1.14. 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.

**1.15. 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.

**1.16. Taxes.** 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. It is understood that all prices and invoices include California and local Sales Tax. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

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

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

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

**1.17. Payment Does Not Imply Acceptance of Work.** The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to

the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

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

**1.19. 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.

**1.20. Independent Contractor; Payment of Taxes and Other Expenses**

**1.20.1. 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.

**1.20.2. Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

**1.21. Insurance.**

**1.21.1.** 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:

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

(b) Commercial General Liability Insurance with limits not less than \$4,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) 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.

(d) 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 for computer programming and data processing services.

**1.21.2.** Umbrella or Excess Liability Insurance may be used with underlying policies to comply with limits required for each form of insurance required under this Maintenance Agreement.

**1.21.3.** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

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

(b) 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.

**1.21.4.** 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.

**1.21.5.** 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.

**1.21.6.** 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.

**1.21.7.** 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.

**1.21.8.** 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.

**1.21.9.** 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.

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

**1.21.11.** 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.

**1.22. Indemnification.** Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

**1.23. 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.

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

**1.25. Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services as provided under Section 4 and Appendix A of this Agreement are delayed, the City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor therefore agrees to pay the liquidated damages set out in Appendix A for delay in services and other unavailability of the AVLS. Said liquidated damages are not a penalty, but are reasonable estimates of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Maintenance Agreement 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 or maintain the AVLS and other services to the City within the times fixed in Appendix A or such extensions of time permitted in writing by the SFMTA. The maximum liquidated damages assessed against Contractor under this Maintenance Agreement will not exceed ten percent (10%) of the value of this Maintenance Agreement.

**1.26. Default; Remedies.** Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

**1.26.1.** Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

- 6.8. Submitting false claims
- 6.10. Taxes
- 6.15. Insurance
- 6.24. Proprietary or confidential information of City
- 6.31. Assignment
- 6.38. Drug-free workplace policy,
- 6.54. Compliance with laws
- 6.57. Protection of private information
- 6.58. Graffiti removal

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

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

**1.26.4.** A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

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.

### **1.27. Termination for Convenience**

**1.27.1.** City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience without cause. City shall exercise this option by giving Contractor written notice of termination no less than 90 days prior to the effective date. The notice shall specify the date on which termination shall become effective.

**1.27.2.** 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.

**1.27.3.** 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 a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall be calculated as five percent (5%) of the total costs of annual Included Services

Fees (set out in section A of Appendix B of this Maintenance Agreement) that would have been charged during the initial two (2) year term of this Maintenance Agreement.

(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.

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

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

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

**1.28. Rights and Duties upon Termination or Expiration.** This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

- 6.8. Submitting false claims
- 6.9. Disallowance
- 6.10. Taxes
- 6.11. Payment does not imply acceptance of work
- 6.13. Responsibility for equipment
- 6.14. Independent Contractor; Payment of Taxes and Other Expenses
- 6.15. Insurance
- 6.16. Indemnification
- 6.17. Incidental and Consequential Damages
- 6.18. Liability of City
- 6.24. Proprietary or confidential information of City
- 6.26. Ownership of Results
- 6.27. Ownership of Data
- 6.28. Software License
- 6.29. Audit and Inspection of Records
- 6.49. Modification of Agreement.
- 6.50. Administrative Remedy for Agreement Interpretation.
- 6.51. Agreement Made in California; Venue
- 6.52. Construction
- 6.53. Entire Agreement
- 6.56. Severability

6.57. Protection of private information

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. 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.

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

**1.30. 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.

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

To City: Sam Lau  
Deputy Chief Operating Officer  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7th floor  
San Francisco, CA 94103

To Contractor: John Eaton  
Chief Financial Officer  
NextBus Inc.  
2433 Mariner Square Loop, Suite 103  
Alameda, California 94501

Any notice of default must be sent by registered mail.

**1.32. Ownership of Results.** If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software designed solely for SFMTA applications, 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.

**1.33. Ownership of Data.** The City recognizes that the AVLS and related software provided by Contractor under the AVLS Contract are proprietary systems to which the City's interest is limited to the license provisions set out in this Maintenance Agreement and in the AVLS Contract. Notwithstanding any understandings or agreements created prior to this Maintenance Agreement to the contrary, however, all data generated, transmitted, distributed, manipulated, compiled, stored, archived, or reported by the AVLS concerning SFMTA vehicles and operations, including but not limited to data concerning vehicle location, predicted arrival times, route and stop configuration and historic AVLS data is the property of the SFMTA without reservation of rights or other restriction of any kind. AVLS data concerning the location of SFMTA vehicles in real time and predicted arrival times are records that the City may make available to the public through passenger information display signs, data feeds (including but not limited to XML data feeds), internet web pages and weblinks, information kiosks, public information systems, PDA and cell phone applications, electronic messaging, and other technologies that may be utilized to inform persons wishing to access, process, or archive information concerning public transit in San Francisco. Contractor may retain and use copies of SFMTA AVLS data for reference and as documentation of its experience and capabilities.

**1.34. Software License.** The licenses established under the AVLS Contract authorizing the City to utilize Contractor's software survive the expiration of that agreement. In addition, the City is hereby granted a non-exclusive, non-transferable, perpetual license to use any Software Update or Software Upgrade provided by Contractor under this Maintenance Agreement. Contractor warrants that it has the title to and/or authority to grant said license (and any necessary sublicenses) to the City. Contractor further warrants that to the best of Contractor's knowledge, the Software Update or Software Upgrade will not infringe on any license, copyright, patent or trademark. The provision by the SFMTA of AVL data to the public, including the predictive data stream via XML data feed from a City website, is a permitted use under the software license from Contractor to the City. Contractor and City understand and agree that members of the public may use the real time predictive data for private or commercial purposes, including the development of web and smart phone applications. The provision of said data to the public does not create a beneficiary interest of any third party under this Maintenance Agreement or any software license granted to the City.

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

**1.36. 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.

**1.37. 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.

**1.38. 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.

**1.39. 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. 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. 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. 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. 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.

#### **1.40. Local Business Enterprise Utilization; Liquidated Damages**

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

#### **1.40.2. Compliance and Enforcement**

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

imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

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

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

**1.40.3. Subcontracting Goals.** The LBE subcontracting participation goal for this Maintenance Agreement is 3.2 percent of the total value of this Maintenance Agreement. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

**1.40.4. Subcontract Language Requirements.** Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this Maintenance Agreement and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

**1.40.5. Payment of Subcontractors.** Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

#### **1.41. Nondiscrimination; Penalties**

**1.41.1. 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.

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

**1.41.3. 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.

**1.41.4. 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.

**1.41.5. 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) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**1.42. 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.

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

**1.44. 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.

**1.45. 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.

**1.46. 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.

**1.47. 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.

**1.48. 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.

**1.49. 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.

**1.50. Requiring Minimum Compensation for Covered Employees.**

**1.50.1.** 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 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.

**1.50.2.** 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.

**1.50.3.** 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 rebuttably presumed to be retaliation prohibited by the MCO.

**1.50.4.** 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.

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

**1.50.6.** 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.

**1.50.7.** 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.

**1.50.8.** 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.

**1.50.9.** If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with the SFMTA 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 the SFMTA to exceed \$25,000 in the fiscal year.

**1.51. Requiring Health Benefits for Covered Employees.** Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at [www.sfgov.org/olse](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.

**1.51.1.** 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..

**1.51.2.** 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.

**1.51.3.** 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.

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

**1.51.5.** 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.

**1.51.6.** 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.

**1.51.7.** 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.

**1.51.8.** Contractor shall keep itself informed of the current requirements of the HCAO.

**1.51.9.** 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.

**1.51.10.** 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.

**1.51.11.** 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.

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

**1.51.13.** 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.

## **1.52. First Source Hiring Program**

**1.52.1. 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.

**1.52.2. 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 maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

(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 nonduplicative, 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.

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

**1.52.4. 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.

**1.52.5. 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.

(iii) 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.

**1.52.6. 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.

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

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

**1.55. Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the SFMTA to submit to the SFMTA 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% (HRC Contract Modification Form).

**1.56. Administrative Remedy for Agreement Interpretation.** Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to SFMTA Chief Operating Officer, who shall make a final determination on behalf of the City as to the meaning of the Agreement.

**1.57. 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.

**1.58. Construction.**

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

**1.58.2.** This Agreement and each of its terms is the product of mutual negotiation and drafting by the Parties. The Parties acknowledge and agree that the rule of interpretation or construction of contracts that a document or ambiguities in a document shall be construed against the drafter of the document shall not apply to this Agreement. The Parties further agree that neither Party shall introduce or seek to introduce as parol or extrinsic evidence any of the Parties' communications regarding this Agreement in any legal proceeding in which the meaning or validity of this Agreement is at issue.

**1.59. Entire Agreement.** This Agreement and any documents incorporated by reference herein constitute the entire agreement between the Parties. It sets forth all intended rights and obligations and supersedes any and all previous agreements correspondence and



understandings between them with respect to the subject matter hereof. In the event of any inconsistency between the provisions of any Appendix and the provisions of this document, the provisions of this document shall prevail. This Agreement may be modified only as provided in Section 48, "Modification of Agreement."

**1.60. 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.

**1.61. Force Majeure**

**1.61.1.** Neither Party shall by reason of Force Majeure, be entitled to terminate this Agreement nor shall either Party have any claim for damages against the other for any non performance or delay under the Agreement as a result of such Force Majeure. If the performance in whole or part of any obligation under this Agreement is delayed by reason of any such event of Force Majeure for a period exceeding three (3) months, the Parties shall discuss and review in good faith the desirability and conditions of terminating this Agreement.

**1.61.2.** The prevented Party shall, as soon as it becomes aware of an event of Force Majeure, immediately inform the other Party of the nature and the beginning and the end of the Force Majeure circumstances preventing the performance of the Agreement.

**1.62. 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.

**1.63. 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 Maintenance Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Maintenance Agreement, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**1.64. 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.

**1.65. 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 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.

**Included Appendices**

- A: Scope of Maintenance Services To Be Provided By Contractor
- B: Calculation of Charges

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

**San Francisco  
Municipal Transportation Agency**

\_\_\_\_\_  
NATHANIEL P. FORD, SR.  
Executive Director/CEO

Approved as to Form:

Dennis J. Herrera  
City Attorney

By \_\_\_\_\_  
Robert K. Stone  
Deputy City Attorney

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION  
AGENCY  
BOARD OF DIRECTORS  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
Roberta Boomer, Secretary to the  
SFMTA Board of Directors

**NextBus, Inc.**

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

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

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JOHN EATON  
Chief Financial Officer  
NextBus Inc.  
2433 Mariner Square Loop, Suite 103  
Alameda, California 94501-1036

## APPENDIX A

### **AVLS MAINTENANCE SERVICES TO BE PROVIDED BY CONTRACTOR**

Contractor shall provide the SFMTA System Support and Software Services and Equipment Maintenance Services, as described herein to support operation of the SFMTA's AVLS. Unless provided for herein or by amendment to this Maintenance Agreement, Contractor's maintenance service obligations are limited to the Base System.

#### **1. BASE SYSTEM**

##### **1.1. Hardware.**

The components listed in the following three charts comprise the SFMTA's AVLS Base System:

###### **1.1.1. Tracker Hardware.**

- (a) Revenue vehicle trackers with charge-guard power supply: 872
- (b) Revenue (LRV, historic and cable car) vehicle trackers without charge-guard power supply: 223
- (c) Nonrevenue vehicle trackers with charge-guard power supply: 50
- (d) Revenue Vehicle trackers without charge-guard power supply: 26

###### **1.1.2. Display Sign Hardware.**

- (a) LED displays with wireless communication link: 833
- (b) LCD monitors with computer and WI-FI network: 18
- (c) Agent booth computers with passenger information monitor: 9
- (d) Push-to-Talk speakers: 67

###### **1.1.3. Server Hardware.**

- (a) Primary NextMuni server: 1
- (b) Off-line standby NextMuni server: 1

###### **1.1.4. Software.**

- (a) Up-to-date NextMuni system application software
- (b) Up-to-day NextMuni system application software source code
- (c) SFMTA customized application software (subway map, MTC data feed, TSDE translator, real-time prediction quality system monitoring application, kiosk real system maps)

1.1.5. **Spares.** The spare parts listed in the following table shall be considered part of the Base System. If the spare parts listed in the table below are not in SFMTA inventory as of the date this Maintenance Agreement is finally approved, the Agency shall purchase said spares within 90 days of said date and transfer them to Contractor for its maintenance of the AVLS.

Tracker: 129	Platform sign with talking-sign: 7
Charge Guard: 91	LCD monitor: 2
LED shelter sign with Talking-sign: 40	LCD enclosure: 1
Push-to-Talk speaker: 7	Neo-ware computer: 3

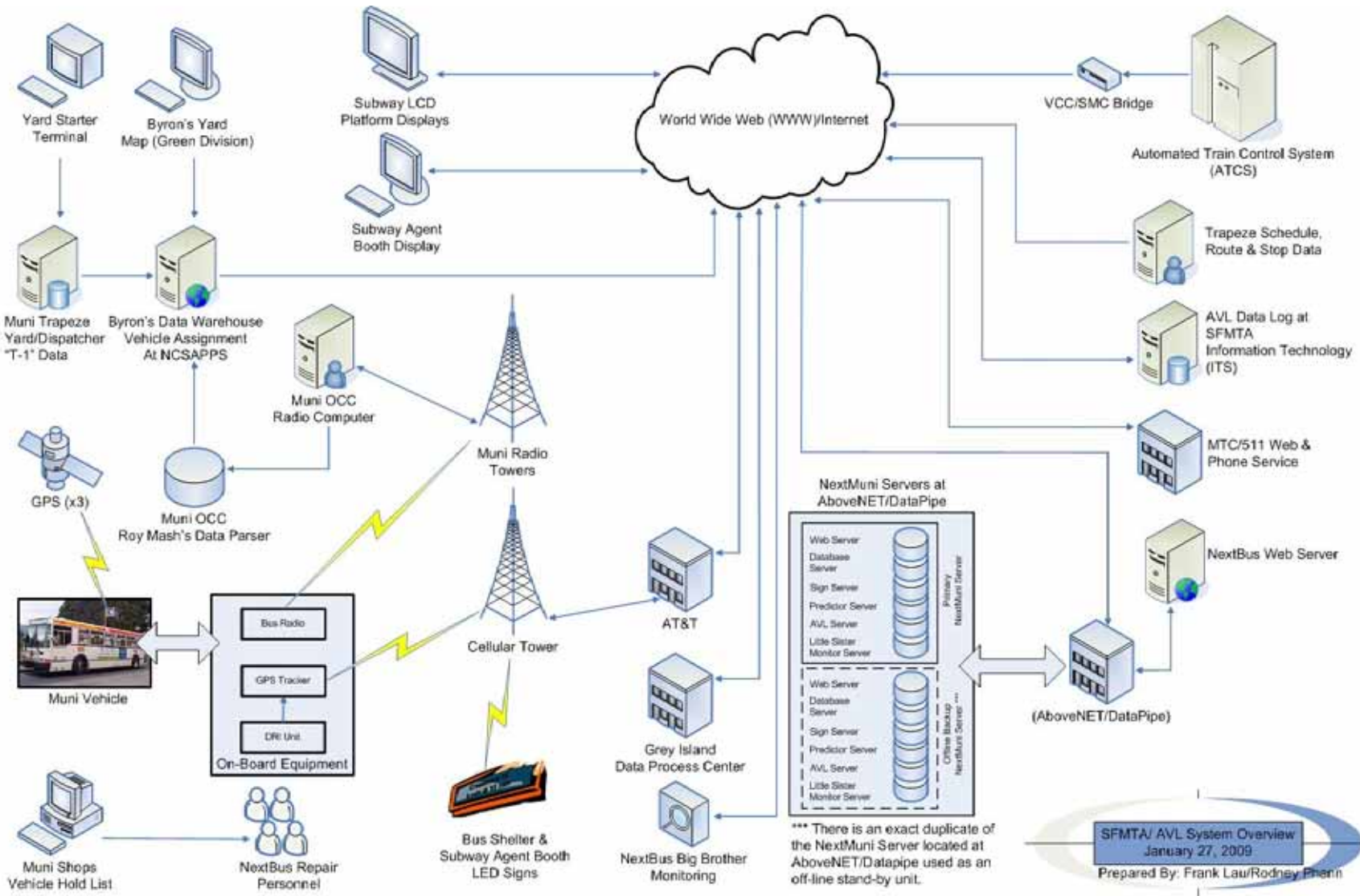


Figure 1 – AVLS Configuration Overview

**Figure 1: AVLS Configuration Overview**

The purpose of this figure is to show an overview of the relationship between the different sub-system components that constitute the AVL/NextBus system. The system in general can be broken down into four collections of sub-system components. The first collection of sub-systems being the data sources, which for the most part are composed of internal Muni data such as vehicle assignments, scheduling data, historical headway data, and Muni route/stop information data. The second collection of sub-systems is the actual NextBus system processing all of the Muni data and performs the necessary computations to supply the predictions. The third collection of sub-systems is the output components which take the predictions and displays it on bus shelters, LCD screens, web sites, PDAs, cell phones, and stores it in a database for other agencies such as MTC/511 to use. Lastly the fourth system component is the communications medium which the AVL/NextBus system runs on. GPS trackers get positional information from satellites and that data gets passed along through AT&T cellular modems through the web to NextBus systems to process as mentioned above. As shown in the diagram, AVL/NextBus data is not a static system but rather a system of systems which constantly updates in order to bring the most up to date predictions necessary to Muni patrons.

## 2. INCLUDED SERVICES

Contractor shall provide the Included Services described in this Section II in exchange for the SFMTA's payment of the Annual Services Fee described in Appendix B to this Maintenance Agreement.

2.1. **System Maintenance Reports and Repair Log.** Contractor shall each day, seven days per week, generate and review System Maintenance Reports to identify defective Trackers and Display Signs, and shall further replace and repair defective Trackers and Display Signs by performing the tasks described in this Section 2 as Included Services. Contractor shall enter and track the repair of defective Trackers and Display Signs on a Repair Log. Contractor shall daily transmit the Repair Log to designated SFMTA staff, seven days per week, via e-mail.

2.2. **Maintenance of Spares.** Contractor shall at its expense maintain Spares in the amounts listed in the table at Section 1.1.5, above, and shall have them available for installation to the SFMTA's AVLS. If at anytime during the term of this Maintenance Agreement, the number of working Spares fall below the quantities set out in Section 1.1.5, Contractor shall acquire such additional Spares.

### 2.3. Equipment Maintenance Services.

Contractor shall provide Equipment Maintenance Services for the Equipment of the Base System, as described below.

#### 2.3.1. Tracker Replacement and Repair.

(a) Contractor shall each day, seven days per week, identify defective Trackers, and shall replace and repair Trackers that have stopped reporting, Trackers whose images appear outside of the traveled areas, and Trackers that have intermittent Problems, Trackers that are otherwise defective.

(b) To gain access to a vehicle to repair a Tracker, Contractor shall contact the dispatcher of the yard at which the vehicle with a defective Tracker is located to confirm that the vehicle is available and to make arrangements for Contractor to perform testing and repairs. Contractor shall perform all testing and repairs of on-board vehicle equipment at night during the hours 8:00 PM to 4:00 AM. Contingent upon the SFMTA making the vehicle on which the defective Tracker is installed available to Contractor, Contractor shall repair or replace a defective Tracker within 24 hours of the report of that Tracker as defective on a System Maintenance Report,.

(c) For vehicles with a Tracker that is integrated to a DRI Unit, Contractor shall test the Tracker in the vehicle to determine whether the Problem is caused by the Tracker or by the DRI Unit. If the Problem is caused by the DRI Unit or other equipment the SFMTA maintains, Contractor shall note that in a DRI repair log and notify SFMTA Operations to schedule repair of that equipment.

(d) If a Tracker is found defective, Contractor shall immediately replace it with a spare unit. Contractor shall repair the removed defective Tracker in Contractor's own facility (or that of a subcontractor) and return that Tracker to the inventory of spares it maintains for the SFMTA.

(e) All completed repairs must be noted in the Repair Log.

(f) Contractor shall send a report via email no later than 4:30 AM each morning clearly identifying the vehicles on which the Tracker is believed to be defective and which Contractor was not able to repair the previous night, so that the SFMTA may where possible hold a vehicle with a defective Tracker out of revenue service.

#### 2.3.2. Passenger Information LED Display Signs.



Every day, seven days per week, Contractor shall perform the tasks described in this Section 2.3.2 to identify, diagnose and repair or replace defective LED displays using the following procedure:

(a) Contractor shall generate and review a Sign Administration Report to identify LED display signs that are not communicating with NextBus server.

(b) Contractor shall perform a “reset” of the sign manager to re-register sign communication.

(c) If the reset does not establish communication with the sign, Contractor shall within 24 hours of the time the sign appeared as non-functioning on a Systems Maintenance Report: (1) perform on-site diagnostics and repair if the Problem is related to cables and modems; or (2) for signs with Problems not related to cables and modems, Contractor shall replace the sign with a spare, and remove the sign for repair at Contractor's own facility or that of a subcontractor.

### 2.3.3. **Passenger Information Subway LCD Hardware.**

(a) Everyday, seven days per week, Contractor shall physically inspect the Subway LCD hardware to ensure that the display is functioning correctly. If the parties agree, the number of physical inspections of LCD signs may be reduced as Contractor develops automatic remote monitoring systems to detect inoperable or defective LCD signs and hardware. Contractor shall enter and track repair of non-functioning or defective LCD signs and hardware will in the Daily Repair Log.

(b) Contractor shall repair all Problems occurring in or related to Subway LCD hardware or replace with spare said hardware within 24 hours of discovery or report that said hardware is malfunctioning or inoperable.

(c) Contractor shall replace repair Subway LCD hardware at Contractor's own facility or that of a subcontractor.

(d) All repairs must be performed between 10:00 AM and 2:00 PM, or after 8:00 PM, or on Saturday or Sunday.

2.3.4. **Sign Replacements.** All AMS signs found defective will be replaced with Data Display LED display sign Spares. AMS platform displays will be replaced with Data Display platform sign Spares, and AMS agent booth displays will be replaced with Data Display 24” shelter sign Spares.

2.3.5. **Sign Map Software Update.** Contractor shall implement approved new subway map software in all Subway LCD Passenger Display Signs within 30 days of Contractor's receipt of training in the operation of the signs from the sign manufacturer or the SFMTA.

2.3.6. **Return of Spare Parts.** Contractor shall return all spare parts, including Trackers and Signs, to the SFMTA upon the expiration or termination of this Maintenance Agreement, or upon request from the SFMTA.

2.4. **Safety.** Contractor shall be wholly responsible for the safety of its personnel while performing work on SFMTA property. Contractor shall observe all SFMTA safety rules and requirements while performing work on any SFMTA property, including passenger loading platforms, transit stops, subway stations, and maintenance yards. Contractor's personnel and its subcontractors' personnel must obtain safety training and clearance from the SFMTA prior to performing any work on SFMTA platforms, in the subway or in SFMTA maintenance yards.

2.5. **System Support Services.** Contractor shall provide all support services and software engineering services necessary to maintain the AVLS operating within Accepted System Standards. Contractor shall provide the following System Support Services:

2.5.1. **Re-Integration of SFMTA's AVLS to NextBus.** The SFMTA's AVLS servers and related Equipment are currently located in a server cage separate from Contractor's servers and equipment. The parties intend that the SFMTA's AVLS, including the NextMuni.com website, will be relocated onto Contractor's main servers and the SFMTA's separate server will be removed from service. The parties agree to cooperate to effect the completion of that reintegration within 90 days from the Effective Date of this Maintenance Agreement. Contractor shall provide all equipment and technology necessary for back-up and fail-safe protections of AVLS functions and AVLS data.

2.5.2. **AVLS Subsystems.** Contactor shall maintain and provide first-line system support to the following AVLS WEB subsystems:

- (a) Internet-based JAVA Map Displays with local-street maps and route system overlay.
- (b) Transit management reports.
- (c) Real time bus arrival information for passengers.

2.5.3. Contractor shall provide a Systems Support Manager who will be a single point of contact to the SFMTA and will act as a liaison between the SFMTA's customer care service and contractor.

2.5.4. Contractor's System Support Manager shall supervise and be responsible for investigating and correcting or repairing Problems.

2.5.5. To ensure adequate support coverage to the SFMTA, Contractor shall provide a Customer Service Lead to back-up the Systems Support Manager in his/her absence.

2.5.6. Contractor shall perform all system maintenance and upgrades to the AVLS during non-rush hours, which are defined as between 8:00 PM and 4:00 AM (Pacific Time). Contractor may perform emergency maintenance at other times, but only with SFMTA written approval.

2.6. **ASP and Wireless Data Services.** ASP and wireless data charges (for cell phone communications between Trackers and servers) are part of Included Services and are compensated by payment of the annual maintenance fees. Contractor shall be wholly responsible for managing, arranging for and/or providing ASP services to maintain the NextMuni.com and NextBus.com internet web sites. Contractor shall be wholly responsible for managing, arranging for and/or providing AVLS wireless data services to maintain communications between vehicle Trackers and the AVLS servers.

## 2.7. **Software Services.**

2.7.1. **AVLS Software.** Contractor shall maintain the AVLS software so that it continues to operate within Accepted System Parameters for the term of this Maintenance Agreement. Contractor shall provide all necessary programming and configuration services, software updates, non-custom upgrades (i.e., upgrades Contractor provides to all of its customers), work-arounds, patches and bug fixes and quality checks necessary to maintain the AVLS. Contractor shall provide immediate notice via email to the SFMTA's System Manager, the 311 System Manager, and 511 System Manager (and other personnel whom the SFMTA may identify) when Contractor discovers Problems.

2.7.2. **SFMTA Systems Interfaces.** Contractor shall provide Systems Support to ensure the continued functioning of the following SFMTA AVLS interfaces within Accepted System Parameters, which are set out in the submittal documents referenced below. Contractor shall provide no less than three (3) business days notice via email to the SFMTA's System Manager prior to implementing a software update or upgrade that may impact a systems interface.

(a) Continuous Automated Monitoring Data and Prediction Quality (Refer to MR1138 Submittal Document# 132).

(b) Automation of Configuration to Incorporate Schedule and Route Changes into the AVL and Prediction Servers (Refer to MR 1138 Submittal Document# 135). Contractor shall verify new schedule and post-processing of the configuration data before final release.

(c) New Subway System Map Flash Software (Refer to MR 1138 Submittal Document# 137).

(d) Metropolitan Transportation Commission (MTC) 511 (Refer to MR 1138 Submittal Document #136).

(e) Train Number Import Interface/Assignment Feed.

(f) XML data feed of AVLS real-time vehicle location data and predictive arrival time data to City databases and websites.

(g) Storing AVL and prediction data in the NextMuni Database.

(h) AVL Feed for Underground Streetcars via SMC and VCC Feeds.

(i) Passenger Web Interface.

(j) ADA Website.

(k) WAP site.

(l) SMS site.

(m) Google API Based Map.

(n) Agent Booth Web Pages.

(o) Management Map.

(p) Message Console.

(q) Data Archival.

(r) SFMTA user activity log (that records job assignments and managers logs)

(s) Existing Custom Reports, including:

(i) Prediction Quality

(ii) Prediction quality for Route

(iii) Headway Monitoring.

**2.7.3. Interfaced Software Updates.** Contractor shall provide systems support to ensure the continued functioning of the SFMTA's AVLS interface to the Trapeze scheduling software system and the data feed to the Metropolitan Transportation Authority's (MTC) 511 system within Accepted System Parameters. Contractor shall apply the following procedures to maintain those data feeds:

(a) Contractor shall load configuration from Trapeze system onto test system with the Schedule Update application on the Agency Page.

(i) If configuration does not load successfully, Contractor shall investigate problem. Contractor will fix the upload software accordingly. If the problem is due to the configuration data, Contractor will communicate that information to SFMTA so that the Agency can correct the data.

(ii) If a relatively small problem is encountered, such as a holiday file is found to be missing, empty, or without expected holidays, Contractor will inform SFMTA of missing data and insert the data manually if possible and/or notify SFMTA of the deficiency.

(b) Contractor shall check the data configuration on the test system as follows:

(i) Review current list of expected changes in this upload and confirm or note discrepancies.

(ii) Review current list of known problems and statuses from last report, note changes.

(iii) Inspect System Maintenance Reports for new problems:

(iv) Examine log files for new warnings, errors, or any major changes in information messages that were detected when the configuration was loaded. Investigate and analyze any changes.

(v) Visually inspect all routes zoomed to whole system for global path or stop errors.

(vi) Visually inspect each route zoomed to its individual level for defects such as jagged routes or stops not being on the paths.

(vii) Pan each route from end to end zoomed to street block level, checking for visual defects in paths or stops.

(viii) Inspect turnaround paths at Embarcadero end for the F, J, L, M, S, and KT routes.

(ix) Check the route selector for each route for number of route directions offered against list of known discrepancies, such as four directions for the 38-Geary.

(x) Review report from "Configuration Reports: Segment Times for Route" for unexpected default speeds where there are normally adjusted speeds. Check a list of specific hi-priority routes. If many of these have default speeds, leave the new schedule on the test system for a week, run the Segment Times application on it, and inspect again before approving for deployment to public.

(xi) Review report from "Configuration Reports: Stops and Time points for Jobs" for each route's job group (such as 93xx for J). Confirm last two columns are sparse, that is, no part of any job consists of only time points or schedule points.

(xii) Confirm that expected holidays appear in report "Configuration Reports: Holidays"

(xiii) Identify Problems from above checks, research, analyze, and compile detailed report. Email report to SFMTA System Manager and other responsible parties at NextBus and SFMTA. Depending on evaluation and review of reports and any other problems found by NextBus or SFMTA, either request a new upload to correct urgent problems or deploy this upload to production system as is.

(xiv) Notify SFMTA that the Agency needs to confirm that the intended changes have been made correctly and that no Problems have been introduced. This step is critical because NextBus does not know the intent of the schedule changes so cannot fully QA the configuration alone.

(xv) Confirm that XML feed is fully functional for the test system so that MTC can access and test it.

(xvi) Notify MTC that new configuration is available on sf-muni-test predictor such that it can be tested.

(xvii) Work with SFMTA to resolve the Problem and issues found while performing quality assurance checks.

(xviii) Field questions from MTC that we can answer. Refer MTC to appropriate SFMTA personnel for questions that they need to answer.

(xix) Make any needed software changes required for the MTC 511 feed, such as for making sure that the stop IDs are properly disambiguated.

(xx) Collaborate with MTC & SFMTA to make sure that the changeover to the new configuration on the production servers can be executed.

(xxi) Inform MTC when new configuration on test system is fully functional. As Contractor receives new data sets from SFMTA, Contractor will repeat the above processes and communicate with MTC when a new configuration is available on the test system.

(xxii) Update running times so that the generated arrival predictions are as accurate as possible. This will not work for all types of configuration changes because the vehicles will not yet be running the new configuration. Therefore this update will need to be done again several days after the new configuration goes into effect.

(xxiii) Before implementing the new schedule, Contractor shall make the new configuration available on the production NextBus and NextMuni.com servers at the appointed time such that the MTC 511 system will automatically start uploading it.

(xxiv) After new configuration is in place for several days, update the running times so that the generated arrival predictions are as accurate as possible.

(xxv) After the configuration has gone live, communicate with MTC to see if there are new problems. Resolve such problems if they occur.

2.7.4. **XML Data Link.** Contractor shall provide necessary technological assistance in placing an XML data stream (via weblink or other SFMTA approved data conveyance) of the real time predictive AVLS data to the SFMTA's website.

2.7.5. **System Administration.** Contractor shall perform the following system administrative tasks to maintain the AVLS data infrastructure:

(a) Maintain Contractor's network system infrastructure for managing, storing, archiving, and protecting the SFMTA's AVL and predictive data and other related data;

(b) Perform daily backup of all SFMTA AVLS data to ensure secure data storage and quick recovery;

(c) Maintain a secure firewall to ensure continuous data protection and data integrity;

(d) Maintain software at a level of functionality of Accepted System Parameters;

(e) Provide on-going remedial software support by qualified software/system engineers;

(f) Maintain system availability with minimal interruptions caused by periodic scheduled backup or other unscheduled interruptions;

(g) Work directly with wireless carriers to resolve Problems originated by the wireless carriers.

and reliable;

- (h) Update server operating system to ensure that AVLS is secure
- (i) Update application software on servers including:
  - (i) PostGres database
  - (ii) Apache
  - (iii) Tomcat web server software
  - (iv) Java JDK
  - (v) Perl, and Python.

Update firmware (software embedded to Equipment) on switches, firewalls, and load balancers.

- (j) Reconfigure firewalls and load balancer as needed;
- (k) Maintain systems monitoring tools that automatically detect Problems;
- (l) Replace and reconfigure disk drives as they fail;
- (m) Replace and set-up new servers when old servers are retired, become obsolete or fail;
- (n) Maintain “out of band” service that allows Contractor to service a server even if the server or the network is down;
- (o) Maintain domain names and SSL security certificates;
- (p) Maintain third party software licenses;
- (q) Manage power and network requirements of AVLS, and obtain additional power or network bandwidth as needed;
- (r) Update the LINUX operating system.

#### 2.7.6. **System Monitoring.**

Contractor shall continuously monitor the AVLS subsystems listed below to ensure that the continue operate within Accepted System Parameters. Contractor shall notify the SFMTA's Systems Manager, the 311 System Manager, the 511 System Manager (and other personnel who may be identified by the SFMTA) by email whenever a Problem arises that impedes to the operation of these subsystems:

- (a) Server-to-sign and tracker-to-server communication,
- (b) Internet connectivity of servers,
- (c) Server operation and efficiency
- (d) Wireless data links and maintenance schedules

#### 2.7.7. **AVLS Software Updates and Upgrades.**

(a) Contractor shall provide the SFMTA with all Software Updates to maintain the AVLS operating within Accepted System Parameters. Contractor shall provide to the SFMTA at no additional charge Software Upgrades and other enhancements that Contractor has provided to any of Contractor's other customers at no additional charge. (Custom Software Upgrades applicable only the SFMTA are Additional Services.) Contractor shall test all Upgrades and Updates before deployment to ensure compatibility with the SFMTA AVLS. Contractor shall deploy Upgrades and Updates to the SFMTA's AVLS only at such times as will not degrade the availability or functions of the AVLS. Contractor shall provide notice to and

seek authority from the SFMTA no less than three (3) business days notice before deploying an Upgrade or Update to the AVLS. The SFMTA will not unreasonably withhold its approval to deploy an Update or Upgrade. Contractor shall manually check and confirm system performance is within Accepted System Parameters after uploading software or configuring data.

(b) The City is hereby granted a non-exclusive, non-transferable, perpetual, restricted license to use any Software Update or Software Upgrade provided by Contractor under this Maintenance Agreement. Contractor warrants that it has the title to and/or authority to grant said license(s) and sublicenses(s) to the City. Contractor further warrants that to the best of Contractor's knowledge at the time, the Software Update or Software Upgrade will not infringe on any license, copyright, patent or trademark.

2.7.8. **Existing Automatic Route/Stop/Schedule Import.** Contractor shall make any necessary changes to the AVLS to incorporate any route, stop, or schedule changes for transit routes. SFMTA must submit all route, stop, and schedule changes to Contractor for upload to the AVLS via the WEB configuration upload interface or other file format prescribed by NextBus not less than three (3) weeks before the Agency makes those changes to revenue service.

2.7.9. **Data Storage.** Contractor shall store SFMTA AVL and arrival, departure, headway and schedule adherence data in an on-line accessible format for not less than six (6) months. Contractor shall store SFMTA AVL and prediction data that is older than six (6) months in an accessible archive format for not less than three (3) years.

2.7.10. **Allowance for Minor Improvement of Webpage and Existing Custom Reports.** Contractor shall provide SFMTA 160 engineering hours for each year of this Maintenance Agreement to be used for minor improvements to the NextMuni.com webpage and custom reports existing as of the August 1, 2009. Unused hours will rollover to the following year, but the City may not accrue more than 300 hours. Engineering hours required for webpage and custom report maintenance beyond those accrued at the time service is requested by SFMTA will be Additional Services. The SFMTA may utilize the engineering hours within the allowance for the creation of an AVLS management dashboard (described in Section 2.7.11), which functions shall be limited to NextBus system and AVLS operating status.

2.7.11. **Data Dashboard.** Contractor shall develop and implement a "dashboard" that displays in a single computer screen view the following AVLS data:

(a) Location (by station, yard and vehicle number), description and identification of Equipment (including Trackers, DRI Units, and Display Signs) not functioning for which repair has not been completed,

(b) Daily balance of Spares

(c) Other AVLS Performance metrics to be determined by SFMTA

2.7.12. **Allowance for Training, As-Needed Engineering Services and Hardware Procurement.** In addition to the 160 annual engineering hours provided for in section 2.7.9, included within the annual services fee is One Hundred Thousand Dollars (\$100,000) for as-needed engineering services and hardware procurement. Contractor shall bill as-needed engineering services and training requested by the SFMTA at the labor rates set out in Appendix B to this Maintenance Agreement. Contractor shall bill the SFMTA for as-needed Equipment authorized by the SFMTA at actual cost plus five percent (5%) mark-up. Any portion of the allowance for as-needed engineering services and hardware procurement shall roll-over to the next year or shall be credited towards the annual services fee.

## 2.8. **Customer Support Requests.**

2.8.1. **Urgent Problem Reporting.** SFMTA will report Urgent Problems and other AVLS malfunctions to Contractor's Customer Service Call Administrator through the

following toll-free phone telephone number which Contractor shall maintain for the Term of this Maintenance Agreement: 1-877-NextBus (877-639-8287). Contractor shall respond to an urgent Problem within thirty (30) minutes of SFMTA's initial report to inform the SFMTA of actions taken to fix the reported Problem and restore AVLS to full operation. Customer may call the toll-free number at any time and leave detailed Problem reports on voice-mail. SFMTA shall provide to Contractor as much information as it knows concerning the Problem, and shall provide the name and phone number of the SFMTA contact person responsible for addressing the Problem with Contractor.

During non-business hours (i.e., before 8:00 AM and after 6:00 PM Pacific Time), all reports of urgent Problems made to 877-639-8287 will be forwarded to a paging service. The paging service shall be familiar with the Contractor's procedures for receiving, tracking and assigning incoming calls. Systems related calls shall be given priority and will be dispatched immediately to the appropriate support personnel or the standby support engineer for investigation, in accordance with the contracted coverage and level of service. Contractor shall respond to reports of hardware related Problems (reported during off-business hours) within 24 hours or receipt of complaint.

**2.8.2. Non-Urgent Problem Reporting.** SFMTA will report non-urgent Problems and other non-urgent AVLS malfunctions via email at support@nextbus.com. Contractor shall respond to a non-urgent Problem within 24 hours of SFMTA's initial report. SFMTA shall provide to Contractor as much information as it knows concerning the Problem, and shall provide the name and email address of the SFMTA contact person responsible for addressing the Problem with Contractor.

**2.9. Problem, Complaint and Inquiry Report Tracking.**

a. Contractor shall log all Problems reported by the SFMTA, the 311 System Manager, and the 511 System Manager (and other personnel who may be identified by the SFMTA) and assign an individual tracking number to each Problem, complaint or inquiry reported. Contractor shall use the NextBus Service & Support System to log calls and track details, assignments and journal service and support so that call data can be effectively reported as to type, severity and frequency of Problems reported, response times, and time and actions required to the resolve Problems.

b. Contractor shall dispatch a support engineer responsible for resolving that Problem within 24 hours of SFMTA's initial report. During business hours (5:00 AM to 5:00 PM Pacific Time), Contractor's call administrator will answer the phone and log all incoming calls, assign a tracking number, and forward the call to the appropriate support personnel. System related calls are of priority and shall be dealt with immediately. Contractor shall begin work to fix Equipment related Problems within 24 hours from the time the Problem is reported. If the Problem concerns a Tracker, the 48 hour period shall not commence when the SFMTA makes the vehicle on which the Tracker is located available to Contractor.

c. Contractor shall submit a report to SFMTA within 10 days of resolving a Problem stating how Contractor resolved the Problem and how Contractor proposes to avoid or prevent its reoccurrence.

**2.10. User Training.** When requested by the SFMTA, Contractor shall provide annually one two-day refresher course for up to twenty (20) persons in the operation of the AVLS, including but not limited to data reporting and compilation, system administration, and use of AVLS management tools.

**2.11. Complaint Escalation Procedures.**



2.11.1. **Contractor.** If Contractor fails to respond to a reported Problem or other complaint within the time required or other time reasonable under the circumstances, the SFMTA may escalate the report of the Problem to the following personnel:

- (a) Call Administrator - 877- NextBus (877-639-8287)
- (b) Kevin Northcutt, Support Engineer
- (c) Roger Wong, Field Support Manager
- (d) Russell Chun, System Support Manager
- (e) Lillian Chan, Chief Operating Officer

SFMTA may submit complaints to the Contractor's assigned field support manager after 48 hours have elapsed from the initial report of a Problem, which complaint shall trigger Contractor's internal Problem report escalation procedures.

2.11.2. **SFMTA.** If SFMTA fails to respond to an inquiry or other complaint within reported Problem within a time reasonable under the circumstances, Contractor may escalate the report of the Problem to the following SFMTA personnel:

- (a) System Manager (to be designated)
- (b) Thomas Kennedy, Deputy Director for Maintenance of Way (or his designee)
- (c) Gina Tomlinson, Deputy Director, Information Technology
- (d) Sam Lau, Deputy Chief Operating Officer
- (e) Kenneth McDonald, Chief Operating Officer

### 3. ADDITIONAL SERVICES

Contractor shall provide the SFMTA the Additional Services described in this Section III and as may be requested by the SFMTA, which shall be priced either on a negotiated fixed fee or on an time and material basis using the hourly labor rates set out in Appendix B.

3.1. **Additional Custom Reports.** If the AVLS software must be reconfigured to provide the additional report(s) requested by the SFMTA, Contractor shall provide the Agency a cost analysis of the time and cost required to configure the software to generate the report(s).

3.2. **Repair Training.** During the term of this Maintenance Agreement, when requested by the SFMTA, Contractor shall provide a one-week repair training courses to train SFMTA maintenance technicians in the testing, removal, installation and repair of AVLS Equipment, including but not limited to Trackers and Sign Displays.

3.3. **Additional Training.** When requested by the SFMTA, Contractor shall provide additional training sessions to SFMTA personnel in: (1) Equipment diagnosis, maintenance, and repair; (2) data collection and sorting, and report writing and user training.

#### 3.4. AVLS Expansion.

3.4.1. **Vehicles.** The amount of the annual service charge for Included Services is calculated based on the number of vehicles included in the AVLS as of August 1, 2009. Contractor may increase the annual service charge for Included Services by the prorata cost per vehicle for Included Services for each Tracker of \$70 per month or \$840 per year (as set out in the following table) added to the AVLS that results in a net gain in the number of vehicles included in the AVLS. Contractor may charge not more than its hourly rate for time actually expended in installing a Trackers to an added vehicles or for removing a Tracker from a vehicle to be retired and reinstalling the Tracker on a replacement vehicle.

3.4.2. **LED Display Signs.** The amount of the annual service charge for Included Services is calculated based on the number of display signs included in the AVLS as of August 1, 2009. Contractor may increase the annual service charge for Included Services by the prorata cost per display sign of \$35.00 per month or \$420 per year (as set out in the following table) for each display sign added to the AVLS that results in a net gain in the number of display signs included in the AVLS. Contractor may charge not more than its hourly rate (as provided in Appendix B to this Maintenance Agreement) for time actually expended in installing a display sign or for removing a display sign to be retired and installing a new display sign. If custom hardware is required to mount a sign, engineering hourly rates apply for design of the custom brackets. Additional charges will include cost plus 10 percent for building custom brackets.

Equipment	Rate/Price
Trackers (per vehicle):	
Wireless and ASP fees	\$70.00 month/\$840.00 Year
Display Signs (per sign):	
LCD ASP fees	\$98.00 month/\$1,176.00 year
LED, Agent Kiosk sign ASP fees	\$35.00 month/\$420.00 year
LED sign wireless data service fees	\$17.50 month/ \$210 year

3.5. **Additional Services Request Procedure.** The SFMTA will request Additional Services in writing to Contractor. Contractor shall within 10 days of receipt of request and after business and detailed technical requirements have been approved by SFMTA provide the SFMTA a proposal that includes a description of services to be provided, identity of staff and number staff hours required to complete the project, start date, completion date, costs and expenses, and a not-to-exceed total cost estimate or lump sum price for the work. SFMTA shall make appropriate staff available on a timely basis to complete business and detailed technical requirements. The SFMTA must approve the proposal in writing by work order signed by the SFMTA's Executive Director/CEO or his designee.

3.6. **Other Additional Services.**

Contractor's resolution of Problems caused by any of the following occurrences will be treated as Additional Services:

3.6.1. Failure of Customer's operations staff to follow instructions or corrective procedures provided by Contractor,

3.6.2. Hardware and system misuse, negligence, willful misconduct, tampering, accident, abuse, fire, flood, wind, earthquake, act of God or public enemy,

3.6.3. Upgrade of Tracker and Display Sign hardware that are requested by SFMTA,

3.6.4. Repair for hardware failures after Maintenance Contract expires,

3.6.5. Shipping and repair costs for parts damaged as specified under (a),

3.6.6. Integration of third party hardware or software not integrated to the AVLS as of August 1, 2009.

3.7. **Mark-up for Equipment.** When requested by the SFMTA, Contractor shall procure AVLS Equipment on behalf of the Agency. Contractor may mark-up procured Equipment not more than five percent (5%) of Contractor's cost. SFMTA will pay actual shipping costs only.

4. **SYSTEM AVAILABILITY REQUIREMENTS**

The AVLS is a vital system on which SFMTA relies for transit management and SFMTA's riders rely on for transit use and trip planning. Timely maintenance of the AVLS, including replacement of nonoperational Equipment by Contractor, is crucial to maintain system availability for all users. Contractor shall maintain the AVLS to meet the system availability requirements set out below.

4.1. **Tracker Availability.** Within any 48 hour period, no less than 98 percent of Trackers must be operable and available. Contractor shall pay to the SFMTA as liquidated damages One Hundred Dollars (\$100) per non-operable Tracker for any period exceeding 48 hours where Contractor fails to maintain the Trackers as required herein.

4.2. **Signs Availability.**

4.2.1. **Platform and Shelter Signs.** Within any 48 hour period, no less than 98 percent of Platform Signs and Shelter Signs must be fully operable, subject to parts availability. Contractor shall pay to the SFMTA as liquidated damages Two Hundred Fifty Dollars (\$250) per non-operable sign for any period exceeding 48 hours where Contractor fails to maintain the Platform Signs as required herein. Contractor shall pay to the SFMTA as liquidated damages \$100 per non-operable sign for any period exceeding 48 hours where Contractor fails to maintain the Shelter Signs as required herein

4.2.2. **Subway and Agent Booth Signs.** Within any 24 hour period, all Subway LCD and LED Signs must be fully operable, subject to parts availability. Contractor shall pay to the SFMTA as liquidated damages One Thousand Dollars (\$1,000) per non-operable sign for any period exceeding 24 hours where Contractor fails to maintain the Subway and Agent Booth Signs as required herein.

4.3. **Data and Server System Availability.** Contractor shall maintain the AVLS servers and software so that the AVLS is functioning within Accepted System Parameters 24 hours per day, seven days per week. Contractor shall perform planned server maintenance only during the hours of 12:00 AM to 4:00 AM Pacific Time.

4.4. **Webpage Availability.** Contractor shall maintain the NextMuni.com web page so that it is available to the public 24 hours per day, 7 days per week. Contractor shall perform planned webpage updates and upgrades only during the hours of Midnight to 4:00 AM. Contractor shall pay to the SFMTA as liquidated damages \$2,500 for any period exceeding four (4) continuous hours where Contractor fails to maintain the NextMuni.com website as required herein.

4.5. **MTC 511 Link.** Contractor shall maintain the data link from the AVLS to the MTC 511 system so that AVLS data is available to the MTC 511 system 24 hours per day, 7 days per week. Contractor shall pay to the SFMTA as liquidated damages \$2,500 for any period exceeding four (4) continuous hours where Contractor fails to maintain the MTC 511 Link as required herein.

4.6. **Availability Reporting.** No later than the tenth day of any month during the term of this Maintenance Agreement, Contractor shall submit a report to the SFMTA stating the availability of the AVLS and its component parts and systems (as described in paragraphs 4.1 through 4.5, above) during the preceding month. The report shall describe Contractor's maintenance of the AVLS (including Equipment replaced, software and webpage updates and upgrades, and server maintenance), any Problems arising during the month reported, any unresolved Problems and Contractor's proposed actions to resolve those Problems. The report will compare AVLS availability for all months reported, so that the SFMTA may track AVLS performance and maintenance.

4.7. **Payment of Liquidated Damages.** At the SFMTA's discretion, Contractor shall pay the SFMTA liquidated damages in the amounts listed above, when the AVLS or a component of the AVLS is unavailable, and the unavailability of the AVLS or AVLS component exceeds the unavailability standards set out in this Section 4, and said unavailability is not excused due to actions of the SFMTA or actions of third parties (including ASP, wireless data service, and server hosting providers) beyond the reasonable control of Contractor. The SFMTA may in its discretion either demand payment of liquidated damages or reduce by those amounts the next quarterly payment of annual service fees.

## **APPENDIX B**

### **CALCULATION OF CHARGES**

#### **A. Fees for Included Services.**

The Fees for Included Services during the term of this Maintenance Agreement shall be as set out in the following table:

Contract Year	Included Services Fee	Quarterly Payment
2009-2010	\$1,977,429	\$494,357.25
2010-2011	\$1,977,429	\$494,357.25
2011-2012	\$1,977,429	\$494,357.25
2012-2013	\$1,977,429	\$494,357.25

#### **B. Additional Services.**

When Contractor provides the SFMTA Additional Services authorized under a time and material purchase order, Contractor shall charge the SFMTA the hourly labor rates set out in the following table.

##### Labor Rates

Contract Year	Position/PM Hourly Rate	Position/Sr. SW Eng Hourly Rate	Position/System Administration Hourly Rate	Position/Support Engineer Hourly Rate	Position/HW Engineer Hourly Rate
2009-2010	\$122.00	\$ 145.00	\$ 104.00	\$ 90.00	\$ 90.00
2010-2011	\$126.00	\$ 149.00	\$ 107.00	\$ 92.50	\$ 92.50
2011-2012	\$130.00	\$ 153.50	\$ 110.00	\$ 95.25	\$95.25
2012-2013	\$134.00	\$ 158.00	\$ 113.50	\$98.00	\$98.00

#### **C. Costs Listed Are Inclusive.**

1. Fees for Included Services include AVLS Equipment maintenance and repair and all wireless data services and ASP charges, which include services provided by AT&T and NextBus to ensure the communicability of the AVL trackers and display signs by performing the following:

- a. Maintaining the wireless network
- b. Trouble shoot and diagnose problems
- c. Perform provisioning SIMs to NextBus network
- d. Configure of SIMs to AVL trackers and signs

2. ASP charges include the following services provided by NextBus:
  - a. System Administration
  - b. On-going Monitoring of System
  - c. Wireless Communication Monitoring
  - d. Minor Product Enhancement Releases
  - e. Existing Automatic Route/Stop/Schedule Import
  - f. Maintaining Custom Interfaces

3. All prices listed herein as Included Services and Additional Services include applicable State and Local sales and use taxes.

4. Unless specifically provided otherwise in an authorized Purchase Order for Additional Services, the prices listed herein for Included Services and Additional Services are comprehensive and cover profit and all of Contractor's expenses, charges, costs, overhead (including but not limited to wages, salaries, benefits and other labor costs, equipment not supplied to the SFMTA, telephone, facsimile, postage, travel expenses, lodging, meals, vehicle rental and mileage) and mark-up for Equipment and other materials to be charged to the SFMTA.

**Final Modification and Contract Closeout Agreement between  
The City and County of San Francisco and NextBus, Inc. for the Purchase and  
Implementation of an Automatic Vehicle Location System**

This Final Modification of and Contract Closeout Agreement (“Agreement”), dated for convenience as August 1, 2009, modifies and terminates the Contract between the City and County of San Francisco ("City"), acting by and through its Municipal Transportation Agency ("SFMTA"), and NextBus, Inc., 2433 Mariners Square Loop, Alameda, CA 94501 ("Contractor") for the Purchase and Implementation of an Automatic Vehicle Location System.

**RECITALS**

WHEREAS, The City and the Contractor are parties to a contract for the Purchase and Implementation of an Automatic Vehicle Location System, Contract No. MR-1138 ("the AVLS Contract"), approved by the San Francisco Municipal Transportation Agency Board of Directors by Resolution No. 01-129; and

WHEREAS, The parties have previously modified the AVLS Contract nine times to increase its term, scope of work and compensation; and

WHEREAS, The Contractor has provided to the City an Automatic Vehicle Location System ("AVLS") and related technical services; and

WHEREAS, The Contractor has met the requirements of the AVLS Contract;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Final Modification and Contract Closeout Agreement ("Closeout Agreement"), and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged,

**THE CONTRACTOR AND THE CITY AGREE AS FOLLOWS:**

**A. COMPENSATION AND TERM**

1. Section 2.2 "Term of the Agreement" of Article 2 of the AVLS Contract “Project Term” is hereby modified so that the term of the Contract is extended to and shall expire on July 1, 2009, concurrent with the commencement of an agreement between the parties for AVLS software maintenance and services.

2. Section 4.1 (b) of Section 4.1 “Compensation” of Article 4 of the AVLS Contract “Pricing and Payment” is hereby deleted and replaced with the following:

4.1(b) In no event shall the amount of the AVLS Contract exceed the Project Price, which is Twelve Million Three Hundred Forty-Seven Thousand Five Hundred Thirty-Six Dollars Ninety-Seven Cents (\$12,347,536.97).

3. Section 4.8 of Article 4 of the AVLS Contract “Pricing and Payment” is hereby deleted and replaced with the following:

4.8 To guarantee the Contractor’s performance of the AVLS Contract, the City has retained \$617,376.85 as at July 21, 2009 of the Project Price set out in Section A.2, above,

which has been deposited into an escrow account. Within 10 days of final approval of this Agreement, the City shall direct the escrow agent to release and pay said funds (as well as any other funds retained and deposited to escrow) to Contractor. The City has paid all other funds due and owing to Contractor for work performed under the AVLS Contract. Contractor agrees that its receipt of said retained funds shall satisfy the City's obligations under the AVLS Contract as to compensation of Contractor.

**B. LETTER OF CREDIT AND PERFORMANCE/PAYMENT BONDS**

Section 8.2 "Term and Extensions" of Article 8 of the AVLS Contract "Performance, Labor, and Material Bond," is hereby amended with the following:

Section 8.2 Term and Extension of Letter of Credit

As provided in section 8.2 of the Eighth Amendment to the Agreement (AVLS Contract), dated December 19, 2007, the Contractor shall provide the City an irrevocable letter of credit in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) to guaranty warranties of the AVLS. The City shall return said letter of credit to the Contractor within 15 days of the expiration of the warranty period described in Article 17 of the AVLS Contract. In the alternative of providing the City a new letter of credit, Contractor may reduce the existing letter of credit to Two Hundred Fifty Thousand Dollars (\$250,000) by amendment delivered to the SFMTA by the bank that issued the existing letter of credit.

The City will release the performance and payment bonds provided by Contractor within 30 days of the final approval of this Closeout Agreement, subject to and contingent upon Contractor's written confirmation and warranty that all subcontractors and material suppliers to the AVLS Contract have been fully compensated all monies due and owing and that no liens or stop notices have been or will be placed against the AVLS Contract. Contractor agrees to fully defend and indemnify the City against any and all liens and stop notices filed against the AVLS Contract.

**C. FINAL QUANTITY ADJUSTMENTS**

The final quantity adjustment in Appendix A to this Closeout Agreement was agreed by both parties based all work already been completed and all expenses invoiced. The adjusted final contract amount is set out in Section A of this Closeout Agreement.

**D. CITY'S ACCEPTANCE OF WORK AND CONTRACTOR'S RELEASE OF CLAIMS**

1. Except as to those obligations that survive expiration or termination of the AVLS Contract, which are set out in Article E below, the City agrees that Contractor has met the requirements of the AVLS Contract.
2. As provided herein, SFMTA shall pay Contractor the remaining monies owing to Contractor under the Contract that are not subject to stop notice or other lien effective prior to the date of this Closeout Agreement.
3. Except for the City's obligations set forth in this Agreement, Contractor fully, finally forever, irrevocably and unconditionally releases and discharges the City with respect to, and



waives and covenants not to sue or otherwise institute or cause to be instituted any legal or administrative proceedings against the City, and all other persons and entities herein released, with respect to: any and all rights, claims, actions, causes of action, disputes, demands, damages, debts, liabilities, costs, expenses, attorneys' fees and obligations of whatever kind, character, or description, whether known or unknown, suspected or unsuspected, fixed or contingent, including but not limited to claims for direct costs, general damages, special damages, extra work, delay and other impacts, inefficiency costs, and lost profits, that Contractor had, now has or may in the future have, arising from, the AVLS Contract or the Work performed under the AVLS Contract.

4. The waivers, compromises, settlements, releases and discharges given in this Agreement are given by Contractor on behalf of itself and its respective predecessors, successors, parents, subsidiaries, owners, partners, partnerships, joint ventures, associations, affiliates, assigns, liquidators, trustees, receivers, insurers, administrators, executors, employees, insurers, agents, officers, directors, representatives, attorneys, and any other person or entity asserting or claiming any right, title or interest by or through any of them with respect to the to the AVLS Contract or the work performed under the AVLS Contract.

5. Contractor expressly understands and agrees that this Agreement applies to all unknown, unsuspected, and unanticipated claims, liabilities, and causes of action, in addition to those known, which it may have against any or all of the persons or entities herein released relating to the to the Contract or the Work performed under the Contract. Contractor acknowledges that its is familiar with and expressly waives any and all rights and benefits conferred upon them by Section 1542 of the California Civil Code, or any successor statute thereto, or any similar law or legal principle, which states as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

6. If Contractor has filed any legal claim, cause of action, litigation or other legal action against the City based upon or arising from the Contract or the Work performed under the Contract, Contractor hereby abandons and dismisses such claims with prejudice, and authorizes and directs all attorneys acting on its behalf to dismiss with prejudice, any and all such causes of action, claims and litigation against the City in any way related to, connected with or arising from the Contract or the Work performed under the Contract.

## **E. SURVIVING OBLIGATIONS**

The provisions of this Section E restate the provisions of the AVLS Contract and of the Software License and Maintenance Services Agreement, dated January 27, 2004 (the "2004 License") between the City and Nextbus Information Services, Inc. that survive the expiration or termination of the AVLS Contract. This Closeout Agreement does not amend those surviving provisions, but only restates them here to clarify the intent of the City and Contractor. No provision of the AVLS Contract, as amended, shall survive the expiration or termination the AVLS Contract unless such survival is expressly provided for herein.

### **1. AVLS Contract.**

As provided in section 11.2 of the AVLS Contract and as the AVLS Contract has been modified by approved Amendments to the AVLS Contract, the following provisions of the AVLS Contract survive the expiration or termination of the AVLS Contract and shall remain enforceable: Sections 1.1 (General Terms), 1.2 (Definitions), 4.1(Compensation), 4.2 (Guaranteed Maximum Costs), 4.4 (False Claims), 4.5 (Disallowance), 5.1. (Independent Contractor), 5.2 (Taxes), 13.1 (Subcontracting), 13.4 (Delegation), 13.5 (Assignment), Article 7 (Insurance and Indemnity), Article 9 (Events of Default and Remedies ), Article 10 (Dispute Resolution), Article 14 (Software License, as modified by the Software License and Maintenance Agreement discussed in Section E.2, herein), Article 16 (Software Maintenance and Support, as modified by the 2004 License, discussed in Section E.2, herein), and Article 20 (General Provisions).

The warranty provisions set out in Article 17 of the AVLS Contract shall survive for one (1) year from the date this Closeout Agreement is fully executed. The one year warranty shall be concurrent with the first year of support upon signing of the maintenance contract.

### **2. Maintenance and License Agreement.**

The expiration or termination of the AVLS Contract shall not modify or otherwise have any effect on the provisions, requirements and obligations of the Parties set out in the Software License and Maintenance Services Agreement, dated January 27, 2004, between the Contractor and the City (the "2004 License"). The 2004 License modified and replaced Article 14 and Appendix G of the AVLS Contract. To the extent that the 2004 License should conflict with any agreement between Contractor and the City as to the provision, scope or cost of maintenance services executed subsequent to this Closeout Agreement, the subsequent maintenance services agreement shall govern. Notwithstanding anything to the contrary in the AVLS Contract or this Closeout Agreement, however, nothing shall effect a waiver or other reduction in rights of the City to the Licensed Software (granted under the 2004 License) unless the agreement effecting such waiver or reduction in rights is set out expressly in writing, explicitly described as a waiver of license rights, and approved by the Board of the Directors of the San Francisco Municipal Transportation Agency.

## **F. GENERAL PROVISIONS**

This Closeout Agreement binds and inures to the joint and several benefit of each Party and their respective current, former, and future direct and indirect parents, subsidiaries, affiliates,

partners, joint ventures, related entities, owners, shareholders and insurers, as well as the past or present predecessors, successors, fiduciaries, liquidators, trustees, administrators, receivers, assigns, insurers, officers, directors, employees, owners, shareholders, agents, attorneys, and representatives of any of them. Each such person and entity may on their own behalf, and on behalf of any other person or entity released herein, assert and enforce all terms and conditions of this Closeout Agreement, including all releases, waivers, compromises, settlements, agreements, covenants, warranties and representations.

Contractor expressly represents and warrants that: (a) it is the sole and exclusive owner of each and every right, title, interest, claim, demand, action or cause of action which it waives, releases or discharges in this Agreement; (b) it has not sold, assigned, transferred or otherwise alienated any right, title, interest, claim, demand, action or cause of action which would otherwise be released by it pursuant to this Closeout Agreement.

Contractor acknowledges, represents and warrants that it has not relied upon any promises or representations by or on behalf of the City, or the attorneys, employees or representatives of the City, concerning any matter of law, analysis or fact except as specifically set forth herein. Contractor acknowledges and agrees that there is a risk that the legal analysis or facts upon which it relies in entering into this Agreement may later turn out to be other than, or different from, those now known, suspected or believed by it to be true, but Contractor assumes that risk for itself. This Closeout Agreement shall nonetheless remain in full force and effect, notwithstanding the occurrence of such differences in material fact, law or analysis.

Each Party represents and warrants that it or its authorized officers, agents or representatives have read this Closeout Agreement, and it has had a full and adequate opportunity to have this Agreement explained to it by its legal counsel as that Party has deemed appropriate. Each Party further acknowledges and warrants that it understands this Closeout Agreement to its full and complete satisfaction and that it is signing this Closeout Agreement voluntarily and without coercion. Each Party waives any claim or assertion that it failed to fully understand or appreciate the significance of this Closeout Agreement.

Contractor represents and warrants that it has obtained all necessary or appropriate approvals and authorizations to enter into this Agreement from any officers, directors, boards, owners, , shareholders, or other requisite persons or entities, so that this Closeout Agreement shall be and is fully effective and binding on it.

This Closeout Agreement supersedes all prior or contemporaneous agreements and understandings, whether oral or written as to the matters specifically set out herein. This Closeout Agreement is an integrated document; this Closeout Agreement contains the entire agreement of the Parties as to the matters addressed in it, and it can only be modified or amended by a written Agreement signed by all Parties or their successors-in-interest. The terms of this Closeout Agreement are contractual and not a mere recital.

This Closeout Agreement and each of its terms is the product of mutual negotiation and drafting by the Parties. The Parties acknowledge and agree that the rule of interpretation or construction of contracts that a document or ambiguities in a document shall be construed against the drafter of the document shall not apply to this Closeout Agreement or any other prior agreement

between the Parties. The Parties further agree that neither Party shall introduce or seek to introduce as parole or extrinsic evidence any of the Parties' communications regarding this Agreement in any legal proceeding in which the meaning or validity of this Closeout Agreement is at issue.

Any headings or captions to the paragraphs or sections of this Closeout Agreement are solely for the convenience of the Parties and in no way define, limit, extend or describe the scope of this Closeout Agreement or any portion thereof. All personal pronouns used in this Closeout Agreement, regardless of gender, shall include all other genders, and the singular shall include the plural and vice versa.

Notwithstanding any other provision of this Closeout Agreement, nothing herein shall preclude any Party, person or entity herein released from bringing any action to enforce this Agreement, or, upon the commencement of any action or other proceeding asserting claims, actions, causes of action or damages released or waived herein, pleading and introducing this Agreement as a defense and/or as a cross-complaint, counterclaim, cross-claim or third-party complaint.

The failure of any Party to require performance by any other Party of any provision hereof shall not affect the full right to require such performance at any time thereafter, unless the waiver is in writing and specifies that it is a permanent waiver. The waiver by any Party of a breach of any provision of this Closeout Agreement shall not be taken or held to be a waiver of the provision itself.

This Closeout Agreement is for the benefit of Contractor and City alone; no third parties are intended to benefit or may benefit from this Closeout Agreement, which is enforceable only by the Contractor or the City, inclusive.

Should any provision of this Closeout Agreement be declared or determined to be wholly or partially illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining parts, terms or provisions shall not be affected thereby, and said illegal, unenforceable, or invalid part, term or provision shall be deemed not to be a part of this Closeout Agreement.

This Closeout Agreement shall be governed and interpreted in accordance with the laws of the State of California. Any action to enforce this Closeout Agreement shall be filed exclusively within the State of California in the United States District Court for the Northern District of California, if it has jurisdiction, or otherwise in the California Superior Court in and for the County of San Francisco.

The Parties and the signatories to this Agreement represent and warrant that the undersigned purporting to act for each Party, respectively, have full and proper legal authority to execute this Closeout Agreement on behalf of such Party.

This Closeout Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. The Parties agree that signatures and initials transmitted by facsimile or other electronic means shall have the same force and effect as original signatures and initials.

IN WITNESS WHEREOF, each party has duly executed this Closeout Agreement as of the date first referenced above.

**CITY**

Approved:

\_\_\_\_\_  
NATHANIEL P. FORD, SR.  
Executive Director/CEO

Approved as to Form:

Dennis J. Herrera  
City Attorney

\_\_\_\_\_  
Robert K. Stone  
Deputy City Attorney

San Francisco Municipal Transportation  
Agency  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
Roberta Boomer, Secretary to the  
SFMTA Board of Directors

**CONTRACTOR**

Approved:

---

JOHN EATON  
Chief Financial Officer  
NextBus Inc.  
2433 Mariner Square Loop, Suite 103  
Alameda, California 94501-1036





**THIS PRINT COVERS CALENDAR ITEM NO. : 10.19**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Administration

**BRIEF DESCRIPTION:**

Charter Section A8.404(h) sets a deadline for fixing the wage schedule for Transit Operators in classification 9163 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. However, Charter Section A8.404-1 prohibits any increase to compensation or other economic provision for Transit Operators for fiscal year 2009-10 above the levels in place as of June 30, 2009.

**SUMMARY:**

- Charter Section A8.404(a) requires 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 jurisdictions are the Massachusetts Bay Transportation Authority (MBTA) and the Santa Clara Valley Transportation Authority (SCVTA).
- Charter Section A8.404(h) sets a deadline of August 25, 2009 for fixing a wage schedule retroactive to July 1, 2009.
- 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.
- Notwithstanding the provisions of A8.404, Charter Section A8.404-1 prohibits any increase in compensation for transit operators for fiscal year 2009-10.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Certification of wage rates memo to SFMTA Board

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE \_\_\_\_\_

SECRETARY \_\_\_\_\_

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

ADOPTED RESOLUTION BE RETURNED TO Rumi Ueno \_\_\_\_\_

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

**PAGE 2**

**PURPOSE:**

Charter Section A8.404(h) sets a deadline for fixing the wage schedule for Transit Operators in classification 9163 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 bus operators in comparable jurisdictions. However, Charter Section A8.404-1 prohibits any increase to compensation or other economic provision, for Transit Operators for fiscal year 2009-10 above the levels in place as of June 30, 2009.

The two jurisdictions with the highest wage schedules are the Massachusetts Bay Transportation Authority (MBTA) and the Santa Clara Valley Transportation Authority (SCVTA).

As of July 1, 2009, the Santa Clara Valley Transportation Authority (SCVTA) published hourly wage rate is twenty-eight dollars and eighty six cents (\$28.86) with one scheduled wage increase of eighty eight cents (\$.088) effective January 29, 2010. The Massachusetts Bay Transportation Authority (MBTA) published rate is thirty dollars and eighteen cents (\$30.18). The following chart reflects the actual wage certification rates:

<b>Transportation Authority</b>	<b>Hourly Wage Rate Effective 7/1/2009</b>	<b>Hourly Wage Rate Effective 1/29/2010</b>
Boston, Massachusetts (MBTA)	\$30.18	\$30.18
Santa Clara (SCVTA)	\$28.86	\$29.74

By operation of Charter Section A8.404-1 there can be no wage increase for class 9163 Transit Operator above the current rate of \$ 27.915 for the upcoming fiscal year.

**GOAL**

The proposed approval of the wages in place for Transit Operators as of June 30, 2009 meets the following strategic goals:

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

Goal 5 – SMFTA 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.

In addition, such action is necessary to comply with the provisions of the Charter.

**PAGE 3**

**DESCRIPTION**

Charter Section A8.404(h) sets a deadline for fixing the wage schedule for Transit Operators in classification 9163 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. However, Charter Section A8.404-1 prohibits any increase to compensation or other economic provision, for Transit Operators for fiscal year 2009-10 above the levels in place as of June 30, 2009.

The City Attorney has reviewed this calendar item.

**ALTERNATIVES CONSIDERED**

None.

**FUNDING IMPACT**

There are no cost increases for FY2009-10 due to the wage freeze under Charter Section A8.404.1.

**RECOMMENDATION**

Staff recommends that the SFMTA Board approve the certification and set the wages for Transit Operators for 2009-10 at their current levels.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, Under Section 8A.104 of the Charter, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors succeeded to the powers of the Board of Supervisors with respect to collective bargaining for employees in service critical classifications; and,

WHEREAS, 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, 2009, retroactive to July 1, 2009; and,

WHEREAS, Charter Section A8.404(a) mandates that wages for platform employees employed with 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 (SCVTA) with the rate of \$28.86, and,

WHEREAS, The average of two highest wage rates is \$29.52, and,

WHEREAS, Charter Section A8.404-1 prohibits any increase to compensation or other economic provision, for Transit Operators for fiscal year 2009-10 above the levels in place as of June 30, 2009, 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 \$27.915 per hour as of July 1, 2009, the level in place as of June 30, 2009.

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

---

Secretary, San Francisco Municipal Transportation Agency Board

## MEMORANDUM

Date: August 4, 2009

To: SFMTA Board of Directors  
Tom Nolan, Chairman  
Rev. Dr. James McCray, Vice Chairman  
Cameron Beach, Director  
Shirley Breyer Black, Director  
Malcolm Heinicke, Director  
Jerry Lee, Director  
Bruce Oka, Director

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

From: Debra A. Johnson  
Chief of Staff/Director, Administration

Subject: Salary Survey and Certification of Wage Schedule for Transit Operators  
During Fiscal Year 2009-2010

In each fiscal year, Charter Sections A8.404(a) and 8A.104(l) require the SFMTA to certify the two highest wage schedules in effect as of July 1 for platform employees in comparable jurisdictions. This is to inform you of what the rates for the Transit Operators will be for the Fiscal Year 2009-2010.

Employee and Labor Relations staff utilized information provided by John Dash and Associates to ascertain the most current wage rates being paid to Bus Operators in comparable jurisdictions across the country. In accordance with the Charter, the survey information recorded the hourly wages paid to Bus Operators in transit systems throughout the United States, with populations greater than five hundred thousand (500,000) and employing at least four hundred (400) platform employees.

As of July 1, 2009, the Santa Clara Valley Transportation Authority (SCVTA) published hourly wage rate remains at twenty-eight dollars and eighty six cents (\$28.86). There is one scheduled wage increase for SCVTA in Fiscal Year 2009-2010 of eighty eight cents (\$0.88).

As of July 1, 2009, the Massachusetts Bay Transportation Authority (MBTA) published rate is thirty-dollars and eighteen cents (\$30.18). There are no additional scheduled wage increases for MBTA during Fiscal Year 2009-2010.

August 4, 2009

The published wage rates for both SCVTA and MBTA are listed below. On behalf of the San Francisco Municipal Transportation Agency and pursuant to the Charter, this is to certify that, as of this date, the wage schedules for SCVTA and MBTA published on July 1, 2009 are as follows:

<b>Transportation Authority</b>	<b>Hourly Wage Rate Effective 7/1/2009</b>	<b>Hourly Wage Rate Effective 1/29/2010</b>
Massachusetts Bay Transportation Authority (MBTA)	\$30.18	\$30.18
Santa Clara Valley Transportation Authority (SCVTA)	\$ 28.86	\$29.74
<b>Per Charter Section A8.404(a):</b>		
Average of the two highest wage rates:	\$29.52	\$29.96

## MEMORANDUM

Date: August 4, 2009

To: SFMTA Board of Directors  
Tom Nolan, Chairman  
Rev. Dr. James McCray, Vice Chairman  
Cameron Beach, Director  
Shirley Breyer Black, Director  
Malcolm Heinicke, Director  
Jerry Lee, Director  
Bruce Oka, Director

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

From: Debra A. Johnson  
Chief of Staff/Director, Administration

Subject: Salary Survey and Certification of Wage Schedule for Transit Operators  
During Fiscal Year 2009-2010

In each fiscal year, Charter Sections A8.404(a) and 8A.104(l) require the SFMTA to certify the two highest wage schedules in effect as of July 1 for platform employees in comparable jurisdictions. This is to inform you of what the rates for the Transit Operators will be for the Fiscal Year 2009-2010.

Employee and Labor Relations staff utilized information provided by John Dash and Associates to ascertain the most current wage rates being paid to Bus Operators in comparable jurisdictions across the country. In accordance with the Charter, the survey information recorded the hourly wages paid to Bus Operators in transit systems throughout the United States, with populations greater than five hundred thousand (500,000) and employing at least four hundred (400) platform employees.

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August 4, 2009

Page 2

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Massachusetts Bay Transportation Authority (MBTA)	\$30.18	\$30.18
Santa Clara Valley Transportation Authority (SCVTA)	\$ 28.86	\$29.74
<b>Per Charter Section A8.404(a):</b>		
Average of the two highest wage rates:	\$29.52	\$29.96



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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Parking and Traffic

**BRIEF DESCRIPTION:**

Approving various routine traffic and parking modifications as consent calendar items per the attached resolution.

**SUMMARY:**

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

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

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

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO \_\_\_\_\_ Maxine Louie

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

## 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. RESCIND - PARKING METER AREA NO. 3 (1-HOUR PARKING TIME LIMIT, 9 AM - 6 PM, MONDAY THROUGH SATURDAY) AND ESTABLISH - PARKING METER AREA NO. 3 (2-HOUR PARKING TIME LIMIT, 9 AM - 6 PM, MONDAY THROUGH SATURDAY) - 24<sup>th</sup> Street, 3750 block, both sides, between Chattanooga and Church Streets; 24<sup>th</sup> Street, 4100 block, north side, from Castro Street to 105 feet westerly; 24<sup>th</sup> Street, 4100 block, south side, from Castro Street to 140 feet westerly; Church Street, 1150 block, east side, from 24<sup>th</sup> Street to 74 feet northerly; Vicksburg Street, 200-300 block, west side, from 29 feet north of 24<sup>th</sup> Street to 31 feet south of 24<sup>th</sup> Street; Vicksburg Street, 200-300 block, east side, from 30 feet north of 24<sup>th</sup> Street to 27 feet south of 24<sup>th</sup> Street; Sanchez Street, 1000-1100 block, west side, from 67 feet north of 24<sup>th</sup> Street to 49 feet south of 24<sup>th</sup> Street; Sanchez Street, 1000-1100 block, east side, from 47 feet north of 24<sup>th</sup> Street to 53 feet south of 24<sup>th</sup> Street; Noe Street, 1050-1100 block, west side, from 24<sup>th</sup> Street to 89 feet southerly; Noe Street, 1050-1100 block, east side, from 42 feet north of 24<sup>th</sup> Street to 47 feet south of 24<sup>th</sup> Street; Castro Street, 1200 block, west side, from 24<sup>th</sup> Street to 82 feet northerly; Castro Street, 1200 block, east side, from 24<sup>th</sup> Street to 96 feet northerly; and Castro Street, 1300 block, both sides, between 24<sup>th</sup> and Jersey Streets. **PH 6/5/09 Requested by Merchants**
- B. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "T" (4-HOUR TIME LIMIT, 8 AM - 3 PM, MONDAY THROUGH FRIDAY) - Rockwood Court, both sides, between Rockaway Avenue and Ulloa Street (1-99 block). **PH 6/5/09 Requested by Residents**

- C. ESTABLISH - STOP SIGNS - 12th Street at Harrison Street, making this T-intersection a one-way STOP. **PH 6/5/09 Requested by Residents**
- D. ESTABLISH - RIGHT TURNS ONLY - San Juan Avenue, eastbound, at Alemany Boulevard. (To be removed upon future installation of traffic signals). **PH 6/5/09 Requested by Residents**
- E. REVOKE - MULTIPLE RIGHT TURN LANES - Fremont Street, northbound, at Folsom Street. (For transit routing during the construction of the Temporary Transbay Terminal and the Transbay Terminal Center. This temporary condition is required through December 2014). **PH 6/5/09 Requested by AC Transit**
- F. ESTABLISH - TRANSIT LANE - Fremont Street, northbound, at Folsom Street on the rightmost lane. (For transit routing during the construction of the Temporary Transbay Terminal and the Transbay Terminal Center. This temporary condition is required through December 2014). **PH 6/5/09 Requested by AC Transit**
- G. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME EXCEPT TELEVISION VEHICLES - Larkin Street, west side, between the north and south crosswalks at Fulton Street; and Larkin Street, west side, in the 57-foot red zone north of the north crosswalk at Fulton Street. **PH 6/5/09 Requested by City Hall**
- H. ESTABLISH - TOW-AWAY NO PARKING ANYTIME - 20<sup>th</sup> Avenue, east side, from approximately 252 feet to 280 feet north of Ulloa Street (between the driveways of 2450 - 20<sup>th</sup> Avenue and 2460 - 20<sup>th</sup> Avenue). **PH 6/19/09 Requested by SFMTA**
- I. CONSTRUCT - MEDIAN ISLANDS - 20th Avenue, between Taraval Street and Ulloa Street. **PH 6/19/09 Requested by SFMTA**
- J. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME - Hyde Street, west side, from Pacific Avenue to 20 feet northerly. **PH 6/19/09 Requested by SFMTA**
- K. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "X" (4-HOUR PARKING TIME LIMIT, 8 AM - 4 PM, MONDAY THOROUGH FRIDAY) - Minnesota Street, east side, between 18th and 19th Streets (frontage of 601 Minnesota Street). **PH 6/19/09 Requested by Resident**
- L. ESTABLISH - STOP SIGNS - Guttenberg Street at Hanover Street, making this intersection all-way STOP controlled; Anza Street at 12th Avenue, making this intersection all-way STOP controlled. **PH 6/19/09 Requested by Resident**
- M. ESTABLISH - 45-DEGREE ANGLE PARKING - Balboa Street, south side, between 34th and 35th Avenues; Balboa Street, south side, between 38th and 39th Avenues. **PH 6/19/09 Requested by DPW**
- N. CONSTRUCT - SIDEWALK BULB-OUT - Balboa Street, north side, from 34th Avenue to 30 feet westerly (6-foot wide bulb-out); Balboa Street, north side, from 39th Avenue to 29 feet easterly (6-foot wide bulb-out); Balboa Street, south side, from 34th Avenue to 50 feet westerly (bus bulb replaces existing pole stop; 16-foot wide sidewalk bulb-out); Balboa Street, south side, from 39th Avenue to 20 feet easterly (16-foot wide sidewalk bulb-out); Balboa Street, north side, from 37th Avenue to 50 feet easterly (bus bulb replaces existing pole stop; 16-foot wide sidewalk bulb-out). **PH 6/19/09 Requested by DPW**

- O. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME - Balboa Street, south side, from 34th Avenue to 50 feet westerly (bus bulb replaces existing pole stop); Balboa Street, south side, from 39th Avenue to 20 feet easterly; Balboa Street, north side, from 37th Avenue to 50 feet easterly (bus bulb replaces existing pole stop). **PH 6/19/09 Requested by DPW**
- P. RESCIND - PARKING METERS, 1-HOUR TIME LIMIT AND ESTABLISH - PARKING METERS, 2-HOUR TIME LIMIT - Balboa Street, 3200-3700 blocks, both sides; 36<sup>th</sup> Avenue, 600 block, west side; 37<sup>th</sup> Avenue, 600-700 blocks, both sides; 38<sup>th</sup> Avenue, 600-700 blocks, both sides. **PH 6/19/09 Requested by Merchants**
- Q. ESTABLISH - TRAFFIC SIGNAL - Folsom Street intersection, at Russ Street. **PH 6/19/09 Requested by Mayor's Office of Community Development**
- R. CONSTRUCT - SIDEWALK BULB-OUT - Folsom Street, northeast and northwest corners, at Russ Street (6-foot wide bulbs into Folsom Street); Folsom Street, south side, at Russ Street (7-foot wide bulb between the property line extensions of Russ Street). **PH 6/19/09 Requested by Mayor's Office of Community Development**
- S. ESTABLISH - RIGHT TURN ONLY - London Street, southbound, at Geneva Avenue. **PH 6/19/09 Requested by Residents**
- T. ESTABLISH - RED ZONE - Newcomb Avenue, north side, from Phelps Street to 27 feet easterly; Newcomb Avenue, south side, from Phelps Street to 23 feet easterly; Newcomb Avenue, north side, from Newhall Street to 34 feet westerly; and Newcomb Avenue, south side, from Newhall Street to 31 feet westerly. **PH 6/19/09 Requested by Residents**
- U. ESTABLISH - RAISED CROSSWALK - Newcomb Avenue, east crosswalk at Phelps Street; Newcomb Avenue, west crosswalk at Newhall Street. **PH 6/19/09 Requested by Residents**
- V. REVOKE - GREEN ZONE AND ESTABLISH - BLUE ZONE - 1700 Lombard Street, north side, from 0 feet to 22 feet west of Octavia Street (22-foot zone). **PH 6/26/09 Requested by Resident**
- W. ESTABLISH - GREEN ZONE - 3101 Octavia Street, west side, from 0 feet to 22 feet north of Lombard Street (22-foot zone). **PH 6/26/09 Requested by Resident**
- X. REVOKE - (NON-COMPLIANT) BLUE ZONE – 2599 Bush Street, south side, from 85 feet to 103 feet east of Divisadero Street (18-foot zone). **PH 6/26/09 Requested by SFMTA**
- Y. ESTABLISH - BLUE ZONE - 2599 Bush Street, south side, replacing parking meter #2539 (18-foot zone); 1799 Divisadero Street, west side, replacing parking meter #1729 (22-foot zone). **PH 6/26/09 Requested by SFMTA**
- Z. REVOKE - (NON-COMPLIANT) BLUE ZONE - 2655 Bush Street, south side, from 31 feet to 84 feet west of Divisadero Street (53-foot zone). **PH 6/26/09 Requested by SFMTA**
- AA. REVOKE - BLUE ZONE – 1596 Fulton Street, north side, from Lyon Street to 22 feet east (22-foot zone). **PH 6/26/09 Requested by SFMTA**

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. RESCIND - PARKING METER AREA NO. 3 (1-HOUR PARKING TIME LIMIT, 9 AM - 6 PM, MONDAY THROUGH SATURDAY) AND ESTABLISH - PARKING METER AREA NO. 3 (2-HOUR PARKING TIME LIMIT, 9 AM - 6 PM, MONDAY THROUGH SATURDAY) - 24<sup>th</sup> Street, 3750 block, both sides, between Chattanooga and Church Streets; 24<sup>th</sup> Street, 4100 block, north side, from Castro Street to 105 feet westerly; 24<sup>th</sup> Street, 4100 block, south side, from Castro Street to 140 feet westerly; Church Street, 1150 block, east side, from 24<sup>th</sup> Street to 74 feet northerly; Vicksburg Street, 200-300 block, west side, from 29 feet north of 24<sup>th</sup> Street to 31 feet south of 24<sup>th</sup> Street; Vicksburg Street, 200-300 block, east side, from 30 feet north of 24<sup>th</sup> Street to 27 feet south of 24<sup>th</sup> Street; Sanchez Street, 1000-1100 block, west side, from 67 feet north of 24<sup>th</sup> Street to 49 feet south of 24<sup>th</sup> Street; Sanchez Street, 1000-1100 block, east side, from 47 feet north of 24<sup>th</sup> Street to 53 feet south of 24<sup>th</sup> Street; Noe Street, 1050-1100 block, west side, from 24<sup>th</sup> Street to 89 feet southerly; Noe Street, 1050-1100 block, east side, from 42 feet north of 24<sup>th</sup> Street to 47 feet south of 24<sup>th</sup> Street; Castro Street, 1200 block, west side, from 24<sup>th</sup> Street to 82 feet northerly; Castro Street, 1200 block, east side, from 24<sup>th</sup> Street to 96 feet northerly; and Castro Street, 1300 block, both sides, between 24<sup>th</sup> and Jersey Streets.
- B. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "T" (4-HOUR TIME LIMIT, 8 AM - 3 PM, MONDAY THROUGH FRIDAY) - Rockwood Court, both sides, between Rockaway Avenue and Ulloa Street (1-99 block).
- C. ESTABLISH - STOP SIGNS - 12th Street at Harrison Street, making this T-intersection a one-way STOP.
- D. ESTABLISH - RIGHT TURNS ONLY - San Juan Avenue, eastbound, at Alemany Boulevard. (To be removed upon future installation of traffic signals).
- E. REVOKE - MULTIPLE RIGHT TURN LANES - Fremont Street, northbound, at Folsom Street. (For transit routing during the construction of the Temporary Transbay Terminal and the Transbay Terminal Center. This temporary condition is required through December 2014).
- F. ESTABLISH - TRANSIT LANE - Fremont Street, northbound, at Folsom Street on the rightmost lane. (For transit routing during the construction of the Temporary Transbay Terminal and the Transbay Terminal Center. This temporary condition is required through December 2014).
- G. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME EXCEPT TELEVISION VEHICLES - Larkin Street, west side, between the north and south crosswalks at Fulton Street; and Larkin Street, west side, in the 57-foot red zone north of the north crosswalk at Fulton Street.

- H. ESTABLISH - TOW-AWAY NO PARKING ANYTIME - 20<sup>th</sup> Avenue, east side, from approximately 252 feet to 280 feet north of Ulloa Street (between the driveways of 2450 - 20<sup>th</sup> Avenue and 2460 - 20<sup>th</sup> Avenue).
- I. CONSTRUCT - MEDIAN ISLANDS - 20th Avenue, between Taraval Street and Ulloa Street.
- J. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME - Hyde Street, west side, from Pacific Avenue to 20 feet northerly.
- K. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "X" (4-HOUR PARKING TIME LIMIT, 8 AM - 4 PM, MONDAY THOROUGH FRIDAY) - Minnesota Street, east side, between 18th and 19th Streets (frontage of 601 Minnesota Street).
- L. ESTABLISH - STOP SIGNS - Gutfenberg Street at Hanover Street, making this intersection all-way STOP controlled; Anza Street at 12th Avenue, making this intersection all-way STOP controlled.
- M. ESTABLISH - 45-DEGREE ANGLE PARKING - Balboa Street, south side, between 34th and 35th Avenues; Balboa Street, south side, between 38th and 39th Avenues.
- N. CONSTRUCT - SIDEWALK BULB-OUT - Balboa Street, north side, from 34th Avenue to 30 feet westerly (6-foot wide bulb-out); Balboa Street, north side, from 39th Avenue to 29 feet easterly (6-foot wide bulb-out); Balboa Street, south side, from 34th Avenue to 50 feet westerly (bus bulb replaces existing pole stop; 16-foot wide sidewalk bulb-out); Balboa Street, south side, from 39th Avenue to 20 feet easterly (16-foot wide sidewalk bulb-out); Balboa Street, north side, from 37th Avenue to 50 feet easterly (bus bulb replaces existing pole stop; 16-foot wide sidewalk bulb-out).
- O. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME - Balboa Street, south side, from 34th Avenue to 50 feet westerly (bus bulb replaces existing pole stop); Balboa Street, south side, from 39th Avenue to 20 feet easterly; Balboa Street, north side, from 37th Avenue to 50 feet easterly (bus bulb replaces existing pole stop).
- P. RESCIND - PARKING METERS, 1-HOUR TIME LIMIT AND ESTABLISH - PARKING METERS, 2-HOUR TIME LIMIT - Balboa Street, 3200-3700 blocks, both sides; 36<sup>th</sup> Avenue, 600 block, west side; 37<sup>th</sup> Avenue, 600-700 blocks, both sides; 38<sup>th</sup> Avenue, 600-700 blocks, both sides.
- Q. ESTABLISH - TRAFFIC SIGNAL - Folsom Street intersection, at Russ Street.
- R. CONSTRUCT - SIDEWALK BULB-OUT - Folsom Street, northeast and northwest corners, at Russ Street (6-foot wide bulbs into Folsom Street); Folsom Street, south side, at Russ Street (7-foot wide bulb between the property line extensions of Russ Street).
- S. ESTABLISH - RIGHT TURN ONLY - London Street, southbound, at Geneva Avenue.
- T. ESTABLISH - RED ZONE - Newcomb Avenue, north side, from Phelps Street to 27 feet easterly; Newcomb Avenue, south side, from Phelps Street to 23 feet easterly; Newcomb Avenue, north side, from Newhall Street to 34 feet westerly; and Newcomb Avenue, south side, from Newhall Street to 31 feet westerly.
- U. ESTABLISH - RAISED CROSSWALK - Newcomb Avenue, east crosswalk at Phelps Street; Newcomb Avenue, west crosswalk at Newhall Street.
- V. REVOKE - GREEN ZONE AND ESTABLISH - BLUE ZONE - 1700 Lombard Street, north side, from 0 feet to 22 feet west of Octavia Street (22-foot zone).
- W. ESTABLISH - GREEN ZONE - 3101 Octavia Street, west side, from 0 feet to 22 feet north of Lombard Street (22-foot zone).

- X. REVOKE - (NON-COMPLIANT) BLUE ZONE – 2599 Bush Street, south side, from 85 feet to 103 feet east of Divisadero Street (18-foot zone).
- Y. ESTABLISH - BLUE ZONE - 2599 Bush Street, south side, replacing parking meter #2539 (18-foot zone); 1799 Divisadero Street, west side, replacing parking meter #1729 (22-foot zone).
- Z. REVOKE - (NON-COMPLIANT) BLUE ZONE - 2655 Bush Street, south side, from 31 feet to 84 feet west of Divisadero Street (53-foot zone).
- AA. REVOKE - BLUE ZONE – 1596 Fulton Street, north side, from Lyon Street to 22 feet east (22-foot zone).

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

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

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

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

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

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

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:** Resolution authorizing the Executive Director/CEO or his designee to submit project applications to the Metropolitan Transportation Commission for the Transit Capital Priority process to program capital funding for Fiscal Years 2010-2012 for the Federal formula funding programs and for Surface Transportation Program funds.

**SUMMARY:**

- The Metropolitan Transportation Commission (MTC) has issued a call for transit operators in the region to submit project applications to receive federal formula funds and Surface Transportation Program (STP) funds for capital projects.
- Federal formula and STP funds are primary sources of funding for the San Francisco Municipal Railway's capital program.
- In order to receive such funding, the San Francisco Municipal Transportation Agency (SFMTA) must submit capital project applications to MTC for consideration in the Federal Transit Administration (FTA) Section 5307 formula program, Section 5309 Fixed Guideway formula program, and STP program.
- The MTC also requires an authorizing resolution from this Board committing the SFMTA to provide the necessary local match for the projects and providing assurances of SFMTA's capacity to complete the projects.

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE

\_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO

Margurite Fuller

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



## **PURPOSE:**

The purpose of this resolution is to authorize the Executive Director/CEO or his designee to submit project applications to the Metropolitan Transportation Commission for the Transit Capital Priority process to program capital funding for Fiscal Years 2010-2012 for the federal formula funding programs and for Surface Transportation Program funds.

## **GOAL:**

The SFMTA will further the following goals 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:**

In order to be eligible for capital funding from these federal programs, the MTC requires that the SFMTA submit a resolution from its Board of Directors authorizing the Executive Director/Chief Executive Officer to file project applications for these funds. The resolution should provide assurances that the SFMTA will have the capacity to match federal funds with non-federal funds and be able to complete the projects. The SFMTA will secure the required non-federal matching funds separately by tapping into various state, regional, and local fund sources.

In its role as the region's designated metropolitan planning organization, MTC has issued a call for projects from eligible federal grantees. MTC requires lists of projects from transit operators in order to program the annual regional apportionment of federal formula funds for Fiscal Years 2010 to 2012 FTA Section 5307 formula funds, Section 5309 Fixed Guideway funds, and STP funding. These funds are the primary sources of federal funding for Muni's capital program.

The established projects submitted to MTC incorporate and are consistent with Muni's priorities as established by the SFMTA Board in the adopted Fiscal Year 2008 Short Range Transit Plan (SRTP) and Capital Improvement Program (CIP). The projects are as follows:

- Paratransit Operating Assistance
- Paratransit Vehicle Replacement
- TEP Capital Implementation Program
- Central Control & Communications (C3) Facility
- Cable Car Infrastructure Rehabilitation Program
- Cable Car Vehicle Renovation
- Escalator Rehabilitation
- Historic Vehicle Rehabilitation
- Motor Coach Replacement – 45-40' Alternate Fuels Vehicles
- Trolley Coach Replacement – 60-60' Electric Vehicles

- Overhead Rehabilitation Program
- Rail Replacement Program
- Wayside Fare Collection Equipment Rehab/Replacement
- Wayside/Central Train Control Program
- Neoplan Clean Diesel Vehicle Rehabilitation – 170 Vehicles

MTC will program funds for Fiscal Years 2010-2012 using a distribution formula that was developed in cooperation with the region’s transit operators as part of the regional Transit Capital Priorities (TCP) process. The SFMTA will not receive the total amount requested; rather, the SFMTA will receive a portion of the requested funds based on the TCP distribution formula.

**ALTERNATIVES CONSIDERED:**

Not applicable.

**FUNDING IMPACT:**

SFMTA has applied to MTC for funding, and is committed to providing non-federal match for that funding, up to the amounts shown below:

<b>Funding Source</b>	<b>Amount</b>
Federal Funds	\$322,049,936
Non-Federal Matching Funds	\$91,228,081
Total	\$413,278,017

**OTHER APPROVALS RECEIVED OR STILL REQUIRED:**

The City Attorney has reviewed this calendar item.

**RECOMMENDATION:**

Staff recommends the SFMTAB approve the resolution authorizing the Executive Director/CEO or his designee to submit project applications to the MTC for the Transit Capital Priority process to program capital funding for Fiscal Years 2010-2012 for the federal formula funding programs and for Surface Transportation Program funds.

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

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

WHEREAS, The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Public Law Public Law 109-59, August 10, 2005) continues the Federal Transit Administration Formula Programs (23 U.S.C. §53) and Surface Transportation Program (23 U.S.C. § 133); and

WHEREAS, Pursuant to SAFETEA-LU, and the regulations promulgated thereunder, eligible project sponsors wishing to receive Federal Transit Administration (FTA) Section 5307 and Section 5309 Fixed Guideway (FG) Formula or Surface Transportation Program (STP) grants for a project shall submit an application first with the appropriate metropolitan transportation planning organization (MPO), for review and inclusion in the MPO's Transportation Improvement Program (TIP); and

WHEREAS, The Metropolitan Transportation Commission (MTC) is the MPO for the San Francisco Bay region; and

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is an eligible project sponsor for FTA Section 5307, FTA Section 5309 FG, and Surface Transportation Program funds; and

WHEREAS, SFMTA wishes to submit grant applications to the MTC for funds for the Fiscal Years 2010 to 2012 FTA Section 5307 and FTA 5309 FG, and Surface Transportation Program funds for the following projects (the "Projects"):

- Paratransit Operating Assistance
- Paratransit Vehicle Replacement
- TEP Capital Implementation Program
- Central Control & Communications (C3) Facility
- Cable Car Infrastructure Rehabilitation Program 1998-2009
- Cable Car Vehicle Renovation
- Escalator Rehabilitation
- Historic Vehicle Rehabilitation
- Motor Coach Replacement – 45-40' Alternate Fuels Vehicles
- Trolley Coach Replacement – 60-60' Electric Vehicles
- Overhead Rehabilitation Program 1998-2009
- Rail Replacement Program 1998-2009
- Wayside Fare Collection Equipment Rehab/Replacement
- Wayside/Central Train Control Program
- Neoplan Clean Diesel Vehicle Rehabilitation – 170 Vehicles; and

WHEREAS, MTC requires, as part of the application, a resolution stating the following:

- 1) the commitment of necessary local matching funds of at least of 20% for FTA Section 5307 and FTA Section 5309 FG and 11.47% for Surface Transportation Program funds; and
- 2) that the sponsor understands that the FTA Section 5307, FTA Section 5309 FG and Surface Transportation Programs funding is fixed at the programmed amount, and therefore any cost increase cannot be expected to be funded by FTA Section 5307, FTA Section 5309 FG, and Surface Transportation Program funds; and
- 3) the assurance of the sponsor to complete the project as described in the application, and if approved, as programmed in the MTC's TIP; and
- 4) that the sponsor understands that FTA funds must be obligated within three years of programming, and the Surface Transportation Program funds must be obligated by September 30<sup>th</sup> of the year that the project is programmed for in the TIP, or the project may be removed from the program; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO or his designee to execute and file applications for funding under the FTA Section 5307, FTA Section 5309 FG, and/or Surface Transportation Program of SAFETEA-LU in the amount of \$322,049,936 for the following projects (the "Projects"):

- Paratransit Operating Assistance
- Paratransit Vehicle Replacement
- TEP Capital Implementation Program
- Central Control & Communications (C3) Facility
- Cable Car Infrastructure Rehabilitation Program 1998-2009
- Cable Car Vehicle Renovation
- Escalator Rehabilitation
- Historic Vehicle Rehabilitation
- Motor Coach Replacement – 45-40' Alternate Fuels Vehicles
- Trolley Coach Replacement – 60-60' Electric Vehicles
- Overhead Rehabilitation Program 1998-2009
- Rail Replacement Program 1998-2009
- Wayside Fare Collection Equipment Rehab/Replacement
- Wayside/Central Train Control Program
- Neoplan Clean Diesel Vehicle Rehabilitation – 170 Vehicles; and, be it

FURTHER RESOLVED, That the Municipal Transportation Agency Board of Directors by adopting this resolution provides the following assurances:

- 1) SFMTA will provide \$91,228,081 in local matching funds for the Projects; and
- 2) SFMTA understands that the FTA Sections 5307 and 5309 FG and STP funding for the Projects is fixed at \$322,049,936, and that any cost increases must be funded by the SFMTA from local matching funds, and that SFMTA does not expect any cost increases to be funded with FTA Sections 5307, and 5309 FG, and Surface Transportation Program funds; and
- 3) The Projects will be built as described in this resolution and, if approved, for the amount shown in the MTC TIP, with obligation occurring within the timeframe established below; and
- 4) The program funds are expected to be obligated by September 30<sup>th</sup> of the year for which the project is programmed in the TIP; and, be it

FURTHER RESOLVED, That a copy of this resolution will be transmitted to the MTC prior to MTC programming the FTA Section 5307 and 5309 FG or Surface Transportation Program funded project in the TIP; and be it

FURTHER RESOLVED, That the SFMTA requests MTC to support the application for the projects described in the resolution and to program these Projects, if approved, in MTC's TIP.

I certify that the foregoing resolution was adopted by the 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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Resolution authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO, to accept and expend \$2,025,000 of federal Congestion Mitigation and Air Quality (CMAQ) funds for the preliminary engineering and design of the Third Street Phase II - Central Subway Project.

**SUMMARY:**

- The San Francisco Municipal Transportation Agency (SFMTA) must apply to the Federal Transit Administration (FTA) to have funds included in a federal grant once the Metropolitan Transportation Commission (MTC) programs the project in the region's Transportation Improvement Program (TIP).
- The project planned is consistent with the priorities established by the SFMTA Board, as affirmed in Muni's Short Range Transit Plan, and are embodied in the Regional TIP and the San Francisco County Transportation Authority's Congestion Management and Strategic Plan.
- The Third Street Phase II- Central Subway project is a congressional priority for funding in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).
- The SFMTA seeks authority to accept and expend \$2,025,000 of Federal Highway Administration (FHWA) CMAQ funds transferred to the FTA to be administered under its Section 5307 program for the Third Street Phase II – Central Subway Project. These CMAQ funds are 100 percent federally funded and require no local match.

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION BE RETURNED TO: Leda Young, 1 South Van Ness Avenue, 8<sup>th</sup> Floor

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

## **PAGE 2.**

### **PURPOSE**

The SFMTA requests SFMTA Board action to accept and expend \$2,025,000 of FHWA flexible funds to be administered through the FTA Section 5307 capital assistance program for the preliminary engineering and design of Muni's Third Street Phase II - Central Subway project.

### **GOAL**

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

- Goal 1 – Customer Focus: To provide safe, accessible, reliable, clean and environmentally sustainable service.

Objective 1.3 - Reduce emissions as required by the SFMTA Clean Air Plan

Objective 1.4 - Improve accessibility across transit service

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

Objective 4.2 – Ensure efficient and effective use of resources.

### **DESCRIPTION**

Each year, the Metropolitan Transportation Commission (MTC), in its role as the region's designated metropolitan planning organization, develops a regional Program of Projects (POP) for various federal funding programs authorized for mass transportation projects under SAFETEA-LU. These funding programs include the Federal Highway Administration's (FHWA) Congestion Mitigation and Air Quality Improvement (CMAQ) program. The CMAQ funds are so-called "flexible" funds that can be transferred to the FTA. These funding sources are also elements of the regional Transportation Improvement Program (TIP).

The established POP incorporates and is consistent with SFMTA's priorities as established in the adopted Short Range Transit Plan (SRTP) and Capital Investment Plan adopted by the SFMTA Board. The MTC amended the region's TIP to program fiscal year 2009 FHWA CMAQ funds to include the Third Street Phase II - Central Subway project.

This action would authorize the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$2,025,000 of flexible CMAQ funds transferred to the FTA to be administered in its Section 5307 program for the Third Street Phase II - Central Subway project.

### **ALTERNATIVES CONSIDERED**

Not applicable.

### **FUNDING IMPACT**

The SFMTA applied for these funds under FTA Grant No. CA-95-X057-01. There is no required local match with this grant.

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

This funding for Third Street Phase II - Central Subway project is included in the region's TIP for fiscal year 2009.

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

### **RECOMMENDATION**

The SFMTA recommends the SFMTAB adopt a resolution authorizing SFMTA, through its Executive Director/CEO, to accept and expend \$2,025,000 of CMAQ funds for the preliminary engineering and design of the Third Street Phase II - Central Subway Project.



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

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

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is an eligible claimant for Congestion Mitigation and Air Quality (CMAQ) funds under the Federal Highway Administration (FHWA) program of SAFETEA-LU; and

WHEREAS, CMAQ funds are flexible funds that can be transferred to the Federal Transit Administration (FTA) for administration to be used for a transit project; and

WHEREAS, In Fiscal Year 2009, \$2,025,000 CMAQ funding has been allocated to the proposed Third Street Phase II Central Subway project; and

WHEREAS, The contract for financial assistance does not require a local match; and

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

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

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

RESOLVED, That the SFMTA Board authorizes the SFMTA, through its Executive Director/CEO, to accept and expend \$2,025,000 of flexible FHWA CMAQ funds to be administered through FTA Section 5307 capital assistance for the preliminary engineering and design of Muni's Third Street Phase II - Central Subway project; and be it further

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

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

I certify that the foregoing resolution was adopted by 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. : 10.5**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the San Francisco Municipal Transportation Agency (SFMTA), through its Executive Director/CEO (or his designee), to accept and expend up to \$1,089,413 in Transportation Development Act (TDA) funds for bicycle facilities, bicycle parking, and for bicycle safety programs.

**SUMMARY:**

- SFMTA requests authority to accept and expend up to \$1,089,413 in Transportation Development Act grant funds for implementation of bicycle facility projects; bicycle parking; and for bicycle safety programs, such as educational events, safety brochures, flyers, maps, public outreach campaigns to promote safe bicycling, outdoor media and advertising, a “report card” on bicycling in San Francisco, purchasing and distributing of bicycle safety equipment and materials, and staff attendance at the ProBike/ProWalk Conference.
- The choice of projects is based on input SFMTA received from various community groups, such as the San Francisco Bicycle Coalition and the Board of Supervisors’ Bicycle Advisory Committee.
- Implementation of bicycle construction and bicycle parking projects will not occur until after the injunction preventing the City from implementing the San Francisco Bicycle Plan has been lifted by the San Francisco Superior Court.

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION BE RETURNED TO: Eileen Ross, 1 South Van Ness Ave., 8<sup>th</sup> Floor

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

## **PAGE 2.**

### **PURPOSE**

SFMTA requests authority to accept and expend up to \$1,089,413 in state Transportation Development Act (TDA) funds for bicycle facilities, bicycle parking, and for bicycle safety programs. The programs are supported by the San Francisco Bicycle Coalition and the Board of Supervisors' Bicycle Advisory Committee.

### **GOALS**

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

- Goal 1: Customer Focus – To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.  
Objective 1.1 – Improve safety and security across all modes of transportation  
Objective 1.5 – Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare).
- Goal 2: Customer Focus – To get customers where they want to go, when they want to be there.  
Objective 2.3 – Fulfill bicycle and pedestrian network connectivity.
- Goal 4: Financial Capacity – To ensure financial capacity and effective resource utilization  
Objective 4.2 – Ensure efficient and effective use of resources.

### **EXPLANATION**

Article 3 of the TDA authorizes disbursement of funds for bicycle and pedestrian purposes. Within the nine-county Bay Area, the Metropolitan Transportation Commission administers TDA funds. SFMTA proposes to use these funds for the three projects described below.

1. Construction of Bicycle Facilities (\$789,413) – Implementation of bicycle projects, such as striping and signing Class II bikeways (bike lanes) and improving Class III bikeways (bike routes) by widening curb lanes and striping bicycle pavement arrows, – especially on roadways with heavy traffic volumes and narrow lanes.
2. Bicycle Parking (\$200,000) – Purchase and installation of sidewalk bicycle racks at various locations in San Francisco as requested by the public, and as identified by staff.
3. Bicycle Safety Programs (\$100,000) – Implement bicycle safety programs, such as educational events, safety brochures, flyers, maps, public outreach campaigns to promote safe bicycling, outdoor media and advertising, a “report card” on bicycling in San Francisco, purchasing and distributing of bicycle safety equipment and materials, and staff attendance at the ProBike/ProWalk Conference.

**PAGE 3.**

Implementation of bicycle construction and parking projects will not occur until after the injunction preventing the City from implementing the Bicycle Plan has been lifted by the San Francisco Superior Court.

**ALTERNATIVES CONSIDERED**

Not applicable.

**FUNDING IMPACT**

No matching funds are required. If projects cannot be delivered in a timely manner, alternative funding will need to be sought.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The SFMTA requires approval from the Board of Supervisor to accept and expend the funds described above because these projects are combined with projects from DPW to be presented to MTC as a unified program of projects using TDA Article 3 funds.

**RECOMMENDATION**

Staff recommends that the SFMTA Board approve the attached Resolution authorizing the San Francisco Municipal Transportation Agency (SFMTA), through its Executive Director/CEO (or his designee), to accept and expend up to \$1,089,413 in Transportation Development Act (TDA) funds for bicycle facilities, bicycle parking, and for bicycle safety programs.

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

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, With input from the San Francisco Bicycle Coalition, the Board of Supervisors' Bicycle Advisory Committee, and community groups, the SFMTA Bicycle Program has identified a need for various bicycle projects and programs to improve and enhance bicycling as a safe, viable transportation option; and

WHEREAS, The SFMTA will apply for up to \$1,089,413 in Transportation Development Act funds for (1) bicycle facility construction; (2) bicycle parking; and (3) bicycle safety programs, such as educational events, safety brochures, flyers, maps, public outreach campaigns to promote safe bicycling, outdoor media and advertising, a "report card" on bicycling in San Francisco, purchasing and distributing of bicycle safety equipment and materials, and staff attendance at the ProBike/ProWalk Conference; and

WHEREAS, SFMTA will not implement the bicycle parking and bicycle construction projects until the injunction prohibiting implementation of the San Francisco Bicycle Plan has been lifted by the San Francisco Superior Court; and

WHEREAS, If any of the projects and programs do not receive funding, this will not affect the other projects and programs; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the San Francisco Municipal Transportation Agency (SFMTA), through its Executive Director/CEO (or his designee), to accept and expend up to \$1,089,413 in Transportation Development Act (TDA) funds for bicycle facilities, bicycle parking, and for bicycle safety programs; and be it further

RESOLVED, That the SFMTA Board commends this matter to the Board of Supervisors for its approval to accept and expend the aforementioned grant funds; and be it further

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO (or his designee) to execute agreements and other documents required for receipt of these funds, pending approval of the Board of Supervisors; and be it further

RESOLVED, That the Executive Director/CEO (or his designee) shall transmit a copy of this resolution to the Metropolitan Transportation Commission.

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. : 10.6**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Transportation Planning and Development

**BRIEF DESCRIPTION:**

Awarding San Francisco Municipal Transportation Agency Contract No. 1233, Miscellaneous Rail Replacement Project, to Shimmick Construction Company, Inc., located at 8201 Edgewater Drive #202, Oakland, CA 94621, in the "base bid" amount of \$8,729,354, and authorizing the Executive Director/CEO to exercise the option for single tracking or for bus substitution when the agency determines which option is more feasible.

**SUMMARY:**

- On January 6, 2009, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 09-011, authorizing bid call for Contract No. 1233, Miscellaneous Rail Replacement Project.
- This project involves the replacement of worn trackwork and related work at seven locations Citywide and replacement of one ADA ramp located at Ocean Beach. The scope of work includes: replacing existing trackwork, Overhead Contact System (OCS), electrical street lighting, track circuit wiring, Vetag loop; installing water, ground and reclaimed pipe sleeves; and reconstructing ramps and platforms.
- Four bids were received and opened on May 27, 2009. The Contract Compliance Office has reviewed this calendar item and has confirmed that the contractor has committed to meet the Small Business Enterprise (SBE) goal of 22 percent.
- The City Attorney's Office has reviewed this calendar item.
- Staff recommends awarding Contract No. 1233 to Shimmick Construction Company, Inc., in the base bid amount of \$8,729,354.
- Federal and local sources are providing funds for the work under this contract.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Project Budget & Financial Plan

**APPROVALS:**

**DATE**

DEPUTY OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

FINANCE

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO

\_\_\_\_\_ Yvette Torres

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

## **PAGE 2**

### **PURPOSE**

San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1233, Miscellaneous Rail Replacement Project, is to replace worn trackwork and related work at seven locations Citywide and replace one ADA ramp located at Ocean Beach.

### **GOAL**

Contract No. 1233 would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

Objective 1.1 Improve safety and security across all modes of transportation

Objective 1.4 Improve accessibility across transit services

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

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

Objective 5.2 Improve facilities in which people are working

### **DESCRIPTION**

#### Background

SFMTA Contract No. 1233, Miscellaneous Rail Replacement Project, is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under Infrastructure Program and within the Rail Rehabilitation Program. The goal of the program is to revitalize the deteriorated system to reduce maintenance, improve system reliability, and minimize operational problems.

The locations for replacement of worn trackwork are as follows: Taraval Street at 19<sup>th</sup> Avenue, Judah Street at 19<sup>th</sup> Avenue, Taraval Street at Sunset Boulevard, Judah Street at Sunset Boulevard, Church Street at 18<sup>th</sup> Street, Church Street at 30<sup>th</sup> Street, and San Jose Street at 30<sup>th</sup> Street. The seven locations designated for rail replacement were identified by the SFMTA Rail Capital Planning Work Committee with input from SFMTA Maintenance. The useful life of tangent rail is usually 30 years and curved rail is 25 years. In general, rail needs to be replaced due to a combination of factors, including tight track curvature, soil movement, trackway and street pavement settlement, uneven LRV loadings, frequency of LRV movement, automobile traffic loading, and the strength and hardness of rail.

The replacement of the ADA ramp is necessary because it does not meet current ADA requirements. The existing ramp does not have a mid-ramp landing or ADA-compliant handrails. The grade of the existing ramp is also too steep. The new ADA ramp will be built to bring it up to current compliance standards.

## **PAGE 3**



## Scope of Work

The main scope of work for this project consists of replacing existing trackwork, Overhead Contact System (OCS), electrical street lightings, track circuit wiring, Vetag loop; installing water, ground and reclaimed pipe sleeves; and reconstructing ramps and platforms.

The time allotted to substantially complete the work is 360 calendar days. Liquidated damages are \$6,000 per day for each and every calendar day of delay in failure to complete the work. Additional liquidated damages are applicable for interruptions to Muni Operations and are described in the contract documents.

## Bids and Bid History

The SFMTA Board of Directors adopted Resolution No. 09-011 on January 9, 2009, authorizing bid call for Contract No. 1233.

The Project involves the replacement of worn track work and the performance of related work at seven locations along several Muni Metro lines. The SFMTA required bidders to bid on 86 individual items in eight categories for the base contract work. Additionally, the SFMTA required bidders to submit bids on two mutually exclusive options for accommodating passengers during the Project: (1) single tracking or (2) bus substitution. The SFMTA may select either option within nine months after the Notice To Proceed depending on which is operationally more feasible. The bidders were advised that the low bidder would be determined with reference to the total of the base bid and both options.

## Bids Received

On May 27, 2009, SFMTA's Transportation Planning and Development Division received and opened four bid proposals, as follows:

	<b>Base Bid</b>	<b>Option #1</b> (single tracking)	<b>Option #2</b> (Bus Sub.)	<b>Total Bid</b>
<b>Shimmick Construction</b> 8201 Edgewater Drive #202 Oakland, CA 94621	\$8,729,354	\$100,000	\$40,000	\$8,869,354
<b>Con-Quest Contractors</b> 290 Toland Street, San Francisco, CA 94124	\$8,097,073	\$702,000	\$75,000	\$8,874,073
<b>NTK Construction</b> 501 Cesar Chavez Street, Suite 123 San Francisco, CA 94110	\$7,653,167	\$1,390,000	\$223,000	\$9,266,167
<b>Stacy &amp; Witbeck</b> 1320 Harbor Bay Parkway, Suite 240 Alameda, CA 94502	\$8,893,162	\$1,460,000	\$274,400	\$10,627,562
<b>Engineer's Estimate</b>	\$7,649,649	\$993,843	\$437,996	\$9,081,488

## **PAGE 4**

Following receipt of bids, SFMTA received two bid protests from Con-Quest Construction and NTK Construction alleging that Shimmick unbalanced its bid by including unreasonably low prices for each option. The Engineer's Estimate for Optional Bid Item 1 (Single Tracking) was \$993,843. The Engineer's Estimate for Optional Bid Item 2 (Bus Substitution) was \$447,996. Shimmick bid \$100,000 and \$40,000, respectively.

After consulting with the City Attorney's Office, SFMTA staff determined that Shimmick's bid was not materially unbalanced and recommended that the protests be denied. As to unit price items that Shimmick bid high, such items are not so significantly overstated as to amount to an advance payment or fraud or collusion, and none are materially outside the range of the other bidders and/or the Engineer's Estimate. Moreover, the Contract Documents protect the SFMTA in the event that unit price quantities are grossly underestimated. Furthermore, if awarded the Contract, Shimmick would have no recourse to seek additional compensation for its optional bid items. Finally, given the nature of the option work, the SFMTA would require and pay for whichever alternate it selected during the course of the Contract and not just at the end, so the understated unit items would not result in an unreasonable risk to the agency posed by front loading the contract.

Staff reviewed the four bid proposals and determined that Shimmick Construction Company, Inc. is the lowest responsive and responsible bidder, when considering both options, as required under the bid documents. The engineer's estimate for this construction contract is \$9,081,488; the low bid for this work is 2.34% or \$212,134 below the engineer's estimate.

The Contract Compliance Office has reviewed the bid proposals and confirmed that Shimmick will meet the 22 percent Small Business Enterprise (SBE) participation goal established for this contract and will commit to meeting the Non-discrimination Equal Employment Requirements of the contract. Shimmick is in compliance with Chapter 12B Equal Benefits Provision of the San Francisco Administrative Code.

## **ALTERNATIVES CONSIDERED**

The project team held discussions with Maintenance and Operations staff concerning whether the track repair should be done by in-house staff. The preference was to have a contractor replace the worn tracks, because contractors have enough crews with track installation expertise to complete the work within the limited shutdown hours. Staff determined that contracting out is the practical alternative.

Following receipt of two bid protests, staff also analyzed the alternative of rejecting all bids and re-advertising the contract. Unfortunately, repackaging the contract documents, rebidding and awarding the contract could result in delay of four to six months. The project includes replacement of worn track as part of a regular replacement program to maintain safe and efficient operations, and to mitigate excessive noise and vibration. The Rail Program has a series of projects scheduled to be constructed after the Miscellaneous Rail project; any further delay in awarding the contract could delay the entire Rail Program for at least a year.

## **PAGE 5**

In addition, rebidding the contract may cost the project approximately \$100,000 just for repackaging the contract documents. Therefore, staff recommends acceptance of the lowest responsive and responsible bid.

### **FUNDING IMPACT**

Funding for the entire project comes from a combination of programmed Federal Transit Administration funds and local funds. All funding for this project has been secured.

The budget and financial plan for this project is presented in Enclosure 2 of the calendar item.

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

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

No other approvals from any other agency are required for the award of this contract.

### **RECOMMENDATION**

Awarding San Francisco Municipal Transportation Agency Contract No. 1233, Miscellaneous Rail Replacement Project, to Shimmick Construction Company, Inc., in the "base bid" amount of \$8,729,354, and authorizing the Executive Director/CEO to exercise one of two options for single tracking or bus substitution.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No.1233, Miscellaneous Rail Replacement Project, is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under the Rail Replacement Program; and,

WHEREAS, The work to be performed under this project will replace one ADA ramp located at Ocean Beach and replace worn trackwork and related work at the following seven locations: Taraval Street at 19<sup>th</sup> Avenue, Judah Street at 19<sup>th</sup> Avenue, Church Street at 18<sup>th</sup> Street, Church Street at 30<sup>th</sup> Street, San Jose Avenue at 30<sup>th</sup> Street, Taraval Street at Sunset Boulevard, and Judah Street at Sunset Boulevard; and,

WHEREAS, On January 6, 2009, the SFMTA Board of Directors adopted Resolution No. 09-011, authorizing bid call for SFMTA Contract No.1233, Miscellaneous Rail Replacement Project; and,

WHEREAS, On May 27, 2009, SFMTA received and publicly opened four bid proposals in response to its invitation for bids; and,

WHEREAS, SFMTA determined that Shimmick Construction Company, Inc., located at 8201 Edgewater Drive #202, Oakland, CA 94621, is the lowest responsible and responsive bidder, with a total bid amount of \$8,869,354; and,

WHEREAS, SFMTA received bid protests from Con-Quest Construction and NTK Construction alleging that Shimmick unbalanced its bid; after consulting with the City Attorney's Office, SFMTA determined that the protests should be denied; and,

WHEREAS, Funds for this contract are available and the project is funded Federal grants (80%) and by local funding sources (20%), including the San Francisco County Transportation Authority; and,

WHEREAS, SFMTA Contract No. 1233 will assist SFMTA in meeting the objectives of Strategic Plan Goal No. 1 (Customer Focus) – to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; and Goal 5 (SFMTA Workforce) – to provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency's mission and vision and leads the agency into an evolving, technology-driven future; and,

WHEREAS, The time allowed to substantially complete the work under this contract is 360 calendar days after issuance of the Notice to Proceed; and,

WHEREAS, The Contract Compliance Office has reviewed the bid documents and confirms that Shimmick Construction Company, Inc., will meet the 22 percent Small Business Enterprise participation goal established for this contract; now, therefore, be it,

RESOLVED, that the SFMTA Board of Directors awards San Francisco Municipal Transportation Agency Contract No. 1233, Miscellaneous Rail Replacement Project, to Shimmick Construction Company, Inc., located at 8201 Edgewater Drive #202, Oakland, CA 94621, in the “base bid” amount of \$8,729,354, and authorizes the Executive Director/CEO to exercise either the option for single tracking or for bus substitution when the agency determines which option is more feasible.

I 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

## ENCLOSURE 2

### Miscellaneous Rail Replacement Project San Francisco Municipal Transportation Agency Contract No. 1233

#### Project Budget and Financial Plan

<b>Category</b>	<b>Budget</b>
Conceptual Engineering	\$1,145,100
Detail Design	\$2,825,546
Construction	
Construction Contract:	\$8,729,354
Construction Support:	\$3,735,035
Contingency	\$2,090,000
<b>Total</b>	<b>\$18,525,035</b>

#### FINANCIAL PLAN

<b>Project Funding Source</b>	<b>Amount</b>
Federal Grants: FTA	\$14,547,035
Local Grants:	
ABB664 Bridge Toll Funds	\$843,000
Proposition K	\$2,735,000
SFMTA Funds	\$400,000
<b>Total</b>	<b>\$18,525,035</b>

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Traffic Engineering

**BRIEF DESCRIPTION:**

Authorizing the Department of Public Works (“DPW”) to award DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, to install pedestrian pushbutton poles and conduits at 29 designated intersections, to Bay Area Lightworks, Inc., 1300 Van Dyke Avenue, Suite B, San Francisco, for a total contract amount not to exceed \$132,680.

**SUMMARY:**

- On April 21, 2009, the San Francisco Municipal Transportation Agency (“SFMTA”) Board approved Resolution No. 09-061 to issue a bid call for DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) Phase 2, to install pedestrian pushbutton poles and conduits at 29 designated intersections in San Francisco.
- The engineer’s detailed cost estimate for the contract work was \$134,869.25.
- On June 3, 2009, the City received and publicly opened four bids ranging from \$116,800 to 165,000. The apparent lowest bid of \$116,800 and the second lowest bid of \$124,997 were both submitted by firms that were deemed non-responsive by the Contract Compliance Officer from the Human Rights Commission (HRC). The third lowest bid of \$132,680, submitted by Bay Area Lightworks, Inc., was 2% below the engineer’s estimate.
- The contract work will be funded with Proposition K sales tax revenues.
- DPW has determined that Bay Area Lightworks, Inc., is the lowest responsive and responsible bidder.
- The Contract Compliance Officer from HRC has confirmed that Bay Area Lightworks, Inc., will meet the 20% Local Business Enterprise (LBE) subcontracting participation goal established for this contract.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Project Budget and Financial Plan

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO Eddie Tsui

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

**PAGE 2.**

## **PURPOSE**

SFMTA staff requests this Board to authorize the Department of Public Works (“DPW”) to award DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, to install pedestrian pushbutton poles and conduits at 29 designated intersections, to Bay Area Lightworks, Inc., 1300 Van Dyke Avenue, Suite B, San Francisco, for a total contract amount not to exceed \$132,680.

## **GOAL**

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

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

1.1 Improve safety and security across all modes of transportation

1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, and rideshare)

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

2.3 Fulfill bicycle and pedestrian network connectivity

## **DESCRIPTION**

### **Scope of Work**

SFMTA Parking and Traffic (“DPT”), utilizing DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, will install new pedestrian pushbutton poles and conduits at 29 designated intersections located in San Francisco (“the Work”). These 29 intersections are as follows: 4<sup>th</sup>, Ellis, Market and Stockton Streets; 4<sup>th</sup> and Mission Streets; 6<sup>th</sup> Avenue and Geary Boulevard; 9<sup>th</sup> Avenue and Judah Street; 9<sup>th</sup> Avenue and Lincoln Way; 14<sup>th</sup>, Church and Market Streets; 17<sup>th</sup>, Castro and Market Streets; 24<sup>th</sup> Street and Potrero Avenue; 25<sup>th</sup> Avenue and Geary Boulevard; Arguello and Geary Boulevards; Beale and Howard Streets; Bosworth and Diamond Streets; Brannan Street and The Embarcadero; Bryant Street and The Embarcadero; Cole and Fell Streets; Cole and Oak Streets; The Embarcadero and Washington Street; Fell Street and Van Ness Avenue; Fulton and Hyde Streets; Geneva Avenue and Mission Street; Geneva, Ocean and Phelan Avenues; Grove and Larkin Streets; Hayes Street and Van Ness Avenue; Hyde and McAllister Streets; Jones and Turk Streets; Larkin and McAllister Streets; McAllister Street and Van Ness Avenue; O’Shaughnessy Boulevard, Portola Drive and Woodside Avenue; and Polk and Sutter Streets.

These locations were selected based on an agreement between SFMTA, the City Attorney’s Office and advocacy groups for the blind and visually impaired. The Work is more specifically described in the “Accessible Pedestrian Signals (APS) – Phase 2 Contract No. 1577J Project Manual” and the accompanying contract plans and miscellaneous reference drawings (which are voluminous documents and are available for inspection at DPW’s Bureau of Engineering, 30 Van Ness Avenue, 5<sup>th</sup> Floor, San Francisco, California).

The project is categorically exempt under the California Environmental Quality Act.

**PAGE 3.**



The completion date for this contract is 90 calendar days after written Notice To Proceed. Following the Work, DPT Signal Shop staff will install APS units on the new pedestrian pushbutton poles at these intersections.

The Work, along with the subsequent APS installation by DPT Signal Shop, is designed to improve safety for visually impaired pedestrians by providing pedestrian signal indications in audible and tactile formats.

DPT staff performed the initial conceptual design for this contract. DPW staff performed the design review, contract preparation and contract advertising. DPW staff will also provide construction management services.

### **Solicitation for Bids and Bid Opening**

On May 6, 2009, the City solicited for said Contract through public advertisements in the San Francisco Examiner. In addition, the public advertisement was listed until the day of the bid opening on the City's internet website at <http://mission.sfgov.org/OCABidPublication/ReviewBids.aspx>.

On June 3, 2009, the City received and publicly opened the following four bids for DPW Contract No. 1577J:

- Ranis Construction & Electric, Inc.  
171 Miramar Avenue  
San Francisco, CA 94112  
Bid Amount: \$116,800
  
- Bay Area Lightworks, Inc.  
1300 Van Dyke Avenue, Suite B  
San Francisco, CA 94124  
Bid Amount: \$132,680
  
- F. Connolly Co.  
1224 Montgomery Avenue  
San Bruno, CA 94066  
Bid Amount: \$165,000
  
- Ashbury Homes Inc., dba AHI General Contractors  
2166 Hayes Street, Suite 208  
San Francisco, CA 94117  
Bid Amount: \$124,997

The Contract Compliance Officer from the Human Rights Commission has deemed both Ranis Construction & Electric, Inc., and AHI General Contractors as non-responsive.

As the lowest responsive and responsible bidder, staff recommends award to Bay Area Lightworks, Inc., 1300 Van Dyke Avenue, Suite B, San Francisco, in the amount of \$132,680. This bid is 2% below the engineer's estimate.

## **PAGE 4.**

In its bid for DPW Contract No. 1577J, Bay Area Lightworks, Inc., listed the following subcontractors:

- Phoenix Electric (San Francisco, CA)
- North Tipp Construction (San Francisco, CA)
- Eighteen Trucking (San Francisco, CA)

The City Attorney's Office has reviewed this report.

## **ALTERNATIVES CONSIDERED**

Instead of contracting out using the competitive bid process for the construction of DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, the following alternatives were also considered but not selected:

- Replacement and/or refurbishment - Replacement and/or refurbishment of existing equipment was not a viable option since the new APS installations require new pedestrian pushbutton poles to be placed at appropriate locations where no poles currently exist. Some existing poles other than signal poles, such as streetlight poles, were utilized whenever possible.
- No build option – this option was not chosen because the installation of new poles and conduits were needed to install APS at the appropriate locations.
- Rebidding and/or renewing an existing contract – this option does not apply to Contract No. 1577J.

Use of SFMTA in-house staff - Construction of the new pedestrian pushbutton poles and conduits through the use of in-house staff was found to be not feasible. SFMTA in-house staff such as the DPT Traffic Signal Shop are primarily staffed and equipped to perform maintenance of existing infrastructure rather than new construction. However, following the Work, in-house staff will be used to install APS units on the new pedestrian pushbutton poles.

Staff concluded that contracting out through the use of the competitive bidding process was the best alternative to proceed with the construction of DPW Contract No. 1577J. Historically, contracting out via competitive bidding has been the primary way that most signal infrastructure has been constructed in the City; DPT has found this method to be a cost effective and efficient way to construct new pedestrian pushbutton poles and conduits.

## **FUNDING IMPACT**

The engineer's detailed cost estimate for this contract is \$134,869.25.

The Work is funded through Proposition K Sales Tax revenues, a half-cent sales tax approved by San Francisco voters in 2003. Please refer to attached Enclosure 2 for details.

For the design phase of this project, the San Francisco County Transportation Authority ("SFCTA") approved \$161,500 from Proposition K.

**PAGE 5.**

For the construction phase of this project, the SFCTA has also already approved \$775,000 in Proposition K funds.

Operating funds required for the maintenance of the pedestrian pushbutton poles and conduits to be constructed as part of DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2 are included in the DPT budget for FY 09-10.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The Contract Compliance Officer from the Human Rights Commission has confirmed that Bay Area Lightworks, Inc., will meet the 20% Local Business Enterprise (LBE) subcontracting participation goal established for this contract.

The Department of Public Works will proceed with award of DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, after the SFMTA Board's approval of this calendar item.

**RECOMMENDATION**

Staff recommends that the SFMTA Board authorize DPW to award DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, to install pedestrian pushbutton poles and conduits at 29 designated intersections, to Bay Area Lightworks, Inc., 1300 Van Dyke Avenue, Suite B, San Francisco, for a total contract amount not to exceed \$132,680.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, SFMTA Parking and Traffic ("DPT") identifies intersections for new Accessible Pedestrian Signals (APS) installations to be funded by Proposition K Sales Tax revenues, a half-cent sales tax approved by the voters of the City and County of San Francisco in 2003; and,

WHEREAS, APS is designed to improve safety for visually impaired pedestrians by providing pedestrian signal indications in audible and tactile formats; and,

WHEREAS, DPT has identified the following 29 intersections as appropriate locations for new APS installations to improve pedestrian safety: 4<sup>th</sup>, Ellis, Market and Stockton Streets; 4<sup>th</sup> and Mission Streets; 6<sup>th</sup> Avenue and Geary Boulevard; 9<sup>th</sup> Avenue and Judah Street; 9<sup>th</sup> Avenue and Lincoln Way; 14<sup>th</sup>, Church and Market Streets; 17<sup>th</sup>, Castro and Market Streets; 24<sup>th</sup> Street and Potrero Avenue; 25<sup>th</sup> Avenue and Geary Boulevard; Arguello and Geary Boulevards; Beale and Howard Streets; Bosworth and Diamond Streets; Brannan Street and The Embarcadero; Bryant Street and The Embarcadero; Cole and Fell Streets; Cole and Oak Streets; The Embarcadero and Washington Street; Fell Street and Van Ness Avenue; Fulton and Hyde Streets; Geneva Avenue and Mission Street; Geneva, Ocean and Phelan Avenues; Grove and Larkin Streets; Hayes Street and Van Ness Avenue; Hyde and McAllister Streets; Jones and Turk Streets; Larkin and McAllister Streets; McAllister Street and Van Ness Avenue; O'Shaughnessy Boulevard, Portola Drive and Woodside Avenue; and Polk and Sutter Streets; and,

WHEREAS, DPT proposes to perform the Work under the Department of Public Works ("DPW") Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2; and

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

WHEREAS, On April 21, 2009, the SFMTA Board approved Resolution No. 09-061 to issue a bid call for DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2; and,

WHEREAS, The City advertised for bids for DPW Contract No. 1577J and received four bids which were opened publicly on June 3, 2009; and,

WHEREAS, DPW has determined that Bay Area Lightworks, Inc., is the lowest responsive and responsible bidder, with a bid of \$132,680; and,

WHEREAS, The Contract Compliance Officer from the Human Rights Commission has confirmed that Bay Area Lightworks, Inc., will meet the Local Business Enterprise (LBE) subcontracting participation goal of 20% established for this contract; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Department of Public Works to award DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2 to Bay Area Lightworks, Inc., 1300 Van Dyke Avenue, Suite B, San Francisco, for a total contract amount not to exceed \$132,680.

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

### DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2 Project Budget and Financial Plan

#### PROJECT BUDGET

<b>Category</b>	<b>Budget Amount</b>
DPT Traffic Engineering & DPW Bureau of Engineering (Design, Planning Coordination, & Detailed Design)	\$161,500
<b>SUBTOTAL (DESIGN PHASE)</b>	<b>\$161,500</b>
Detailed Engineering Estimate for Construction Contract Cost and 10% Construction Cost Contingency and DPW Bureau of Construction Management (BCM) & Bureau of Engineering (BOE) (Public Affairs, Materials Testing Lab, Wage Check & Construction Inspection)	\$235,995
APS Equipment Purchase	\$296,991
DPT Traffic Engineering & SFMTA Planning (Construction Support)	\$45,014
APS Equipment Installation by DPT Signal Shop (Post Contract Work)	\$152,000
Post Installation Adjustment by DPT Signal Shop	\$45,000
<b>SUBTOTAL (CONSTRUCTION PHASE)</b>	<b>\$775,000</b>
<b>TOTAL (DESIGN AND CONSTRUCTION PHASES)</b>	<b>\$936,500</b>

#### FINANCIAL PLAN

<b>Funding Source</b>	<b>Amount</b>	<b>Percentage</b>
Local Half Cent Sales Tax - Proposition K	\$936,500	100%
<b>TOTAL</b>	<b>\$936,500</b>	<b>100%</b>

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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Transportation Planning and Development

**BRIEF DESCRIPTION:**

Requesting authorization for the Executive Director/CEO to execute the First Modification to San Francisco Municipal Transportation Agency Contract No. 1223, Job Order Contract, with Yerba Buena Engineering and Construction, Inc., to exercise the option of increasing the contract amount by an additional \$1,500,000 for a total Contract amount of \$4,500,000, with no increase in time, to perform additional work related to infrastructure and facility enhancement and maintenance.

**SUMMARY:**

- On August 5, 2008, the San Francisco Municipal Transportation Agency Board adopted Resolution No. 08-134, which authorized the award of Contract No. 1223 to Yerba Buena Engineering and Construction, Inc., at a cost not to exceed \$3,000,000, with an option to increase the contract amount by up to 50 percent of the original contract amount, and for a term not to exceed three years.
- Contract No. 1223 is an indefinite-quantity contract with a predetermined set of bid items that are assigned on an as-needed task order basis as needed for the performance of maintenance, repair and minor construction projects.
- This First Modification is the exercising of the option to increase the contract amount by \$1,500,000 to perform work related to infrastructure and facility enhancement and maintenance.
- Federal, state and local sources will provide funding for the services on an “as-needed,” project-by-project basis.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract Modification No. 1

**APPROVALS:**

**DATE**

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

FINANCE \_\_\_\_\_

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

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO Gigi Pabros

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

## **PAGE 2.**

### **PURPOSE**

Ever since the Job Order Contract No. 1223 was awarded, SFMTA has been able to make use of the contract to expedite the upgrade and repair of various facilities in the city. SFMTA has identified infrastructure/facility enhancement and maintenance needs that will exceed the current \$3,000,000 contract amount. This first modification would increase the contract by an additional \$1,500,000 to accommodate these pressing needs.

### **GOAL**

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

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

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

Objective 1.5 – Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

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

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

### **DESCRIPTION**

On August 5, 2008, the San Francisco Municipal Transportation Agency Board adopted Resolution No. 08-134, which authorized the award of the Job Order Contract (JOC), Contract No. 1223, to Yerba Buena Engineering and Construction, Inc., at a cost not to exceed \$3,000,000, with an option to increase the contract amount by up to 50 percent of the original contract amount, and for a term not to exceed three years.

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

Job Order Contracting utilizes a Unit Price Book (Construction Task Catalog) containing at least 60,000 to 100,000 unit prices covering material, equipment and labor costs for various units of construction, adjusted to current conditions.

The contractor is asked to perform a series of projects on an as-needed basis. When a project is identified, a joint scoping meeting is held between the SFMTA staff and the contractor to define the scope and calculate the quantities of work to be used. The price for each project is the quantity multiplied by the pre-set unit prices and multiplied by the competitively bid adjustment factor. A task order is then issued for each project.



## **PAGE 3.**

To date, SFMTA's contractor for Contract No. 1223 has performed the following tasks: carrying out limited upgrades to the Overhead Catenary System at various locations and finalizing minor modifications to facilities at the Keith Substation, 4<sup>th</sup> and King, and the Potrero facility. SFMTA has identified additional infrastructure and facility enhancement and maintenance projects, including projects funded by the American Recovery and Reinvestment Act of 2009 (ARRA), that will exceed the current \$3,000,000 contract amount.

Specifically, SFMTA anticipates to implement the following improvements and replacements very soon, including but not limited to, replacing Automatic Train Control (ATCS) loop cables throughout the tunnel system; replacing outdated light fixtures in the Motive Power Main Control Room, repairing or replacing certain elements throughout various facilities such as HVAC system, roll up doors, roofing system, site perimeter fencings, etc. SFMTA will distribute the task orders for this work to its JOC contractors.

The SFMTA has recently received an allocation of funding from the Federal Transit Administration (FTA) under ARRA, which must be obligated within a relatively short period of time. Part of this funding is designated for projects involved with infrastructure and facility enhancement and maintenance. A Job Order Contract is an ideal vehicle for implementing these projects.

This first modification will exercise the contract option to increase the contract amount by \$1,500,000 to allow the contractor to perform additional work related to infrastructure and facilities enhancement and maintenance.

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

## **ALTERNATIVES CONSIDERED**

Two alternatives were considered. One was to let out a separate contract of \$1,500,000 to implement the additional work described above. The main disadvantage is the extra time involved to create a bid package and in going through a drawn-out bid and award process. Meanwhile the facility requiring repair and maintenance would suffer further deterioration which in turn will affect operations. The other alternative considered is to perform these repair and maintenance work with in-house forces. But with the current limited staff resources and with the work being valued over the amount allowed to be performed in-house, this latter alternative also proved infeasible.

Given the tight time frame to implement projects funded by ARRA, staff believes exercising the option of increasing the current JOC contract amount up to an additional \$1,500,000 is the best approach.

## **FUNDING IMPACT**

This modification is funded by federal, state and local sources through existing projects on an as-needed basis. Part of the federal funding comes under the American Recovery and Reinvestment Act of 2009.

**PAGE 4.**

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

Other approvals are not required.

**RECOMMENDATION**

Staff recommends that the Board of Directors authorizes the Executive Director/CEO to execute the First Modification to Contract No. 1223, Job Order Contract, with Yerba Buena Engineering and Construction, Inc., to exercise the option of increasing the contract amount by an additional \$1,500,000 for a total contract amount of \$4,500,000, with no increase in time, to perform additional work related to infrastructure and facility enhancement and maintenance.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, On August 5, 2008, the San Francisco Municipal Transportation Agency Board adopted Resolution No. 08-134, which authorized the award of Job Order Contract (JOC), Contract No. 1223, to Yerba Buena Engineering and Construction, Inc., at a cost not to exceed \$3,000,000, with an option to increase the contract amount by up to 50 percent of the original contract amount, and for a term not to exceed three years; and,

WHEREAS, SFMTA has identified additional infrastructure and facility enhancement and maintenance projects that will exceed the current \$3,000,000 contract amount; and,

WHEREAS, SFMTA has recently received an allocation of funding from the Federal Transit Administration under the American Recovery and Reinvestment Act of 2009 that allows the Agency to implement projects identified within the scope of Contract No. 1223; and,

WHEREAS, Time is of essence to implement the infrastructure and facility enhancement and maintenance projects and to expend the ARRA funding; and,

WHEREAS, SFMTA Contract No. 1223, Job Order Contract, will assist SFMTA in meeting the objectives of Strategic Plan Goal No. 1 (Customer Focus) – to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; and Goal No. 2 (System Performance) – to get customers where they want to go, when they want to be there; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute the Modification No. 1 to Contract No. 1223, Job Order Contract, with Yerba Buena Engineering and Construction, Inc., to exercise the option of increasing the contract amount by an additional \$1,500,000 for a total contract amount of \$4,500,000, with no increase in time, to perform additional work related to infrastructure and facility enhancement and maintenance.

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

## **CONTRACT MODIFICATION NO. 1**

### **San Francisco Municipal Transportation Agency Contract No. 1223 Job Order Contract**

Contractor: Yerba Buena Engineering and Construction, Inc.  
1340 Egbert Avenue  
San Francisco, CA 94124

The Contract is modified as follows:

1. Section 20.C of the General Provisions of the Contract is amended to read as follows:
  - C. Minimum and Maximum Contract Values

The Contractor is guaranteed to receive Task Orders totaling at least the Minimum Contract Value of Fifty Thousand Dollars (\$50,000) issued during the base period of the Contract.

The Contractor may be issued Task Orders totaling up to the Maximum Contract Value of Four Million, Five Hundred Thousand Dollars (\$4,500,000) during the term of the Contract. The Contractor is not guaranteed to receive this volume of Task Orders. The City has no obligation to issue Task Orders in excess of the Minimum Contract Value.

2. Section XX is added to the Federal Transit Administration (FTA) Requirements – Construction Contracts to read as follows:

A. ARRA Project Reporting Requirement:

Each ARRA project will require periodic reporting on jobs created and sustained as a result of the Project. Accordingly, the SFMTA will be requiring certain reporting from contractors in order to supply the requested information to the federal government. The SFMTA will use guidelines formulated by the federal government for such reporting.

The SFMTA is also required to provide information to the Transit & Infrastructure (T&I) Committee of the House of Representatives. Contractor shall provide the SFMTA with information regarding the following for the T&I Committee in a format to be provided by the SFMTA:

- Number of direct, on project jobs created or sustained by ARRA Funds
- Total job hours created or sustained by ARRA Funds
- Total payroll of job hours created or sustained by ARRA Funds



**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Transportation Planning and Development

**BRIEF DESCRIPTION:**

Requesting authorization for the Executive Director/CEO to execute the First Amendment to San Francisco Municipal Transportation Agency Contract No. CS-144, Implementation of a Job Order Contract Program, with The Gordian Group, Inc., to increase the contract amount by \$150,000, for a total contract amount not to exceed \$450,000, with no increase in time.

**SUMMARY:**

- On November 7, 2006, the San Francisco Municipal Transportation Agency Board adopted Resolution No. 06-139, which authorized the Executive Director/CEO to negotiate and execute a professional services agreement, Contract No. CS-144, Implementation of a Job Order Contracting Program, with The Gordian Group, Inc., for an amount not to exceed \$300,000, and with a duration of three years, with two one-year options, to assist SFMTA in the administration, implementation and monitoring of Job Order Contracts.
- On August 5, 2008, the San Francisco Municipal Transportation Agency Board adopted Resolution No. 08-133 and Resolution No. 08-134, which authorized the award of two Job Order Contracts, Contract No. 1222 to Power Engineering Contractors, Inc. and Contract No. 1223 to Yerba Buena Engineering and Construction, Inc., each at a cost not to exceed \$3,000,000, each with an option to increase the contract amount by up to 50 percent of the original contract amount, and for a term not to exceed three years.
- SFMTA has identified additional construction projects warranting the exercising of the option of increasing the contract amount of each of the Job Order Contracts.
- This Amendment No. 1 will increase the corresponding scope of support services required of The Gordian Group, Inc. and increase its contract amount by \$150,000.
- Federal, state and local sources will provide funding for the services on an “as-needed” basis.

**ENCLOSURES:**

1. SFMTAB Resolution
2. First Amendment to Contract CS-144

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION PREPARING ITEM _____	_____
FINANCE _____	_____
EXECUTIVE DIRECTOR/CEO _____	_____
SECRETARY _____	_____

ADOPTED RESOLUTION  
BE RETURNED TO Gigi Pabros

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

## **PAGE 2.**

### **PURPOSE**

SFMTA has identified additional infrastructure/facility enhancement and maintenance needs that would increase the scope of work under its Job Order Contracts. This Amendment No. 1 will increase the corresponding scope of support services required of The Gordian Group, Inc. under Contract No. CS-144, Implementation of a Job Order Contracting Program, and increase that contract amount by \$150,000.

### **GOAL**

This Amendment to SFMTA Contract No. CS-144 would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

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

Objective 1.5 – Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

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

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

### **DESCRIPTION**

On November 7, 2006, the San Francisco Municipal Transportation Agency (SFMTA) Board adopted Resolution No. 06-139, which authorized the Executive Director/CEO to negotiate Contract No. CS-144 with The Gordian Group, Inc., for an amount not to exceed \$300,000, and with a duration of three years, with two one-year options, to assist SFMTA in the administration, implementation and monitoring of Job Order Contracts (JOC).

On August 5, 2008, the SFMTA Board adopted Resolution No. 08-133 and Resolution No. 08-134, which authorized the award of two JOC contracts: Contract No. 1222 to Power Engineering Contractors, Inc., and Contract No. 1223 to Yerba Buena Engineering and Construction, Inc., each at a cost not to exceed \$3,000,000, with an option to increase the contract amount by up to 50 percent of the original contract amount, and for a term not to exceed three years.

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

### **PAGE 3.**

Job Order Contracting utilizes a Unit Price Book (Construction Task Catalog) containing at least 60,000 to 100,000 unit prices covering material, equipment and labor costs for various units of construction, adjusted to current conditions.

The contractor is asked to perform a series of projects on an as-needed basis. When a project is identified, a joint scoping meeting is held between the SFMTA staff and the contractor to define the scope and calculate the quantities of work to be used. The price for each project will be the quantity multiplied by the pre-set unit prices and multiplied by the competitively bid adjustment factor. A task order is then issued for each project.

The SFMTA requires the services of a consultant to assist SFMTA in the administration, implementation and monitoring of the Job Order Contracts.

The Gordian Group pioneered the development of the JOC system and remains the premier source to aid in the implementation of the JOC system. The Gordian Group has also provided JOC services for the Department of Public Works.

The scope of services under Contract No. CS-144 with The Gordian Group includes the following:

- Prepare and update a Unit Price Book containing at least 60,000 to 100,000 unit prices covering material, equipment and labor costs for various units of construction;
- Provide procurement support, execution procedures and Windows compatible software to manage the contracts for construction;
- Provide continual training to City staff on implementation of the JOC system;
- Conduct outreach to maximize contractor participation in bidding;
- Conduct/attend orientation meetings, program review conferences, and program briefings as needed.

As SFMTA has identified an increase in the scope of work under its JOC contracts partly due to the infusion of funds under the American Recovery and Reinvestment Act of 2009. SFMTA assessed it will also require an increase of support from The Gordian Group.

Amendment No. 1 would increase the current contract amount of \$300,000 by \$150,000, for a total contract amount not to exceed \$450,000, with no extension in time.

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

### **ALTERNATIVES CONSIDERED**

The Gordian Group was the only source available to SFMTA for implementation of its JOC program. SFMTA is currently using Gordian Group's software system and pricing books for management of projects under JOC. For continuity, the support services required of JOC will need to be continued to be provided under Contract CS-144.

### **PAGE 4.**



## **FUNDING IMPACT**

This Amendment No.1 is funded by Federal, state and local sources through existing projects on an as-needed basis. Part of the Federal funding comes under the American Recovery and Reinvestment Act of 2009.

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

Civil Service Commission approval is required.

## **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors authorizes the Executive Director/CEO to execute the First Amendment to San Francisco Municipal Transportation Agency Contract No. CS-144, Implementation of a Job Contracting Program, with The Gordian Group, Inc., to increase the contract amount by \$150,000, for a total contract amount not to exceed \$450,000, with no increase in time.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, On November 7, 2006, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No. 06-139, which authorized the Executive Director/CEO to negotiate and execute a professional services agreement, Contract No. CS-144, Implementation of Job Order Contracting Program, with The Gordian Group, Inc., for an amount not to exceed \$300,000, and with a duration of three years, with two one-year options; and,

WHEREAS, On August 5, 2008, the SFMTA Board adopted Resolution No. 08-133 and Resolution No. 08-134, which authorized the award of two Job Order Contracts, Contract No. 1222 to Power Engineering Contractors, Inc. and Contract No. 1223 to Yerba Buena Engineering and Construction, Inc., each at a cost not to exceed \$3,000,000, with an option to increase the contract amount by up to 50 percent of the original contract amount, and for a term not to exceed three years; and,

WHEREAS, SFMTA has identified additional infrastructure and facility enhancement and maintenance projects that would increase the scope of work under its Job Order Contracts; and,

WHEREAS, SFMTA has assessed it will also require an increase in the scope of services rendered under the professional support services contract, Contract CS-144, with The Gordian Group, Inc.; and,

WHEREAS, Funding for this Amendment is programmed from state, local and federal funds, including the American Recovery and Reinvestment Act of 2009; and,

WHEREAS, SFMTA Contract No. CS-144 will assist SFMTA in meeting the objectives of Strategic Plan Goal No. 1 (Customer Focus) – to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; and Goal No. 2 (System Performance) – to get customers where they want to go, when they want to be there; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute the First Amendment to San Francisco Municipal Transportation Agency Contract No. CS-144, Implementation of a Job Order Contracting Program, with The Gordian Group, Inc., to increase the contract amount by \$150,000 for a total contract amount not to exceed \$450,000, with no increase in time, subject to Civil Service Commission 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

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

**AMENDMENT NO. 1 TO CONTRACT NO. CS-144**

**BETWEEN**

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

**AND**

**THE GORDIAN GROUP, INC.**

**FOR**

**IMPLEMENTATION OF A JOB ORDER CONTRACTING PROGRAM**

This Amendment No. 1 to Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, in the City and County of San Francisco, State of California, by and between the City and County of San Francisco, a municipal corporation, acting by and through its San Francisco Municipal Transportation Agency ("SFMTA" or "City"), and The Gordian Group, Inc. ("Consultant").

**RECITALS**

A. On November 7, 2006, the SFMTA Board of Directors adopted Resolution No. 06-139, which authorized the Executive Director/CEO to negotiate and execute a professional services agreement, Contract No. CS-144, Implementation of a Job Order Contracting Program, with The Gordian Group, Inc., for an amount not to exceed \$300,000, and with a duration of three years, with two one-year options.

B. On August 5, 2008, the SFMTA Board adopted Resolution No. 08-133 and Resolution No. 08-134, which authorized the award of two Job Order Contracts, Contract No. 1222 to Power Engineering Contractors, Inc. and Contract No. 1223 to Yerba Buena Engineering and Construction, Inc., each at a cost not to exceed \$3,000,000, with an option to increase the contract amount by up to 50 percent of the original contract amount, and for a term not to exceed three years.

C. SFMTA has identified additional infrastructure and facility enhancement and maintenance projects that would increase the scope of work under each of the Job Order Contracts by 50 percent.

D. SFMTA has assessed it will also require an increase of 50 percent in the scope of services rendered under the professional support services contract, Contract CS-144, with Consultant and a corresponding increase in contract amount by \$150,000, for a total contract amount not to exceed \$450,000.

NOW, THEREFORE, It is mutually understood and agreed that this Agreement is amended as expressly set forth below, and that all the terms and conditions of this Agreement, as amended, shall remain in full force and effect:

A. Section 5 of the Agreement (“Compensation”) is amended to read as follows:

**5. Compensation.**

The Contractor agrees to perform the services specified in Appendix A for the JOC System License Fees in Appendix B, Calculation of Charges. Compensation shall be paid within thirty (30) days after receipt of an invoice from the Contractor representing its percentage of each Task Order issued to a JOC construction contractor, as describe in Appendix B. In no event shall the compensation amount of this Agreement exceed Four Hundred Fifty Thousand Dollars (\$450,000).

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 the Contractor has failed or refused to satisfy any material obligation provided under this Agreement.

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

B. Section 63 is added to the Agreement to read as follows:

**63. ARRA Requirements.**

SFMTA expects to receive funds for this contract through the American Recovery and Reinvestment Act (ARRA). In order to comply with ARRA, SFMTA must adhere to reporting requirements, some of which have been specified by the federal government and some of which are still under development.

Consultant agrees to support SFMTA and require its subconsultants, as applicable, to support SFMTA by complying with ARRA reporting requirements, including, but not limited to, reporting on the following:

- a. Number of direct, on project jobs created or maintained by ARRA Funds
- b. Total job hours created or sustained by ARRA Funds
- c. Total payroll of job hours created or sustained by ARRA Funds

SFMTA will provide Consultant with additional ARRA reporting requirements as they become available.

IN WITNESS WHEREOF, the parties have executed Amendment No. 1 to the Agreement as of the day and year first written above.

<b>CITY AND COUNTY OF SAN FRANCISCO</b>	<b>THE GORDIAN GROUP, INC.</b>
<p>By: _____ Nathaniel P. Ford, Sr. Executive Director/CEO San Francisco Municipal Transportation Agency</p> <p>APPROVED AS TO FORM: DENNIS J. HERRERA, City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p> <p>San Francisco Municipal Transportation Agency Board of Directors Resolution No. _____ Adopted: _____ Attest:</p>	<p>By: _____ David Mahler Vice President of Finance The Gordian Group, Inc. 140 Bridges Rd., Suite E Mauldin, SC 29662</p> <p>Fed. Emp. ID No. 58-1900371 City Vendor No. 53805</p>
Secretary, SFMTA Board of Directors	

**THIS PRINT COVERS CALENDAR ITEM NO. : 11**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Taxis and Accessible Services

**BRIEF DESCRIPTION:**

The Board of Directors is requested to establish a policy regarding temporary suspension or temporary reduction of the Full-Time Driving requirement for medallion holders who request a modification of the requirement for reasons of temporary physical incapacity.

**SUMMARY:**

- In 2002, the former Taxi Commission (1) approved guidelines for processing requests under the ADA for modification of a taxi medallion permit requirement, and (2) confirmed the full-time driving requirement to be an “essential eligibility requirement” for a medallion for purposes of the Americans with Disabilities Act (ADA).
- In 2003, San Francisco voters rejected Proposition N, a ballot measure which would have prohibited the City from revoking a taxi medallion if the medallion holder is unable, because of a disability, to meet the full-time driving requirement.
- In 2006, the former Taxi Commission adopted a program “for disabled medallion-holders who are otherwise qualified to hold taxicab permits” which allowed either a one-year full exemption for catastrophic illness, or a three-year partial waiver for other physical problems that affect the ability to drive.
- The Division of Taxis and Accessible Services inherited pending requests for full-time driving modifications from medallion holders and would like the SFMTA Board of Director’s guidance on the SFMTA’s policy for processing those requests.

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

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

FINANCE \_\_\_\_\_

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

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO Chris Hayashi

**ASSIGNED SFMTAB CALENDAR DATE:** August 4, 2009

## **PAGE 2.**

### **PURPOSE<sup>1</sup>**

This item is presented to the Board in order to establish a uniform policy regarding temporary suspension or temporary reduction of the Full-Time Driving requirement for Medallion Holders who are temporarily unable to drive due to illness or injury.

### **GOAL**

This item addresses the following Goals of the SFMTA Strategic Plan:

#### Goal 1: Customer Focus:

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

Objectives:

Objective 1.1 - Improve safety and security across all modes of transportation

Allowing Medallion Holders to temporarily suspend the Full-Time Driving requirement during periods of illness or recovery from injury will improve public health and safety by preventing ill and injured Medallion Holders from feeling compelled to drive in spite of physical limitations.

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

Recognizing the need for temporary leave from full time professional responsibilities in the event of illness or injury would improve working conditions for Medallion Holders. Further, not allowing permanent, indefinite waivers of the driving requirement promotes a sense of equity and mutual respect among Medallion Holders.

### **DESCRIPTION**

When a Taxi Medallion is issued, the Medallion Holder is required to be a Full-Time Driver. "Full-Time Driving" means that a Medallion Holder must drive at least 800 hours, or 156 four-hour shifts, in every calendar year.

At its meeting of February 26, 2002, the former Taxi Commission adopted Resolution 2002-14, approving guidelines for processing a request under the Americans with Disabilities Act (ADA) for a modification of a permit requirement. The Taxi Commission's guidelines stated that the

### **PAGE 3.**

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<sup>1</sup> Capitalized terms in this report are defined in Transportation Code Division II, Article 1100.

ADA does not require a Medallion Holder to be exempted from an essential eligibility requirement for the permit (driving), nor does it require a modification of a permit condition if doing so would fundamentally alter the nature of the permit program.

On October 8, 2002, the Commission's Resolution No. 2002-93 confirmed that the Full-Time Driving requirement of Sections 2 and 3 of Proposition K is an "essential eligibility requirement" for a Medallion for purposes of the ADA. This means the ADA does not require the Full-Time Driving requirement to be waived or substantially altered to accommodate a person with disabilities, because the driving requirement is inherently necessary to the City's taxi permit program.

In November 2003, the voters of San Francisco rejected Proposition N, which would have prohibited the City from revoking a Taxi Medallion if the Medallion Holder is unable, because of a disability, to meet the full-time driving requirement. The voters rejected this ballot measure by an overwhelming margin of 72% to 28%.

On February 28, 2006, the Commission adopted Resolution 2006-28, establishing a new policy "for disabled medallion-holders who are otherwise qualified to hold taxicab permits." That policy consisted of three tenets:

1. A 120-day maximum leave per year from the driving requirement with a three consecutive year cap (annual renewal upon review and approval).
2. Up to a full year exemption from the driving requirement once per five years for treatment of a catastrophic recoverable illness.
3. The applicant shall submit medical documentation and be available for review by the San Francisco Department of Public Health upon application and renewal.

In June, 2007, the Taxi Commission was sued in a class action lawsuit by certain named Medallion Holders who claimed that the ADA entitles them to a permanent or indefinite waiver of the Full-Time Driving requirement due to permanent disabilities that prevent them from driving full-time. This lawsuit was resolved in the City's favor in the trial court, and the Medallion Holders' appeal is currently pending before the federal court of appeals.<sup>2</sup>

When in March 2009, the Taxi Commission merged with the SFMTA there were a number of

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<sup>2</sup> This revision is not proposed in response to the lawsuit, and it is not expected that the revision will resolve the lawsuit. The lawsuit's central contention is that the ADA entitles disabled medallion holders to a *permanent* or *indefinite* waiver of the Full-Time Driving requirement. Both the existing policy and the proposed revision reject this notion (as did the trial court in the lawsuit). We therefore presume that the plaintiffs and their lawyers will be equally dissatisfied with the proposed revision, because it deals only with temporary suspensions of the Full-Time Driving requirement, for people with temporary illness or injury, and does nothing to change the City's position in the lawsuit that the ADA does not entitle individuals to hold on to their medallions for the rest of their lives even if they will never drive again.



**PAGE 4.**

applications pending with Taxi Commission staff for waivers or suspension of the driving requirement pursuant to the Taxi Commission's policy. Rather than continue processing those applications pursuant to policies adopted by the former Taxi Commission, staff prepared this item to seek the Board's guidance on the goals and policies of the SFMTA in waiving or suspending driving requirements for Medallion Holders.

Staff recommends that a new policy be adopted because of ambiguities in the prior policy. For example, the Taxi Commission policy allows up to a one-year leave to recover from a "catastrophic illness," but the policy on its face would not allow the same amount of leave for recovery from a broken bone. The policy should also not be cast in terms of the ADA, which does not apply because of the fact that Full-Time Driving is an essential eligibility requirement for the permit.<sup>3</sup> Accordingly, staff has drafted a proposed revision to the policy.

Staff recommends a leave policy that allows for temporary suspension or temporary reduction of the Full-Time Driving requirement due to any bona fide physical incapacity that prevents driving, determined in accordance with demonstrated medical need.

Note that neither the policy offered through this item nor the former Taxi Commission's adopted policies applies to Drivers who are on the Waiting List trying to qualify for a Medallion. The Taxi Commission did not give any waiver or suspension of the driving requirements to qualify for receipt of a Medallion.

The City Attorney has reviewed this report.

**ALTERNATIVES CONSIDERED**

The Board could decline to adopt a leave policy, and the former Taxi Commission's policy would remain in place. Staff does not recommend this alternative, as the former Taxi Commission's policy as currently drafted creates certain problems of interpretation, as described above.

At a future meeting, the Board could also act to rescind the former Taxi Commission's policy and have no temporary leave policy in place. Medallion Holders would then have to find a way to make up their driving requirement during periods when their health permits.

At a future meeting, the Board could also adopt a temporary leave policy that differs from the policy offered for its consideration with this report.

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<sup>3</sup> This policy does not address requests for a modification of a permit requirement that would enable a Medallion Holder to actually *fulfill* the Full-Time Driving requirement, such as a request for special equipment in the vehicle, or an exemption from luggage loading or night-time driving requirements. The ADA would apply to such requests. By contrast, this policy concerns only those Medallion Holders who simply cannot meet the Full-Time Driving requirement, with or without a modification of any kind.

**PAGE 5.**

**FUNDING IMPACT**

There would be no funding impact to the agency resulting from the adoption or failure to adopt this policy.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

None.

**RECOMMENDATION**

Staff recommends that the Board of Directors adopt the proposed policy regarding temporary suspension or temporary reduction of the Full-Time Driving requirement for Taxi Medallion Holders who are temporarily unable to drive due to illness or injury.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, Administrative Code Appendix 6, Sections 2 and 3, and Transportation Code, Division II, Section 1109(c) require all taxi and ramp taxi medallion holders to be Full-Time Drivers; and

WHEREAS, The terms “Full-Time Driving” and “Full-Time Driver” are defined in Transportation Code, Division II, Section 1102(l) as any driver actually engaged in, or the activity comprised of (respectively) the mechanical operation and physical charge and custody of a taxi or ramp taxi which is available for hire or actually hired for at least 156 four-hour shifts or 800 hours, whichever shall come first; and,

WHEREAS, Pursuant to Transportation Code Division II, Section 1120(a)(1), failure to meet the Full-Time Driving requirement is grounds for revocation of a taxi or ramp taxi medallion; and

WHEREAS, A medallion holder should be relieved of the Full-Time Driving requirement for limited periods of time during which the medallion holder is temporarily rendered physically incapable of driving; and,

WHEREAS, By contrast, a medallion holder who is permanently physically incapable of meeting the Full-Time Driving requirement and will not be able to return to Full-Time Driving should not be entitled to such relief, and may properly be required to relinquish his or her medallion to the SFMTA; and,

WHEREAS, The SFMTA Board wishes to adopt a policy to be uniformly applied to medallion holders who request a temporary suspension or temporary reduction of the Full-Time Driving requirement for reasons of temporary physical incapacity; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors establishes the following policy for medallion holders who request temporary suspension or temporary reduction of the Full-Time Driving requirement for reasons of temporary physical incapacity:

1. That applications for temporary suspension or temporary reduction of the Full-Time Driving requirement be submitted to the SFMTA Division of Taxis and Accessible Services on a form approved by and containing all information required by the SFMTA; and
2. That all requests for temporary suspension or temporary reduction of the Full-Time Driving requirement be substantiated by written documentation of a physician who has actually examined the applicant for the condition that is claimed as the basis for the request; and
3. That documentation of the physical condition that prevents Full-Time Driving that is prepared by the physician shall include a recommended modification, such as a limitation of

number of hours of driving per day, week or month and/or an assessment of the amount of time that it would take the medallion holder to recover from the condition and resume Full-Time Driving; and

4. That any request is subject to investigation by SFMTA staff for verification purposes, which may include but are not limited to a physical assessment of the medallion holder or seeking additional medical opinions of the medallion holder's condition; and

5. That any temporary suspension or reduction of the Full-Time Driving requirement for physical incapacity must be requested and approved on an annual basis; and

6. That no suspensions or reductions of the Full-Time Driving requirement pursuant to this temporary leave policy may cumulatively exceed three calendar years for the same condition.

I 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. 12**

**SAN FRANCISCO  
PARKING AUTHORITY COMMISSION**

**DIVISION:** Off-Street Parking

**BRIEF DESCRIPTION:**

Approving postponement of the environmental assessment for the proposed expansion of the Performing Arts Garage until the economic environment and the parking demand in the Civic Center – Hayes Valley area improve significantly.

**SUMMARY:**

- The Performing Arts and Civic Center garages provide parking for the employees and visitors to the Civic Center – Hayes Valley area.
- The Opera, Symphony, Ballet, and War Memorial (“the Performing Arts Group”) are concerned that the future development in the Civic Center – Hayes Valley neighborhood will result in a shortage of parking for their patrons and employees. The Performing Arts Group's labor contracts require that they provide free parking to their employees.
- In 2007, Walker Parking Consultants conducted a feasibility study and issued a report that analyzed parking supply and demand in the Civic Center area. The consultants considered alternatives to increase parking supply, including expansion of the Performing Arts Garage and greater use of the Civic Center Garage, and provided construction and bond financing cost estimates.
- The Civic Center and Performing Arts garages experience low occupancies with over 450 vacant spaces during most weekdays and over 550 vacant spaces during most evenings. Moreover, the new parking garage at the Hasting College of Law added 385 additional spaces.
- The expansion of the Performing Arts Garage would create a serious financial burden and may not comport with the City’s Transit First policy.

**ENCLOSURES:**

1. SFPAC Resolution
2. Attachment A – Area Map
3. Attachment B – Letter from SF Opera, SF Ballet and SF Symphony

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE

\_\_\_\_\_

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EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

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ADOPTED RESOLUTION  
BE RETURNED TO:

\_\_\_\_\_ Amit M. Kothari \_\_\_\_\_

**ASSIGNED SFPAC CALENDAR DATE:** \_\_\_\_\_

## **PAGE 2.**

### **PURPOSE**

The purpose of this report is to provide a comprehensive overview of the parking needs in the Civic Center – Hayes Valley area, and to request postponement of the environmental assessment of the proposed expansion of the Performing Arts Garage.

### **GOAL**

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

- Goal 2: System Performance – To get customers where they want to go, when they want to be there  
Objective 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  
Objective 3.1: Improve economic vitality by growing relationships with businesses, community, and stakeholder groups
  
- 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

### **BACKGROUND**

The Civic Center – Hayes Valley neighborhood attracts visitors to government offices, art and entertainment venues, businesses and restaurants. In addition to many private parking garages and lots, the Performing Arts Garage and the Civic Center Garage accommodate the parking needs of employees and visitors to these destinations.

Performing Arts Garage – The Parking Authority owns the Performing Arts Garage. The revenues of the garage are dedicated to public transit purposes under policies set out in the City Charter. (See discussion of Charter and Proposition A, below.) The garage is located at the corner of Grove and Gough streets, and provides 600 spaces. The SFMTA manages the garage through a management agreement with a private operator. Primary users of the garage include visitors to Hayes Valley merchants; government buildings; attendees of Symphony, Ballet, Opera, and War Memorial events; and government and art institutions' employees. Occupancy rates at the garage have declined over the last couple of years. On most days, more than 325 spaces are vacant, except on very few evenings when concurrent multiple events at the performing arts venues fill the garage to 85-95 percent of its capacity, which leaves approximately 30-90 spaces unoccupied.

Civic Center Garage – The Recreation and Parks Department owns the Civic Center Garage and receives the net revenues. The garage is located under the Civic Center Plaza with access from McAllister and Larkin Streets. The SFMTA administers the garage and contracts with a private operator to manage the facility. The garage provides 850 spaces. Primary users include employees and visitors to the Civic Center and government offices. The garage occupancies have declined over the last couple of years. Peak occupancies during the day are approximately 75-85 percent, which leaves 125-200 spaces unoccupied. Evening occupancies average 30-40 percent, which leaves 525-600 spaces unoccupied.

Chronology

About five years ago, representatives from the Performing Arts Group expressed concern regarding the possibility of a parking shortage when the Market-Octavia Plan is fully implemented and the former Central Freeway lots are developed. A brief chronology is as follows:

- May 2004 As requested by the Performing Arts Group, the SFPAC approved hiring a consultant to conduct a feasibility study to assess parking needs in the Civic Center area and to evaluate the potential expansion of the Performing Arts Garage. The SFPAC also approved acceptance of a \$50,000 contribution from the Performing Arts Group toward the \$120,000 cost of the study.
  
- June 2005 SFPAC approved a contract with Walker Parking Consultants to conduct the feasibility study for a contract amount not to exceed \$120,000.
  
- June 2007 Findings of the study (Walker Report) were presented to the SFPAC, which then:
  - Authorized the Director of the Parking Authority to submit an application to the City Planning Department for an environmental impact assessment; either a negative declaration or an environmental impact report (EIR) for the potential build-out of the garage.
  - Directed the Director of the Parking Authority to prepare bid documents for the selection of a consultant to perform the work associated with the requirements of the environmental impact assessment for the potential build-out of the garage.

**DISCUSSION**

In the last year, the Performing Arts Group have met regularly with SFMTA staff to discuss current and anticipated parking needs. The Performing Arts Group shared valuable information about event calendars, attendance and employee union agreements. The SFMTA provided information to the Performing Arts Group as to occupancies at the Performing Arts and Civic Center garages and developed several short-term and long-term solutions to address the anticipated parking demand. As a result, staff recognizes that the Performing Arts Group has two major concerns – parking supply and parking fees. This calendar item primarily focuses on the matter of parking supply.

**A. Employee Parking**

Members of the Performing Arts Group employ over 500 full-time and over 800 part-time and seasonal workers. Many commute on public transit. Those employees who drive currently park mostly at lots located on land formerly occupied by the Central Freeway. Attachment A shows details of various lots and garages in the area, including lots leased by the Performing Arts Group for employee parking that provide a total of 270 spaces.

Concern

The Performing Arts Group is concerned that employees who park at these lots will be displaced due to development and the Market-Octavia Neighborhood Plan's restrictions on new parking supply, and thus will have no place to park. The Performing Arts Group believes that their employees' parking needs are unique for the following reasons and therefore expansion of the garage is justified:

- Public transit is not a viable commute option for employees who live in the Bay Area and have irregular hours.
- Employees often carry large or heavy instruments and require parking in close vicinity of their employment.
- Many employees and performers are young and long walks may not be safe or convenient.
- The Performing Arts Group has negotiated union agreements that require the provision of parking for certain employee classifications.

Analysis

Currently, these employees park at Lots F, G and J (Attachment A) which are subject to future development. Lot G may be developed in fall 2009, while Lots F and J will continue to be available for parking until sold by the City to developers.

Table 1 shows the current availability at the two City garages. As shown, the Performing Arts Garage currently has hundreds of vacant spaces and can accommodate the Performing Arts Group's employees immediately. The Civic Center Garage, which is a block away from the venues, has hundreds of empty spaces during the evening and can accommodate the employees, as well. There are several privately owned lots and garages within three blocks of the venues that have hundreds of vacant spaces. Additionally, the new parking garage for the Hasting College of the Law which began operations in July 2009, added an additional 385 spaces.

**Table 1**  
**Weekday Daytime Availability at Performing Arts and Civic Center Garages**

<b>DATE/DAY</b>	<b>PAG 10:00 AM</b>	<b>CCG 10:00 AM</b>	<b>PAG 1:00 PM</b>	<b>CCG 1:00 PM</b>	<b>PAG 4:00 PM</b>	<b>CCG 4:00 PM</b>
April 7, 2009 (Tuesday)	342	78	352	67	376	126
April 15, 2009 (Wednesday)	413	245	390	70	417	166
April 23, 2009 (Thursday)	373	203	227	196	190	246
<b>Average</b>	<b>376</b>	<b>175</b>	<b>323</b>	<b>111</b>	<b>328</b>	<b>179</b>

	<b>10:00 AM</b>	<b>1:00 PM</b>	<b>4:00 PM</b>
<b>Total Available Spaces</b>	<b>551</b>	<b>434</b>	<b>507</b>

PAG = Performing Arts Garage (Capacity = 600), CCG = Civic Center Garage (Capacity = 850)

Staff Recommendation

Accommodate employee parking at the Performing Arts Garage, and if necessary, at the Civic Center Garage, as parking becomes unavailable at the former Central Freeway lots. There is no anticipated shortage of available parking spaces for the next several years, even with the loss of Lots F, G, and J.



**B. Event Parking**

The Performing Arts Group and other arts and cultural venues in the area attract thousands of visitors annually. These visitors not only promote art in the region, but also support the local economy by injecting millions of dollars in sales tax and employment opportunities for thousands of employees. Safe and convenient parking for event attendees is therefore very important for the continued success of these institutions, and for the City to continue to benefit from them.

To ensure convenient parking for event attendees, the Performing Arts Garage offers special event parking for a flat fee of \$12, beginning at 6:00 p.m. The garage also accepts pre-paid parking vouchers issued by event venues. When the garage is at capacity, on-site staff provides customers with a map and directions to the Civic Center Garage, which has an average vacancy rate of more than 65 percent or approximately 550 available spaces on most evenings. With special rates, additional signage and higher staffing levels, the current parking needs of event attendees are largely met without complaint.

Concern

The Performing Arts Group is concerned that once the former Central Freeway lots are developed, the resulting loss of parking supply will impact the parking needs of the event attendees. They feel that the expansion of the Performing Arts Garage is necessary to assure future availability of ample parking for attendees.

Analysis

While the Performing Arts Group members have overlapping performance schedules, there are only a few evenings in any month when two or more performances are scheduled. A review of occupancies at the Performing Arts Garage indicates that an ample number of spaces are available during most evenings, irrespective of overlapping performance schedules. The garage only reaches 85-95 percent capacity when three performances are scheduled. Table 2 shows availability of spaces on recent evenings when three performances were scheduled.

**Tables 2**  
**Availability at Performing Arts and Civic Center Garages on Three-Performance Evenings**

<b>DATE/DAY</b>	<b>PAG 7:00 PM</b>	<b>CCG 7:00 PM</b>	<b>PAG 8:00 PM</b>	<b>CCG 8:00 PM</b>	<b>PAG 9:00 PM</b>	<b>CCG 9:00 PM</b>
March 20, 2009 (Friday)	244	605	46	532	42	535
March 21, 2009 (Saturday)	314	637	67	465	54	457
April 4, 2009 (Saturday)	238	598	4	463	-5	466
April 25, 2009 (Saturday)	326	668	77	518	70	494
<b>Average</b>	<b>281</b>	<b>627</b>	<b>49</b>	<b>495</b>	<b>40</b>	<b>488</b>

	<b>7:00 PM</b>	<b>8:00 PM</b>	<b>9:00 PM</b>
<b>Total Available Spaces</b>	<b>908</b>	<b>543</b>	<b>528</b>

PAG = Performing Arts Garage (Capacity = 600), CCG = Civic Center Garage (Capacity = 850)

A new 385-space public garage at the Hastings College of the Law, one block from the Civic Center Garage, began operations in July 2009. Staff anticipates that both daytime and evening occupancies at the Civic Center Garage will drop as a result thereby providing additional space for employees and arts event patrons.

Staff Recommendation

The Performing Arts Garage currently provides sufficient parking on almost all evenings throughout the year. On a very few evenings, when three major performances are scheduled, the garage reaches capacity around 8:00 p.m. Since the shortfall of parking spaces is insignificant, the following short-term solutions are recommended:

- Encourage use of the Civic Center Garage, where over 550 spaces are available in the evenings. To address the Performing Arts Group's concerns over safety, additional security personnel have been assigned to patrol the garage and the Civic Center Plaza on evenings with major performances. The lighting in the Civic Center Plaza area has been upgraded, and a proposed garage signage project will make it easier for the patrons to find the garage.
- Implement *valet-assist* operation on evenings when three or more performances are scheduled. A valet-assist operation could accommodate about 75 additional vehicles within the Performing Arts Garage without facility expansion.
- In the future, when parking demand exceeds supply, implement *curb-side valet* operation at each performing arts venue. This will allow valet parking at hundreds of empty spaces in nearby parking facilities.

These low-cost and highly effective solutions are currently being employed at several SFMTA facilities where parking demands exceed the capacity on a daily basis. These solutions are also being used at special event facilities across the nation.

**ENVIRONMENTAL ASSESSMENT**

The proposed expansion of the garage would require a comprehensive environmental assessment that would assess any negative impacts of the expansion and recommend mitigation measures for each impact deemed significant per the California Environmental Quality Act (CEQA). Preliminary discussions with the Planning Department's Major Environmental Assessment staff and several consultants indicate that an environmental assessment could cost approximately \$850,000. This includes approximately \$500,000 for professional services of an Environmental Impact Report (EIR) consultant and \$350,000 for various fees and services by the City's Planning Department. Staff cost for SFMTA's oversight and management is not included in this estimate. FY2009-10 Operating Budget does not include funds to conduct this assessment. In the future, should the increased parking demand justify an expansion of the garage, the staff will request funds to conduct an environmental assessment through the budget process.

Staff has already developed a draft Scope of Services for a consultant that would be finalized when the economic conditions and parking demand changes significantly.

**ALTERNATIVES CONSIDERED**

Staff has developed several short-term alternatives to meet the parking demand for the employees and the attendees at the performing arts venues. These alternatives, such as valet-assist operations and curbside valet operations, can be implemented in an incremental manner if parking demands increase. Considering the current soft retail environment and weak employment conditions, implementation of the short-term strategies are expected to meet the parking demand at the Performing Arts Garage for at least a couple of years.

When the economy improves and occupancies at the Performing Arts and Civic Center garages increase significantly, staff will reconsider potential expansion of the Performing Arts Garage.

## KEY CONSIDERATIONS

The Performing Arts Group has been working on this matter for over five years. There have been noticeable changes in factors that affect parking, including traffic patterns, economic conditions, parking supply and demand, as well as legislative changes, such as the passage of Proposition A since they began this work. The expansion of the Performing Arts Garage would be a major expense and would create a long-term burden on the SFMTA budget that presents significant legal and policy issues that requires thoughtful consideration.

### The City Charter and Proposition A

The City Charter provides that: "It is the policy of the City and County of San Francisco to use parking-related revenues to support public transit." S.F. Charter § 8A.105(e). In November 2007, San Francisco voters approved Proposition A, amending the City Charter. Section 8A.113(b) of the City Charter mandates that the SFMTA manage off-street parking as to "[e]nsure parking policies and facilities contribute to the long-term financial health of the Agency." The Charter further provides that "[i]t shall be City policy that the Agency manage the Parking Authority so that it does not acquire or construct new or expanded parking facilities unless the Agency finds that the costs resulting from such acquisition, construction, or expansion and the operation of such facilities will not reduce the level of funding to the Municipal Railway from parking and garage revenues. . . to an amount less than that provided for fiscal year 1999-2000," as adjusted by the Controller for inflation. S.F. Charter § 8A.113(b). In addition, before approving the acquisition, construction or expansion of a parking garage, the SFMTA Board of Directors must "make a finding that the operation of the garage will advance or be consistent with the City's Transit First Policy." S.F. Charter § 8A.113(b).

### Transit-First Policy

The City's Transit-First Policy is set forth in Section 8A.115 of the Charter. This section establishes eleven principles and requires that "All officers, boards, commissions, and departments shall implement these principles in conducting the City and County's affairs." The three principles most relevant to the proposed garage expansion are as follows:

1. Public transit, including taxis and van pools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile. S.F. Charter § 8A.115(a)2.
2. Parking policies for areas well served by public transit shall be designed to encourage travel by public transit and alternative transportation. S.F. Charter § 8A.115(a)7.
3. New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments. S.F. Charter § 8A.115(a)8.

It is critical to reevaluate all previous decisions concerning new garage construction or expansion, and ensure that SFMTA's actions conform to the requirements and spirit of Proposition A and the principles of the Transit First Policy.

Travel Mode Shift

Over the last few years, as the economy continued to worsen, gasoline costs reached record highs and peaked at about \$4.75 per gallon last year. This caused a significant mode shift from auto travel to public transit. Although gasoline prices have declined, the mode shift has not yet reversed. San Francisco Bay Area transit operators continue to report record-high ridership, while vehicle miles traveled on freeways and bridge crossings continue to decline or stay at depressed levels. This suggests that reduced parking demand may continue for the foreseeable future and any additional supply, as a result of expansion, may not be necessary. Therefore, any construction of new parking facilities or an expansion of an existing facility must be considered carefully.

Funding

In major metropolitan areas, the cost of construction of a new parking facility ranges from \$40,000 to \$60,000 per space depending upon the land prices, environmental impacts, design and equipment specifications. The proposed expansion of the Performing Arts Garage may cost approximately \$10 million or more depending upon the number of additional spaces. It is important to fully analyze initial financing and on-going operational and maintenance costs before proceeding with any expansion project. Additionally, the Walker Report noted that the cost of expanding the Performing Arts Garage, through garage revenue bonds, could not be fully paid by revenues from the garage alone, but would likely require reallocating revenues from other Parking Authority facilities to support the debt service. Debt financing expansion of the Performing Arts Garage would likely have a negative impact on SFMTA's budget for decades until the debt is entirely paid off.

Parking Space vs. Rates

From discussions with the Performing Arts Group, it is evident that even though the discussions over the last several years have focused on parking spaces, the prime concern is about parking rates. In March 2009, the Performing Arts Group requested that the SFMTA provide parking for their employees at a rate of approximately \$95 per space per month, a 63 percent discount to the current rate of \$260 for the Performing Arts Garage. Staff has informed the institutions that their request for a reduced rate cannot be approved. Even if the garage is built-out, the additional investment will be of no value if the employees decide not to park at the garage unless a heavy discount to the posted rates is offered.

**FUNDING IMPACT**

The postponement of the environmental assessment for the potential expansion of the Performing Arts Garage will not have any impact on the approved FY 2009-10 operating budget. The FY2009-10 operating budget does not include funds to implement this project.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

No other approvals are necessary. The City Attorney's Office has reviewed this item.

**RECOMMENDATION**

Staff recommends that the San Francisco Parking Authority Commission authorize the SFMTA to postpone the environmental assessment for the potential expansion of the Performing Arts Garage until economic conditions improve and parking demand increases significantly, and funding sources for the build-out are identified that will not burden the SFMTA or negatively impact public transit resources.

SAN FRANCISCO  
PARKING AUTHORITY COMMISSION

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

WHEREAS, The San Francisco Municipal Transportation Agency manages the Performing Arts Garage owned by the San Francisco Parking Authority; and,

WHEREAS, The Performing Arts Garage is located at the corner of Grove and Gough streets and provides approximately 600 parking spaces for event attendees at the Performing Arts institutions, as well as visitors and employees for numerous venues and establishments in the Civic Center – Hayes Valley neighborhood; and,

WHEREAS, The Performing Arts Group (SF Opera, SF Symphony, SF Ballet and War Memorial) desire to expand the garage to accommodate future parking needs of their employees and event attendees; and,

WHEREAS, A 2007 parking study jointly funded by the institutions and the Parking Authority, recommended short-term and long-term strategies to meet future parking demands; and,

WHEREAS, In June 2007, the San Francisco Parking Authority Commission authorized the Director of the Parking Authority to submit an application to the City Planning Department for an environmental evaluation, either a negative declaration or an environmental impact report (EIR) for the potential build-out of the garage; and,

WHEREAS, In June 2007, the San Francisco Parking Authority Commission directed the Director of the Parking Authority to prepare bid documents for the selection of a consultant to perform the work associated with the requirements of the environmental evaluation for the potential build-out of the garage; and,

WHEREAS, A comprehensive report was presented to the San Francisco Parking Authority Commission on August 4, 2009 outlining the current and anticipated parking supply and demand in the Civic Center – Hayes Valley neighborhood, including special considerations to the economic conditions, reduced travel and parking demand, Proposition A implications and budgetary impacts and constraints; now, therefore, be it

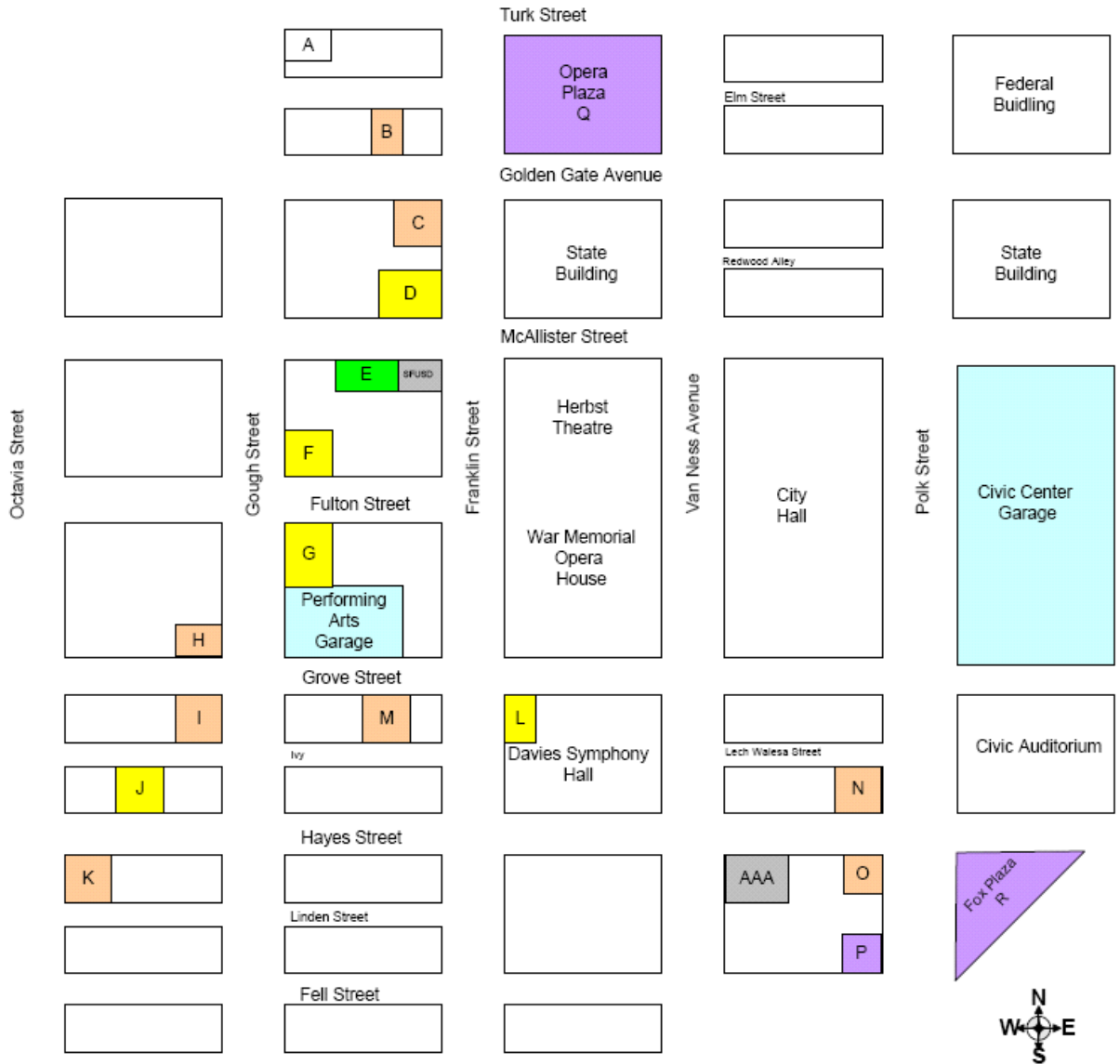
RESOLVED, That the San Francisco Parking Authority Commission authorizes the Executive Director/CEO of the San Francisco Municipal Transportation Agency to postpone the environmental assessment and preparation of an Environmental Impact Report concerning the potential expansion of the Performing Arts Garage until economic conditions improve and parking demand increases significantly, and funding sources for the build-out are identified that will not burden the SFMTA or negatively impact public transit resources.

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

\_\_\_\_\_  
Secretary, San Francisco Parking Authority Commission

# Attachment A

## Attachment A Accessible Version



### Performing Arts Garage Adjacent Parking Facilities

Lot/Gar	Location	Total Spaces
A	Closed	
B	750 Golden Gate	50
C	659 Franklin	80
D	700 McAllister	75
E	McAllister (Mid)	80
F	490 Fulton	90
G	495 Fulton	70
H	400 Grove	33
I	Grove (SW Corner)	50
J	450 Hayes	35
K	461 Hayes	38
L	398 Franklin	52
M	325 Grove	12
N	101 Polk	60
O	101 Hayes	53
P	1 Polk	81
Q	601 Van Ness	620
R	1390 Market	200
Total		1,679

#### Color Legend

<span style="display: inline-block; width: 15px; height: 15px; background-color: orange; border: 1px solid black;"></span>	Public Lot
<span style="display: inline-block; width: 15px; height: 15px; background-color: purple; border: 1px solid black;"></span>	Public Garage
<span style="display: inline-block; width: 15px; height: 15px; background-color: lightblue; border: 1px solid black;"></span>	MTA Garages
<span style="display: inline-block; width: 15px; height: 15px; background-color: yellow; border: 1px solid black;"></span>	Employee Parking
<span style="display: inline-block; width: 15px; height: 15px; background-color: green; border: 1px solid black;"></span>	SFUSD Lot
<span style="display: inline-block; width: 15px; height: 15px; background-color: grey; border: 1px solid black;"></span>	Building

**Attachment A – Accessible Version  
Performing Arts Garage  
Adjacent Parking Facilities**

Attachment A is a diagram showing Parking Facilities adjacent to the Performing Arts Garage, bounded by Turk Street on the North, Larkin Street on the East, Fell Street on the South, and Octavia Street on the West. Each facility in the diagram is depicted by a letter of the alphabet from A-R. The following is a list of those facilities:

<b>Lot</b>	<b>Location</b>	<b>Total Spaces</b>	<b>Use</b>
A	NW Corner of Gough & Turk	---	Closed
B	750 Golden Gate	50	Public Lot
C	659 Franklin	80	Public Lot
D	700 McAllister	75	Employee Parking
E	McAllister (Btwn Gough & Franklin)	80	SFUSD Lot
F	490 Fulton	90	Employee Parking
G	495 Fulton	70	Employee Parking
H	400 Grove	33	Public Lot
I	Grove (SW Corner: Btwn Gough & Octavia)	50	Public Lot
J	450 Hayes	35	Employee Parking
K	461 Hayes	38	Public Lot
L	398 Franklin	52	Employee Parking
M	325 Grove	12	Public Lot
N	101 Polk	60	Public Lot
O	101 Hayes	53	Public Lot
P	1 Polk	81	Public Garage
Q	601 Van Ness (Opera Plaza)	620	Public Garage
R	1390 Market (Fox Plaza)	200	Public Garage

Total Spaces: 1,679

## Attachment B

### [Attachment\\_B\\_Accessible\\_Version](#)



SAN FRANCISCO  
SYMPHONY



SAN FRANCISCO  
OPERA



April 30, 2009

Mr. Amit Kothari  
Director of Off-Street Parking  
San Francisco MTA/Sent via FAX

Dear Amit,

First of all, we wish to thank you for the time you have spent working with us since July of 2008. Our issues are complex and you have always been timely and professional in your response. Though we have experienced delays in moving forward with the EIR, we have done good work together exploring options and educating ourselves about the issues and concerns on both sides. We appreciate your partnership.

As you know well, the San Francisco Symphony, San Francisco Opera and San Francisco Ballet have been working with representatives from the City, with staff members of DPT and with representatives from SFMTA for more than seven years to explore the build-out of the Performing Arts Garage and to address concerns over a potential shortfall of short-term parking in the Civic Center and Hayes Valley neighborhood.

These institutions, as well as the San Francisco War Memorial, City Arts and Lectures, the San Francisco Conservatory, the San Francisco Girls Chorus, the Asian Art Museum and many of the restaurants and retail establishments in the area have petitioned and communicated in various ways over the past seven years about the fact that nearly 1,000 parking spaces will disappear as market rate and affordable housing and retail is built on top of existing surface parking lots. The Octavia Boulevard Plan calls for this development to be built with less than a one to one ratio of housing to parking, which further complicates the parking equation.



On June 19, 2007, the MTA Commission adopted Resolution No. 07—079 which authorized the Director of the Parking Authority to file an application with the Planning Department for Environmental Review of the proposed Performing Arts Garage build-out; directed preparation of bid documents for the selection of a consultant to perform the work associated with the environmental evaluation; and accepted the findings of the Walker Parking Consultants Study of a projected deficit of at least 635 parking space in the immediate vicinity of the Performing Arts Garage.

As you have learned over these past few months, the institutions do all within their power to encourage the use of public transit for both patrons and employees. However, this is not the solution for everyone. The Civic Center is home to three of the world's most esteemed cultural institutions – and the venues are also used by dozens of other acclaimed San Francisco institutions and touring productions. In reality, this is a REGIONAL center for the performing arts attracting patrons from through the nine Bay Area counties and indeed, from throughout the world. Public transit is difficult, if not impossible, for our elderly patrons or those who travel from the North or South Bay. In addition, an opera performance can end after 11:00 p.m. which complicates the use of public transit. Many of our employees also live outside the city. As you have heard in public testimony and read in letters, some of our union stagehands are required to travel within the city to perform their jobs. The San Francisco Opera rehearses in multiple locations and has a costume shop and a scene shop that are in two different locations requiring travel back and forth for set builders, painters, tailors, artists attending fittings, etc. Musicians for all three organizations must travel with their instruments, which can be very heavy and also very valuable. Dancers for the San Francisco Ballet are small, and sometimes very young. These are among the reasons why specific bargaining units have insisted on convenient and safe parking as part of their employment contracts. Three specific lots are leased by the cultural institutions for the purpose of fulfilling union labor agreements: Lot G, Lot F, and Lot J.

However, the lots are slated to be sold in the near future as part of the redevelopment of the Hayes Valley Civic Center area. One, Lot G, is slated to begin development as early as September of 2009. This occurs just at the start of the main fall season of San Francisco Opera – leaving the companies to relocate parking for approximately 80 union stagehands, musicians. At your request, we are formally making the request that the MTA allow the cultural institutions the ability to purchase 80 24/7 monthly parking passes for either the Performing Arts Garage or the Civic Center Garage at a rate of \$8,110 per month. We can be flexible on which garage would work best for you. Additionally, when Lot F is developed, we would ask for the right to purchase 120 spaces at \$10,500 and when Lot J is developed, the right to purchase 64 spaces at \$6,400. The prices we suggest are the prices we are currently paying; given the incredible budget challenges at the moment, the institutions are not able to afford to spend more than is currently budgeted. In order to facilitate long term planning, we would ask for the right to purchase these spaces at these rates for five years.

Though this would be a guaranteed monthly income to the city, most of the time not all of the spaces would be used; we only offer parking to those union laborers actually working on a specific show, so the number changes as the production specifics change related to artistic

production decisions. This arrangement would greatly assist the performing arts institutions, who are also suffering with the current economic situation and could not possibly afford to purchase bulk parking passes – many of which would not be used on a daily basis – at current 24/7 parking rates. We believe it would also help the city in guaranteeing monthly income for what is currently excess capacity in the garages.

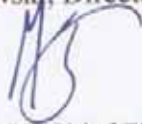
We sincerely appreciate your work in helping us identify this creative solution to the current short-term parking issues. We also appreciate Mr. Ford's commitment to move forward on the EIR for the build-out of the Performing Arts Garage. We thank the MTA for its willingness to listen and to partner with the City's world class cultural institutions on immediate solutions that would work for both the MTA and for our valuable and important labor union employees. And we look to continuing to work with you on parking and transit issues as we move forward into the future

We look forward to your comments and are available to answer any questions you might have.

Sincerely,



Andrew Dubowski, Director of Operations for San Francisco Symphony



Michael Simpson, Chief Financial Officer/Director of Finance and Administration for San Francisco Opera



Jason Blackwell, CFM, Facilities Manager, San Francisco Ballet

cc: Karen Ames, consultant; James Reuben, Reuben and Junius

## Attachment B – Accessible Version

Attachment B is a copy of a letter dated April 30, 2009, addressed to Mr. Amit Kothari, Director of Off-Street Parking, from the Performing Arts Group, signed by Andrew Dubowski, Director of Operations for San Francisco Symphony; Michael Simpson, Chief Financial Officer/Director of Finance and Administration for San Francisco Opera; and Jason Blackwell, CFM, Facilities Manager, San Francisco Ballet. The letter reads as follows:

Dear Amit,

First of all, we wish to thank you for the time you have spent working with us since July of 2008. Our issues are complex and you have always been timely and professional in your response. Though we have experienced delays in moving forward with the EIR, we have done good work together exploring options and educating ourselves about the issues and concerns on both sides. We appreciate your partnership.

As you know well, the San Francisco Symphony, San Francisco Opera and San Francisco Ballet have been working with representatives from the City, with staff members of DPT and with representatives from SFMTA for more than seven years to explore the build-out of the Performing Arts Garage and to address concerns over a potential shortfall of short-term parking in the Civic Center and Hayes Valley neighborhood.

These institutions, as well as the San Francisco War Memorial, City Arts and Lectures, the San Francisco Conservatory, the San Francisco Girls Chorus, the Asian Art Museum and many of the restarants [*sic*] and retail establishments in the area have petitioned and communicated in various ways over the past seven years about the fact that nearly 1,000 parking spaces will disappear as market rate and affordable housing and retail is built on top of existing surface parking lots. The Octavia Boulevard Plan calls for this development to be built with less than a one to one ratio of housing to parking, which further complicates the parking equation.

On June 19, 2007, the MTA Commission adopted Resolution No. 07-079 which authorized the Director of the Parking Authority to file an application with the Planning Department for Environmental Review of the proposed Performing Arts Garage build-out; directed preparation of bid documents for the selection of a consultant to perform the work associated with the environmental evaluation; and accepted the findings of the Walker Parking Consultants Study of a projected deficit of at least 635 parking space in the immediate vicinity of the Performing Arts Garage.

As you have learned over these past few months, the institutions do all within their power to encourage the use of public transit for both patrons and employees. However, this is not the solution for everyone. The Civic Center is home to three of the world's most esteemed cultural institutions – and the venues are also used by dozens of other acclaimed San Francisco institutions and touring productions. In reality, this is a REGIONAL center for the performing arts attracting patrons from through the nine Bay Area counties and indeed, from throughout the world. Public transit is difficult, if not impossible, for our elderly patrons or those who travel from the North or South Bay. In addition, an opera performance can end after 11:00 p.m. which complicates the use of the public transit. Many of our employees also live outside the city. As you have heard in public testimony and read in letters, some of our union stagehands are required to travel within the city to perform their jobs. The San Francisco Opera rehearses in multiple locations and has a costume shop and a scene shop that are in two different locations requiring travel back and forth for set builders, painters, tailors, artists attending fittings, etc. Musicians for all three organizations must travel with their instruments, which can be very heavy and also very valuable. Dancers for the San Francisco Ballet

are small, and sometimes very young. These are among the reasons why specific bargaining units have insisted on convenient and safe parking as part of their employment contracts. Three specific lots are leased by the cultural institutions for the purpose of fulfilling union labor agreements: Lot G, Lot F, and Lot J.

However, the lots are slated to be sold in the near future as part of the redevelopment of the Hayes Valley Civic Center area. One, Lot G, is slated to begin development as early as September of 2009. This occurs just at the start of the main fall season of San Francisco Opera – leaving the companies to relocated parking for approximately 80 union stagehands, musicians. At your request, we are formally making the request that the MTA allow the cultural institutions the ability to purchase 80 24/7 monthly parking passes for either the Performing Arts Garage or the Civic Center Garage at a rate of \$8,110 per month. We can be flexible on which garage would work best for you. Additionally, when Lot F is developed, we would ask for the right to purchase 120 spaces at \$10,500 and when Lot J is developed, the right to purchase 64 spaces at \$6,400. The prices we suggest are the prices we are currently paying; given the incredible budget challenges at the moment, the institutions are not able to afford to spend more than is currently budgeted. In order to facilitate long term planning, we would ask for the right to purchase these spaces at these rates for five years.

Though this would be guaranteed monthly income to the city, most of the time not all of the spaces would be used: we only offer parking to those union laborers actually working on a specific show, so the number changes as the production specifics change related to artistic production decisions. The arrangement would greatly assist the performing arts institutions, who are also suffering with the current economic situation and could not possibly afford to purchase bulk parking passes – many of which would not be used on a daily basis – at current 24/7 parking rates. We believe it would also help the city in guaranteeing monthly income for what is currently excess capacity in the garages.

We sincerely appreciate your work in helping us identify this creative solution to the current short-term parking issues. We also appreciate Mr. Ford's commitment to move forward on the EIR for the build-out of the Performing Arts Garage. We thank the MTA for its willingness to listen and to partner with the City's world class cultural institutions on immediate solutions that would work for both the MTA and for our valuable and important labor union employees. And we look to continuing to work with you on the parking and transit issues as we move forward into the future.

We look forward to your comments and are available to answer any questions you might have.

Sincerely,

**THIS PRINT COVERS CALENDAR ITEM NO. : 13**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Off-Street Parking

**BRIEF DESCRIPTION:**

Authorizing the San Francisco Municipal Transportation Agency (SFMTA) Executive Director/CEO to make minor rate adjustments for the Golden Gateway and Portsmouth Square garages.

**SUMMARY:**

Golden Gateway Garage

- SFMTA manages the Golden Gateway Garage which supports parking needs of the employees in and visitors to the Financial District, Chinatown and the Justin Herman Plaza – Ferry Building area.
- Based on a survey of parking rates for various parking facilities in the vicinity of the garage, staff recommended specific rate changes for the garage that included increasing the Park & Ride validation rate from \$3.00 to \$3.50 per vehicle for all-day parking to become effective July 1, 2009.
- As approved by the SFMTA Board of Directors through the FY 2009-10 budget process, the rates were increased to \$3.50 effective July 1, 2009.
- The community requested that the Park & Ride validation rate be reduced back to \$3.00.
- Approximately 35,000 vehicles benefit from this validation rate annually. Reducing the rate to \$3.00 will result in a decrease in annual revenues by approximately \$17,500.

Portsmouth Square Garage

- Under a lease with the City and County of San Francisco, the Portsmouth Plaza Parking Corporation manages the Portsmouth Square Garage. The Portsmouth Plaza Parking Corporation Board has requested minor adjustments to the effective hours for the evening rates (exiting by 4 a.m. instead of 8:00 a.m.) and a correction to the validation rate (a \$6 discount instead of a \$5 discount).

**ENCLOSURES:**

1. SFMTAB Resolution

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION

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

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO Amit Kothari

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

## **PAGE 2.**

### **PURPOSE**

Authorizing the SFMTA Executive Director/CEO make minor rate changes for the Golden Gateway and Portsmouth Square garages

### **GOAL**

These recommendations support the following 2008-2012 Strategic Goals adopted by the SFMTA Board of Directors:

- Goal 2: System Performance – To get customers where they want to go, when they want to be there
- Objective 2.5: Manage parking supply to align with SFMTA and community goals

### **DESCRIPTION**

#### Golden Gateway Garage

The Golden Gateway Garage is located at 250 Clay Street and has approximately 1,100 parking spaces. The garage, managed by the SFMTA, supports parking needs of the employees in and visitors to the Financial District, Chinatown and the Justin Herman Plaza – Ferry Building area. To support Chinatown businesses, the garage offers a free Park & Ride shuttle on Saturdays and Sundays. Additionally, the garage offers a flat rate of \$3.50 per vehicle for all-day parking on Saturdays and Sundays, for vehicles exiting with a Park & Ride validation (which is offered by many participating merchants in the Chinatown area).

During the FY 2009-10 budget approval process, SFMTA staff conducted parking rate surveys for all facilities owned and/or managed by the SFMTA. Based on these surveys and staff recommendations, the SFMTA Board of Directors approved rate increases for most garages. As approved by the Board, the Park & Ride validation rate at the Golden Gateway Garage was increased from \$3.00 to \$3.50 per vehicle for all-day parking, effective July 1, 2009. Subsequently, the community requested that the Park & Ride validation rate be reduced back to \$3.00 per vehicle for all-day parking.

Currently, approximately 35,000 vehicles benefit from this validation rate annually. Reducing the rate to \$3.00 will result in a decrease in annual revenues by approximately \$17,500. A reduced rate will benefit Chinatown visitors without having a significant negative impact on the overall gross annual revenues of over \$7 million.

#### Portsmouth Square Garage

The Portsmouth Square Garage, located at 733 Kearny Street, is owned by the Recreation and Park Department and administered by the SFMTA. Under a lease agreement with the City and County of San Francisco, the Portsmouth Plaza Parking Corporation manages day to day operations of the garage. The Recreation and Park Department receives all net revenues after paying for all operating expenses and reserve for a capital expenditure account.

## **PAGE 3.**

The Portsmouth Plaza Parking Corporation Board has requested the following adjustments to the current rate structure:

- Revise the effective hours for the evening rates from “Enter after 5 p.m. and exit by 8:00 a.m.” to “Enter after 5:00 p.m. and exit by 4:00 a.m.” This revision will require that the vehicle must exit by 4 a.m. to qualify for the evening rates, instead of 8:00 a.m. currently.
- Provide a \$6 discount for each validation stamp. The rates currently advertised at the garage show a \$5 discount for each validation stamp, which should have been changed to \$6, reflecting the rate changes effective July 1, 2009.

Staff has discussed these revisions with the Portsmouth Square Plaza Board members and analyzed any negative impacts on the garage operations or net revenues. The proposed changes will have no significant impact on garage revenues.

To receive public input, a Public Hearing has been scheduled for August 4, 2009 at 2:00 p.m. Appropriate newspaper advertisements have been published, according to the SFMTA Board/SFPA Commission Rules of Order, Article 4, Section 10: Meetings for the Revision of Rates, Charges, Fares, Fees and Fines. Before adopting or revising any schedule of rates, charges, fares, fees or fines, the Board/Commission shall publish, in the official newspaper of the City and County of San Francisco for five days, notice of its intention to do so and shall fix the time for a public hearing or hearings thereon, which shall be not less than fifteen days after the last publication of said notice, and at which any person may present his or her objection to or views on the proposed schedule of rates, fare or charges.

If approved, it is anticipated that the new rate will be effective September 1, 2009, following required signage and equipment upgrades at both garages. Approval of this rate revision will not have any impact on the proposed SFpark pilot projects.

### **ALTERNATIVES CONSIDERED**

Staff considered revising the rates as requested during the budget process for FY 2010-11. Although, this is not recommended since it will delay this matter for approximately nine months.

### **FUNDING IMPACT**

Approval of this recommendation will result in a decrease in gross revenues of approximately \$17,500 annually for the Golden Gateway Garage, and no fiscal impact for the Portsmouth Square Garage. Overall, these revisions will not have a significant impact on the SFMTA’s FY 2009-10 approved budget.

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

The San Francisco Recreation & Parks department supports this recommendation. No other approvals are required.

The City Attorney has reviewed this report.

**PAGE 4.**

**RECOMMENDATION**

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the SFMTA Executive Director/CEO to make the following rate revisions:

1. Revise the Park & Ride validation rate to \$3.00 per vehicle for all-day parking on Saturdays and Sundays at the Golden Gateway Garage; and
2. Revise the effective hours for the evening rates to reflect entry after 5:00 p.m. and exit by 4:00 a.m., and provide a \$6 discount for each validation stamp for the Portsmouth Square Garage.



SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) manages the Golden Gateway Garage; and,

WHEREAS, The Golden Gateway Garage, located at 250 Clay Street, provides parking for the employees in and visitors to the Financial District, Chinatown and the Justin Herman Plaza – Ferry Building area; and,

WHEREAS, A Park & Ride service funded by the Golden Gateway Garage revenues provides free shuttle rides to/from the garage to several destinations in the Financial District, Chinatown and the Justin Herman Plaza – Ferry Building area; and,

WHEREAS, The Park & Ride program also provides a validation rate of \$3.50 per vehicle for all-day parking on Saturdays and Sundays; and,

WHEREAS, A request was received that the Golden Gateway Garage Park & Ride validation rate be reduced to \$3.00 per vehicle; and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) manages the Portsmouth Square Garage, owned by the Recreation and Park department and leased to the Portsmouth Plaza Parking Corporation; and,

WHEREAS, The Portsmouth Plaza Parking Corporation Board has requested that the effective hours for the evening rate be changed to “Entry after 5:00 p.m. and exit by 4:00 a.m.” and that each validation stamp provides a \$6 discount off the total parking fee; and,

WHEREAS, SFMTA staff has evaluated these minor rate revisions for both garages and find no significant impact on the approved FY 2009-2010 Operating Budget; and

WHEREAS, The approval of these requests support the 2008-2012 Strategic Goals adopted by the SFMTA Board of Directors; and,

WHEREAS, A public hearing was held on August 4, 2009 to receive input from the general public on the proposed rate revisions; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the SFMTA Executive Director/CEO to reduce the Park & Ride validation rate to \$3.00 per vehicle for all-day parking on Saturdays and Sundays at the Golden Gateway Garage; and be it

FURTHER RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the SFMTA Executive Director/CEO to revise the effective hours for the evening rate to “Entry after 5:00 p.m. and exit by 4:00 a.m., and that each validation stamp provides a \$6 discount off the total parking fee at the Portsmouth Square Garage.

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

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