

THIS PRINT COVERS CALENDAR ITEM NO.:

**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 METERS, 1-HOUR TIME LIMIT AND ESTABLISH - PARKING METERS, 2-HOUR TIME LIMIT- Balboa Street, 3200-3700 blocks, both sides; 36th Avenue, 600 block, west side; 37th Avenue, 600-700 blocks, both sides; 38th Avenue, 600-700 blocks, both sides. **PH 7/17/09 Requested by Merchants**
- B. ESTABLISH - METERED MOTORCYCLE PARKING - Paris Street, west side, from Geneva Avenue to 17 feet northerly. **PH 7/17/09 Requested by Resident/SFMTA**
- C. ESTABLISH - PARKING METER AREA NO. 3 (2-HOUR TIME LIMIT, MONDAY THROUGH SATURDAY - Paris Street, east side, from Geneva Avenue to 50 feet northerly. **PH 7/17/09 Requested by Resident/SFMTA**
- D. ESTABLISH - BUS ZONES - Cabrillo Street, south side, from 7th Avenue to 100 feet westerly (100-foot zone); Cabrillo Street, north side, from 7th Avenue to 100 feet easterly (100-foot zone). **PH 7/17/09 Requested by SFMTA**
- E. RESCIND - BUS ZONES - 6th Avenue at Cabrillo Street (eliminates inbound and outbound bus zones; bus zones to be relocated to Cabrillo Street at 7th Avenue); 8th Avenue at Cabrillo Street (eliminates inbound and outbound bus zones; bus zones to be relocated to Cabrillo Street at 7th Avenue). **PH 7/17/09 Requested by SFMTA**
- F. RESCIND - RESIDENTIAL PERMIT PARKING AREA "C" (2-HOUR TIME LIMIT, 8 AM - 9 PM, MONDAY THROUGH SATURDAY) AND ESTABLISH - NO PARKING ANYTIME - Powell Street, west side, from Sacramento Street to 150 feet southerly. **PH 7/17/09 Requested by Resident**
- G. ESTABLISH - NO PARKING, 10 PM - 6 AM, EVERYDAY - Beacon Street, north side, from the west property line of 290 Beacon Street to 135 feet east of the east property line of 383 Beacon Street; Beacon Street, south side, from the west property line of 285 Beacon Street to 145 feet east of the extension of the east property line of 383 Beacon Street. **PH 7/17/09 Requested by Residents**

- H. ESTABLISH - BUS ZONE - Lawton Street, north side, from 7th Avenue to 88 feet westerly (establishes an 88-foot farside bus zone). **PH 7/17/09 Requested by Resident**
- I. ESTABLISH - STOP SIGN - Ramsell Street at Holloway Avenue, stopping the stem of this T-intersection. **PH 7/17/09 Requested by Resident**
- J. RESCIND - TOW AWAY NO STOPPING ANYTIME AND ESTABLISH - TOW AWAY NO STOPPING, 7 AM TO 9 AM, 4 PM TO 6 PM, MONDAY THROUGH FRIDAY - 10th Street, east side, between Jessie and Mission Streets. **Ph 7/17/09 Requested by Business**
- K. RESCIND - LEFT LANE MUST TURN LEFT AND ESTABLISH - TOW-AWAY LANE MUST TURN LEFT - 10th Street, southbound at Mission Street. **Ph 7/17/09 Requested by Business**
- L. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "J" (2-HOUR TIME LIMIT, 8 AM - 6 PM, MONDAY THROUGH FRIDAY) - Cole Street, both sides, between Carmel Street and 17th Street (1400 block). **PH 7/17/09 Requested by Resident**
- M. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "Y" (2-HOUR TIME LIMIT, 8 AM - 10 PM, EVERYDAY) - Stanford Street, east side, between Brannan Street and Townsend Street (1-99 block). (For residents of 2nd Street, west side, 600 block, even numbers only). **PH 7/17/09 Requested by Resident**
- N. RESCIND - MUNI BUS STOP - 3rd Street, east side, from Stevenson Street to Jessie Street (138-foot bus stop). **PH 7/17/09 Requested by SFMTA**
- O. RESCIND - BUS ONLY LANE - 3rd Street, northbound, between Jessie and Stevenson Streets. **PH 7/17/09 Requested by SFMTA**
- P. ESTABLISH - MUNI BUS STOP - 3rd Street, east side, from Jessie Street to Mission Street (160-foot bus stop). **PH 7/17/09 Requested by SFMTA**
- Q. ESTABLISH - RIGHT LANE MUST TURN RIGHT - 3rd Street, northbound, from Stevenson Street to Market Street. **PH 7/17/09 Requested by SFMTA**
- R. RESCIND - TOW-AWAY NO STOPPING, 7 AM TO 9 AM, MONDAY THROUGH FRIDAY - 18th Street, south side, from Dolores Street to Folsom Street. **PH 7/17/09 Requested by Resident**
- S. RESCIND - TOW-AWAY NO STOPPING, 4 PM TO 6 PM, MONDAY THROUGH FRIDAY - 18th Street, north side, from Treat Avenue to Mission Street. **PH 7/17/09 Requested by Resident**
- T. RESCIND - TOW-AWAY NO STOPPING ANYTIME - 18th Street, south side, from 30 to 130 feet west of Dolores Street. **PH 7/17/09 Requested by Resident**
- U. ESTABLISH - NO PARKING ANYTIME - 18th Street, south side, from Guerrero Street to 20 feet westerly; 18th Street, north side, from Guerrero Street to 20 feet easterly. **PH 7/17/09 Requested by Resident**
- V. ESTABLISH - YELLOW COMMERCIAL LOADING ZONE, 7 AM TO 6 PM, MONDAY THROUGH FRIDAY - 18th Street, south side, from 20 to 50 feet west of Guerrero Street. **PH 7/17/09 Requested by Resident**
- W. ESTABLISH - NO PARKING STREET CLEANING, 6 AM TO 8 AM, MONDAY AND THURSDAY - 18th Street, south side, from Dolores to Folsom Streets. **PH 7/17/09 Requested by DPW**

- X. RESCIND - TOUR BUS LOADING ZONE (2-HOUR DAILY) AND ESTABLISH - TOW-AWAY NO PARKING ANYTIME - "610" Beach Street (Joseph Conrad Park), south side, from 9 feet to 48 feet east of Columbus Avenue (39-foot zone). **PH 7/17/09 Requested by FWCBD**
- Y. ESTABLISH - RED ZONE - Diamond Street, south side, from 40 feet east of the eastern property line of #2476 / #2480 Diamond Street to 58 feet easterly (58-foot zone). **PH 7/17/09 Requested by SFMTA**
- Z. ESTABLISH - NO TURN ON RED - Washington Street, eastbound at Gough Street. **PH 7/17/09 Requested by Resident**
- AA. EXTEND - BUS ZONE - Harrison Street, north side, from 97 feet to 110 feet west of 5th Street (13-foot extension). **PH 7/17/09 Requested by Resident**
- BB. ESTABLISH - PARKING METER 1-HOUR TIME LIMIT, 7 AM TO 6 PM, MONDAY THROUGH SATURDAY - Campton Place (off Stockton Street), between Post and Sutter Streets, north side, along the wide section of the street (existing yellow and white zones would remain, but yellow zones would be metered from Monday through Friday, with general parking allowed on Saturday). **PH 7/17/09 Requested by SFMTA**
- CC. ESTABLISH - STOP SIGNS - Irving Street and 17th Avenue, making this intersection all-way STOP controlled; Hancock Street and Noe Street, stopping the stem of this uncontrolled T-intersection. **PH 7/17/09 Requested by Residents**
- DD. ESTABLISH - NO PARKING ANYTIME - Taraval Street, north side, from approximately 24 feet to 39 feet east of Lenox Way (15-foot zone). **PH 7/17/09 Requested by SFMTA**
- EE. ESTABLISH - GOLDEN GATE TRANSIT BUS ZONE, 5 AM TO 10 AM, MONDAY THROUGH FRIDAY - 1st Street, west side, from Stevenson Street to 74 feet southerly (affects three parking meters: #20, #22 and #24). **PH 7/17/09 Requested by Golden Gate Transit**
- FF. ESTABLISH - UNMETERED MOTORCYCLE PARKING – "459" Fulton Street, south side (establishes 4 motorcycle stalls on the west side of the driveway). **PH 7/17/09 Requested by Resident**
- GG. ESTABLISH - TOW AWAY NO PARKING, 10 PM TO 6 AM, DAILY - Newhall Street, both sides, between Mendell Street and Evans Avenue; Mendell Street, both sides, between Cargo Way and Evans Avenue. **PH 7/17/09 Requested by SFPD**
- HH. ESTABLISH - BLUE ZONE - "225" 5th Street, east side, at parking meter #215 (18-foot zone). **PH 7/24/09 Requested by Resident**
- II. RESCIND - NO PARKING ANYTIME – Waterloo Street, south side, between Bayshore Boulevard and Loomis Street. **PH 7/31/09 Requested by DPT**
- JJ. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME – Waterloo Street, south side, between Bayshore Boulevard and Loomis Street; and Waterloo Street, north side, between Bayshore Boulevard and Loomis Street. **PH 7/31/09 Requested by DPT**
- KK. RESCIND - NO PARKING 12:01 AM TO 6 AM TUESDAY STREET CLEANING – Waterloo Street, north side, between Bayshore Boulevard and Loomis Street. **PH 7/31/09 Requested by DPT**
- LL. ESTABLISH - STOP SIGN – Waterloo Street, westbound, at Bayshore Boulevard; Waterloo Street, eastbound, at Loomis Street; and Marengo Street, northbound at Waterloo Street. **PH 7/31/09 Requested by DPT**

MM. ESTABLISH - LEFT LANE MUST TURN LEFT – Balboa Street, westbound, at 25th Avenue. **PH 7/31/09 Requested by DPT**

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 METERS, 1-HOUR TIME LIMIT AND ESTABLISH - PARKING METERS, 2-HOUR TIME LIMIT- Balboa Street, 3200-3700 blocks, both sides; 36th Avenue, 600 block, west side; 37th Avenue, 600-700 blocks, both sides; 38th Avenue, 600-700 blocks, both sides.
- B. ESTABLISH - METERED MOTORCYCLE PARKING - Paris Street, west side, from Geneva Avenue to 17 feet northerly.
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- KK. RESCIND - NO PARKING 12:01 AM TO 6 AM TUESDAY STREET CLEANING – Waterloo Street, north side, between Bayshore Boulevard and Loomis Street.
- LL. ESTABLISH - STOP SIGN – Waterloo Street, westbound, at Bayshore Boulevard; Waterloo Street, eastbound, at Loomis Street; and Marengo Street, northbound at Waterloo Street.
- MM. ESTABLISH - LEFT LANE MUST TURN LEFT – Balboa Street, westbound, at 25th Avenue.

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

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO, to accept and expend \$37,330,575 of capital assistance from FY 2009 FTA Section 5309 Fixed Guideway grant funds for various Municipal Railway capital projects and activities.

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) must apply to the Federal Transit Administration (FTA) to have funds included in a federal grant once the Metropolitan Transportation Commission (MTC) programs the projects and the funds in the region's Transportation Improvement Program (TIP).
- The projects planned are consistent with the priorities established by the SFMTA Board, as affirmed in Muni's Short Range Transit Plan, and are embodied in the Regional TIP.
- The SFMTA seeks authority to accept and expend grant funding in the amount of \$37,330,575 from FY 2009 FTA Section 5309 Fixed Guideway grant funds. Required matching funds of \$9,332,644 will be obtained from a variety of state and local sources.

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

**DIRECTOR OF DIVISION
PREPARING ITEM**

FINANCE

EXECUTIVE

DIRECTOR/CEO

SECRETARY

**ADOPTED RESOLUTION
TO BE RETURNED TO**

Leda Young, 1 South Van Ness Avenue, 8th Floor

ASSIGNED

MTAB

CALENDAR

DATE

PAGE 2.

PURPOSE

The SFMTA requests SFMTA Board action to accept and expend \$37,330,575 from FTA Section 5309 Fixed Guideway grant funds for various Muni capital projects.

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

The established TCP and POP incorporate and are consistent with SFMTA's priorities as established in the Short Range Transit Plan and Capital Investment Plan adopted by the SFMTA Board. The MTC recently amended the region's TIP to program fiscal year 2009 funds for certain San Francisco transit projects.

The SFMTA will apply, under FTA grant CA-05-0241, for funding for the projects listed below. The Section 5309 Fixed Guideway program includes funds to modernize and enhance existing fixed guideway systems. The funds are apportioned to grantees based on a statutory formula and the TCP process.

Project Name	Project Description	Federal Amount	Match Amount
Muni Rail Replacement	Phased replacement of sections of rail on the light rail and cable car systems.	\$13,000,000	\$3,250,000
Cable Car Infrastructure Rehabilitation	Various improvements to cable car system guideways and infrastructure, such as hatch covers, power controllers, turntables and pulley replacement.	\$3,830,575	\$957,644
Wayside Central Train Control	Various projects to ensure that all command and control systems for safe and efficient operation of fixed guideway transit lines remain in current and up-to-date industry configurations, and in a good state of repair.	\$7,500,000	\$1,875,000
Overhead Lines Reconstruction	Phased replacement/upgrade of Muni's traction power system.	\$13,000,000	\$3,250,000
TOTAL		\$37,330,575	\$9,332,644

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

The required non-federal matching funds of \$9,542,436 will be secured separately. Various state, regional and local fund sources will be tapped to provide matching funds to these projects, which may include State transportation funds, bridge toll funds, Transit Impact Development fees, San Francisco Municipal Railway fare revenue, San Francisco Municipal Railway Improvement Corporation funds, and San Francisco County Transportation Authority sales tax revenue.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

RECOMMENDATION

SFMTA staff recommends that the SFMTA Board adopt a resolution authorizing the SFMTA, through its Executive Director/CEO, to accept and expend \$37,330,575 of FY 2009 FTA Section 5309 Fixed Guideway funds.

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

RESOLUTION No. _____

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

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

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

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

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

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

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

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

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

CA-05-0241 Program of Projects	Federal Amount	Match Amount
Muni Rail Replacement	\$13,000,000	\$3,250,000
Cable Car Infrastructure Rehab	\$3,830,575	\$957,644
Wayside Central Train Control	\$7,500,000	\$1,875,000
Overhead Lines Reconstruction	\$13,000,000	\$3,250,000
TOTAL	\$37,330,575	\$9,332,644

and

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

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO, to accept and expend \$37,330,575 in FY 2009 FTA Section 5309 Fixed Guideways funds for the following projects:

- Muni Rail Replacement
- Cable Car Infrastructure Rehab
- Wayside Central Train Control
- Overhead Lines Reconstruction, and, be it

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

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

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to seek \$9,332,644 in non-federal matching funds.

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

Secretary, Municipal Transportation Agency Board

THIS PRINT COVERS CALENDAR ITEM NO. : 10.4

**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 \$32,729,000 in FY 2008-09 Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) funds from the State of California for various transit capital projects and to substitute one previously authorized project for another using FY 2007-08 PTMISEA funds.

SUMMARY:

- On November 7, 2006, California voters approved Proposition 1B, "The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006." This Act established the bond-funded PTMISEA account which will, over time, disburse \$3.6 billion for transit projects statewide.
- SFMTA applied to Caltrans for a total of \$32,729,000 of FY 2008-09 PTMISEA funds for various capital projects including: Central Subway, Persia Triangle Transit Access Improvements, Randolph/Farallones/Orizaba Transit Access Pedestrian Safety Project, Interim Line Management Center, Light Rail Operations Control Center Improvements at Lenox Way, and High Speed Connectivity and Communications Upgrades.
- Staff has requested that Caltrans re-program \$1,200,000 of previously programmed FY 2007-08 PTMISEA funds from the Mission Bay Loop project to light rail vehicle wreck repairs. MTAB Accept and Expend authorization is necessary because the funds are new to the LRV program.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO: Joel C. Goldberg, 1 SVN, 8th Floor

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

SFMTA requests authority to accept and expend \$32,729,000 in FY 2008-09 Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) funds from the State of California for various transit capital projects and to substitute one previously authorized project for another using FY 2007-08 PTMISEA funds.

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 4: Financial Capacity – To ensure financial capacity and effective resource utilization
Objective 4.2 – Ensure efficient and effective use of resources.

EXPLANATION

On November 7, 2006, California voters approved Proposition 1B, “The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006.” This Bond Act includes a program of \$4 billion to be deposited in the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA). Of this amount, \$3.6 billion will be used to fund eligible public transportation projects that help advance the State’s policy goals of providing mobility choices for residents, reducing congestion, and protecting the environment. Eligible projects are transit capital projects for one of the following purposes: rehabilitation, safety, or modernization improvements; capital service enhancements or expansions; new capital projects; bus rapid transit improvements; and rolling stock procurement, rehabilitation or replacement.

Under California Public Utilities Code (PUC) Sections 99313 and 99314, the Metropolitan Transportation Commission (MTC) and SFMTA are eligible sponsors of projects. The requested funds will be used for projects programmed by MTC, in consultation with the Bay Area’s Congestion Management Agencies, or self-selected after internal prioritization by SFMTA. SFMTA has applied to the State of California, through Caltrans, for a total of \$32,729,000 in FY2008-09 PTMISEA funds for various capital projects, as follows:

SFMTA Fiscal Year 2008-09 PTMISEA-Funded Projects

Project Name	FY 2008-09 Fund Request and Phase	Comments
Central Subway	\$30,000,000 Final Design and Right of Way	- \$15,000,000 from SFMTA - \$15,000,000 from MTC
Persia Triangle Transit Access Improvements	\$127,000 Planning and Design	- TEP Project - Lifeline Transportation Program project recommended by SFCTA - Fully funded project already approved by MTAB on February 17, 2009
Randolph/Farallones/Orizaba Transit Access Ped Safety Project	\$85,000 Planning & Design	- TEP Project - Lifeline Transportation Program project recommended by SFCTA - Fully funded project already approved by MTAB on February 17, 2009
Interim Line Management Center	\$400,000 Design & Construction	- Part of Central Control & Communications Program
Light Rail Operations Control Center Improvements at Lenox Way	\$1,300,000 Design & Construction	- Part of Central Control & Communications Program
High Speed Connectivity and Communications Upgrades	\$817,000 Design & Construction	- Part of Central Control & Communications Program

This action is focused only on PTMISEA-funded projects. As shown in the table above, PTMISEA funds come to the SFMTA through different processes: some are programmed exclusively by the SFMTA; some are programmed through the San Francisco County Transportation Authority (SFCTA) / Metropolitan Transportation Commission (MTC) Lifeline Transportation Program; and some are programmed unilaterally by MTC. Today's action partially replicates actions this Board took with regard to Lifeline Transportation Program projects. Staff hopes that it is more informative to show the Board how all of the FY 2008-09 PTMISEA funds claimed will be spent, even if this means having the Board re-approve actions taken earlier.

Finally, because of changing priorities, staff has requested Caltrans PTMISEA program staff to re-direct \$1,200,000 of previously programmed FY 2007-08 funds (not shown in the table) from the pending Mission Bay Loop project to more urgently needed light rail vehicle wreck repairs.

PAGE 4.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

No matching funds are required except as provided below. If projects cannot be delivered in a timely manner, alternative funding will need to be sought.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The SFCTA, as the Congestion Management Agency for the City and County of San Francisco, recommended to MTC that the Persia Triangle and Randolph/Farallones/Orizaba projects receive PTMISEA funds. MTC concurred. MTC also agreed to fund \$100,000,000 for the Central Subway project with the proviso that SFMTA match each dollar programmed. For FY 2008-09, the first year in which the Central Subway will receive PTMISEA funds, MTC and SFMTA each pledged \$15,000,000 to the Central Subway. The current Central Subway funding plan anticipates receiving the remaining \$85,000,000 from MTC, plus SFMTA's equal share, in annual increments through FY 2014-15. Finally, all PTMISEA requests must be approved by Caltrans PTMISEA program staff in Sacramento. Caltrans has agreed to honor all the funding requests presented in this item.

RECOMMENDATION

Staff recommends that the SFMTA Board approve the attached Resolution authorizing the SFMTA, through its Executive Director/CEO (or his designee), to accept and expend \$32,729,000 in FY 2008-09 PTMISEA funds from the State of California for various transit capital projects and to substitute one previously authorized project for another with \$1,200,000 of FY 2007-08 PTMISEA funds.

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

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On November 7, 2006, California voters approved Proposition 1B, "The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006;" and

WHEREAS, Under the Bond Act, \$3.6 billion of bond proceeds will be deposited into the Public Transportation Modernization, Improvement, and Service Enhancement Account (PTMISEA) for eligible public transportation projects that help advance the State's policy goals of providing mobility choices for residents, reducing congestion, and protecting the environment; and

WHEREAS, Under California Public Utilities Code Sections 99313 and 99314, the Metropolitan Transportation Commission (MTC) and the San Francisco Municipal Transportation Agency (SFMTA) are eligible sponsors of projects; and

WHEREAS, The SFMTA has applied, either directly or in partnership with MTC, to the California Department of Transportation, for \$32,729,000 of FY2008-09 PTMISEA funds for the following capital projects: Central Subway, Persia Triangle Transit Access Improvements, Randolph/Farallones/Orizaba Transit Access Pedestrian Safety Project, Interim Line Management Center, Light Rail Operations Control Center Improvements (Lenox Way), and High Speed Connectivity and Communications Upgrades; and

WHEREAS, The SFMTA has determined that the higher priority of the Agency at the present time is to use \$1,200,000 of FY 2007/08 PTMISEA funds for light rail vehicle wreck repairs rather than the Mission Bay Loop project; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the San Francisco Municipal Transportation Agency, through its Executive Director/CEO (or his designee), to accept and expend \$32,729,000 in FY 2008-09 PTMISEA funds from the State of California for the following projects: Central Subway, Persia Triangle Transit Access Improvements, Randolph/Farallones/Orizaba Transit Access Pedestrian Safety Project, Interim Line Management Center, Light Rail Operations Control Center Improvements (Lenox Way), and High Speed Connectivity and Communications Upgrades; and, be it further

RESOLVED, That the SFMTA Board of Directors authorizes the San Francisco Municipal Transportation Agency, through its Executive Director/CEO (or his designee), to accept and expend \$1,200,00 on light rail vehicle wreck repairs rather than the previously identified Mission Bay Loop project; and, be it further

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

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

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. 10.5

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO, to accept and expend \$30,916,609 of capital assistance from FY 2009 FTA Section 5307 Urbanized Area Formula Grant funds for various Municipal Railway capital projects and activities.

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) must apply to the Federal Transit Administration (FTA) to have funds included in a federal grant once the Metropolitan Transportation Commission (MTC) programs the projects and the funds in the region's Transportation Improvement Program (TIP).
- The projects planned are consistent with the priorities established by the SFMTA Board, as affirmed in Muni's Short Range Transit Plan, and are embodied in the Regional TIP.
- The SFMTA seeks authority to accept and expend grant funding in the amount of \$30,916,609 from FY 2009 FTA Section 5307 Urbanized Area Formula Grant funds. Required matching funds of \$7,711,152 will be obtained from a variety of state and local sources.

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

**DIRECTOR OF DIVISION
PREPARING ITEM**

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

**ADOPTED RESOLUTION
TO BE RETURNED TO**

Leda Young, 1 South Van Ness Avenue, 8th Floor

ASSIGNED

MTAB

CALENDAR

DATE

PAGE 2.

PURPOSE

The SFMTA requests SFMTA Board action to accept and expend \$30,916,609 from FY 2009 FTA Section 5307 Urbanized Area Formula Grant funds for various Muni projects.

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

The established TCP and POP incorporate and are consistent with SFMTA's priorities as established in the Short Range Transit Plan and Capital Investment Plan adopted by the SFMTA Board. The MTC recently amended the region’s TIP to program fiscal year 2009 funds for certain San Francisco transit projects.

The SFMTA will apply for FY 2009 FTA Section 5307 Urbanized Area Formula Grant funds for the following projects under FTA Grant No. CA-90-Y749. Section 5307 funds may be used for any eligible planning or capital purpose.

PAGE 3.

Project Name	Project Description	Federal Amount	Match Amount
Paratransit Assistance	Funding supports various Muni ADA/Accessibility improvements, including paratransit operations.	\$3,847,919	\$961,980
Escalator Rehabilitation	Incremental funding required to rehab/rebuild 28 Metro Subway escalators, as necessary.	\$2,050,000	\$512,500
Cable Car Infrastructure Rehabilitation	Various improvements to cable car system guideways and infrastructure, such as hatch covers, power controllers, turntables and pulley replacement.	\$3,669,425	\$917,356
Subway PA And Platform Display Systems	Replace the existing 29 year old subway public address (PA) system & platform display system (PDS), with a new state-of-the-art integrated PA/PDS system.	\$400,000	\$100,000
Woods Facilities Lift Rehab/ Replacement	A combination of in-ground and portable lifts will replace the original lifts, now nearly 30 years old.	\$150,000	\$37,500
Central Control & Communications	Design, construct and outfit an interim Operation Control Center (OCC) in an existing facility until a new OCC is constructed.	\$2,367,284	\$591,821
Historic Vehicle Rehabilitation	On-going, phased rehabilitation of the SFMTA's Historic Rail Car fleet.	\$5,000,000	\$1,250,000

Project Name	Project Description	Federal Amount	Match Amount
Cable Car Vehicle Rehabilitation	On-going program to overhaul and/or reconstruct the SFMTA's approximately 40 existing cable cars to maintain system reliability and productivity.	\$500,000	\$125,000
Wayside Fare Collection Equipment Purchase	Incremental funding toward the purchase of 57 Ticket Vending Machines and 100 faregates.	\$7,500,000	\$1,875,000

Project Name	Project Description	Federal Amount	Match Amount
Rehabilitation of Neoplan Buses	Due to the age of the Neoplan vehicles, an overhaul is necessary in order to improve the coaches' reliability and maintain a high level of service availability.	\$5,031,981	\$1,257,995
Buy Replacement Trolley Buses	The funds will provide incremental funding to purchase replacement trolley coaches for the existing sixty 60-ft articulated coaches.	\$400,000	\$82,000
TOTAL		\$30,916,609	\$7,711,152

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

The required non-federal matching funds of \$7,711,152 will be secured separately. Various state, regional and local fund sources will be tapped to provide matching funds to these projects, which may include State transportation funds, bridge toll funds, Transit Impact Development fees, San Francisco Municipal Railway fare revenue, San Francisco Municipal Railway Improvement Corporation funds, and San Francisco County Transportation Authority sales tax revenue.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

RECOMMENDATION

The SFMTA recommends the SFMTAB adopt a resolution authorizing the SFMTA, through its Executive Director/CEO, to accept and expend \$30,916,609 of FY 2009 FTA Section 5307 Urbanized Area Formula Grant funds.

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

RESOLUTION No. _____

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

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

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

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

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

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

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

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

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

Grant CA-90-Y749 Program of Projects	Federal Amount	Match Amount
Paratransit Assistance	\$3,847,919	\$961,980
Escalator Rehabilitation	\$2,050,000	\$512,500
Cable Car Infrastructure Rehabilitation	\$3,669,425	\$917,356
Subway Public Address And Platform Display Systems	\$400,000	\$100,000
Woods Facilities Lift Rehab/Replacement	\$150,000	\$37,500
Central Control & Communications	\$2,367,284	\$591,821
Historic Vehicle Rehabilitation	\$5,000,000	\$1,250,000
Cable Car Vehicle Rehabilitation	\$500,000	\$125,000
Wayside Fare Collection Equipment Purchase	\$7,500,000	\$1,875,000
Rehabilitation of Neoplan Buses	\$5,031,981	\$1,257,995
Buy Replacement Trolley Buses	\$400,000	\$82,000
TOTAL	\$30,916,609	\$7,711,152

and

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

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through its Executive Director/CEO to accept and expend \$30,916,609 in FY 2009 FTA Section 5307 Urbanized Area Formula Grant funds for the following projects:

- Paratransit Assistance
- Escalator Rehabilitation
- Cable Car Infrastructure Rehabilitation
- Subway Public Address and Platform Display Systems
- Woods Facilities Lift Rehab/Replacement
- Central Control & Communications
- Historic Vehicle Rehabilitation
- Cable Car Vehicle Rehabilitation
- Wayside Fare Collection Equipment Purchase
- Rehabilitation of Neoplan Buses
- Buy Replacement Trolley Buses and, be it

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

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

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to seek \$7,711,152 in non-federal matching funds.

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

Secretary, Municipal Transportation Agency Board

THIS PRINT COVERS CALENDAR ITEM NO. : 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Muni Operations

BRIEF DESCRIPTION:

Requesting authorization for the Executive Director/CEO to execute Contract No. MR-1064: John M. Woods Motor Coach Facility - Engine Dynamometer System with Ferris Hoist and Repair, dba Peterson Hydraulics, Inc, to replace the engine dynamometer system, in the amount of \$349,559 and for a term not to exceed 150 calendar days

SUMMARY:

- San Francisco Municipal Transportation Agency (SFMTA) Contract No. MR-1064, John M. Woods Motor Coach Facility – Engine Dynamometer System, is part of the SFMTA’s Fleet Procurement Program.
- The scope of work under this contract includes providing all labor, materials, equipment, consumable, design and engineering to replace the obsolete engine dynamometer system at the John M. Woods Motor Coach Facility.
- The engine dynamometer is a special machine that will provide simulated road loading on an engine. This will enable Muni’s Machine Shop technicians to test and ensure that the Cummins ISM engines for the Neoplan fleet meets the original equipment manufacturer’s specifications after being overhauled and rebuilt in-house.
- The proposed cost by the contractor is \$349,559. The work shall be substantially completed within 150 calendar days from the date of the Notice to Proceed.
- Savings of approximately \$142,956 per year can be realized by testing the engines in-house instead of sending them out to a vendor. Based on the current rate of testing 60 engines per year, the payback period for this project will be approximately 2.4 years.

ENCLOSURES:

1. SFMTA Board Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO TJ Lansang – 700 Pennsylvania, B200

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE:

The purpose of this contract is to replace the old and obsolete engine dynamometer system at the John M. Woods Motor Coach Facility with a new engine dynamometer system that is compatible with the type of engines used on the newer fleet.

GOAL:

The goal of this project is to provide the tools and equipment to staff in order to perform their work in a safe and efficient manner and to meet the following goal and objective of the Strategic Plan:

Goal No. 5: SFMTA Workforce

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

Objective No. 5.1: Increase the resources available to the employees in performing their jobs (tools, staff hours, etc.)

DESCRIPTION:

The scope of work for this contract is to replace the old and obsolete engine dynamometer system at the John M. Woods Motor Coach Facility. This includes providing all labor, materials, equipment, design and engineering to replace the existing engine dynamometer system, complete with all required appurtenances.

The engine dynamometer is a special machine that will provide simulated road loading which will then measure torque and rotational speed from which power produced by the engine can be calculated. Dynamometer testing is necessary to ensure that an overhauled and rebuilt engine meets the original manufacturer's performance specifications prior to being reinstalled back in the bus.

The existing engine dynamometer was installed in 1972 and was designed for two-stroke engines. The engines for the recently purchased diesel fleet are four-stroke, computer controlled engines which makes the existing dynamometer obsolete.

The current practice for testing rebuilt engines is to send them to a vendor at a cost of \$2,400 per engine, including shipping and handling. However, there are instances when the engine does not start or develops a leak while being tested, and when this happens, Muni has only two options. The options are to have the engine shipped back for repair, then send it back to the vendor for a retest at an additional cost of \$2,400 or have the vendor perform the troubleshooting and repairs and bill Muni for materials and labor. Either option is time-consuming and costly as there are approximately 60 engines being rebuilt in a year.

Based on the present billing rate by the vendor, the total costs to outsource the testing of the 60 diesel engines a year is approximately \$144,000. Assuming 10% are sent back for retesting, adds another \$14,400 to the annual cost of dynamometer test for a total of \$158,400.

PAGE 3.

Based on the present pay scale for a machinist, the cost to test the engines in-house is about \$234 per engine. Therefore, the approximate in-house cost to test 60 engines per year plus 10% sent back is \$15,444. The estimated yearly savings will be about \$142,956 or a payback period of 2.4 years based on \$349,559 project cost for the dynamometer system.

In addition, Muni will have additional savings due to the time and labor that will not be expended from the shipping and handling of the engines, plus the preparation and handling of purchase orders and packing slips. In addition, troubleshooting and repairs during testing can be done while the engine is mounted on the dynamometer which will result in better quality control, faster turnaround and more availability of engines for a coaches needing engine replacement.

The lowest bid obtained from the bid call process authorized by the MTA Board's Resolution No. 09-036, was from Ferris Hoist and Repair, Inc. at \$349,559, and the only other bidder was Angotti & Reilly at \$383,559, and the engineer's estimate was \$264,000.

The difference between the engineer's estimate and the contractor's bid price is due to the increase in material cost for the dynamometer and heat exchanger, plus the increase in labor cost due to the constraints of working in an existing building with very limited space. However, based on five engine rebuilds per month, the payback period for this project is 2.4 years which is still an attractive payback period for any project.

The contract requires Ferris Hoist and Repair, Inc. to complete the project in 150 calendar days; otherwise liquidated damages of \$500 per calendar day of delay will be assessed against them.

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

The SFMTA's Contract Compliance Office has reviewed this calendar item and has set an SBE goal of 0% for this project.

Funding for this Contract is from CPT 466 – Neoplan Bus Procurement Contract.

ALTERNATIVES CONSIDERED:

The alternative is not to replace the obsolete engine dynamometer system and continue to use a vendor. This option will mean that the engines will continue to be outsourced for testing at an additional expense and it will cause a delay in returning vehicles to revenue service. .

FUNDING IMPACT:

The Operating Budget will not be affected since the project is funded through a Federal Transportation Administration grant. In fact, savings will be realized because the cost to test the engines in-house is about 1/10 the cost when done by a vendor.

OTHER APPROVAL RECEIVED OR STILL REQUIRED

None

RECOMMENDATION:

Staff recommends that the SFMTA Board authorizes the Executive Director/CEO to execute a contract with Ferris Hoist and Repair, dba Peterson Hydraulics, Inc. for Contract No. MR-1064: John M. Woods Motor Coach Facility Engine Dynamometer System.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency's contract No. MR-1064: John M. Woods Motor Coach Facility Engine Dynamometer System, is part of MUNI's Fleet Procurement Program; and,

WHEREAS, The scope of work under Contract No. MR-1064 includes providing all labor, materials, equipment, consumables, design and engineering to replace the existing obsolete engine dynamometer system with a brand new engine dynamometer complete with all required appurtenances; and,

WHEREAS, The project is expected to produce a yearly savings of about \$142,956 in engine dynamometer testing cost; and,

WHEREAS, The bid documents have been completed and the Contract is funded 100% from Federal Transit Administration Funds; and

WHEREAS, The Contract Compliance Office has established a 0% SBE goal for this contract; now, therefore be it

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.7

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Parking and Traffic

BRIEF DESCRIPTION: Authorizing the Department of Public Works (DPW) to execute change order No. 3 to DPW Contract No. 1099J, SFgo Various Locations Contract, with Phoenix Electric Company for an amount not to exceed \$177,652 and a time extension of 100 calendar days.

SUMMARY:

- On January 6, 2009, the SFMTA Board of Directors adopted Resolution No. 09-006, which authorized DPW to award Contract No. 1099J, SFgo Various Locations Contract, to Phoenix Electric Company, for a total contract amount not to exceed \$1,073,888.
- SFMTA staff requests authorization for DPW to execute change order No. 3 to install special variable message sign (VMS) foundations at 3rd/Marin Streets and 3rd/Mariposa Streets due to unforeseen underground obstructions at the project site; install a Pacific Gas and Electric (PG&E) power meter system; and install additional reinforcement to mount the VMS to its support structure.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

SHOULD BE RETURNED TO Ken Kwong

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

SFMTA staff requests this Board to authorize the Department of Public Works (DPW) to execute change order No. 3 to Contract No. 1099J, SFgo Various Locations Contract, to install special variable message sign (VMS) foundations at 3rd/Marin Streets and 3rd/Mariposa Streets due to unforeseen underground obstructions at the project site, install a Pacific Gas and Electric (PG&E) power meter system, and install additional reinforcement to mount the VMS to its support structure.

GOAL

The SFMTA will further the following goals of the Strategic Plan:

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 2.4 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 SFMTA's Parking and Traffic Division (DPT), utilizing DPW Contract No. 1099J: SFgo Various Locations Contract, is installing seven variable message signs and 11 closed circuit television cameras ("the work") in San Francisco. The variable message signs will be located along Third Street, the Fell and Oak Street corridors, and in the South of Market area. In addition, 11 closed circuit television cameras will be installed along Third Street, the Fell and Oak Street corridors, Octavia Blvd., and in the South of Market area.

These locations were selected to allow SFgo to monitor traffic conditions from the Transportation Management Center and verify incidents on these corridors via the closed circuit television cameras. The variable message signs will be used to display traveler information regarding traffic conditions, roadway incidents, or any other important messages to the public. Furthermore, variable message signs will be part of the SFpark – Parking Guidance System to display real-time garage space information.

On January 6, 2009, the SFMTA Board of Directors adopted Resolution No. 09-006, which authorized DPW to award Contract No. 1099J, SFgo Various Locations Contract, to Phoenix Electric Company for a total contract amount not to exceed \$1,073,888.

On May 5, 2009, change order No. 1, in the amount of \$53,700 for a new contract amount of \$1,467,510, was approved by the Executive Director/CEO to install conduits and pull boxes ahead of the Temporary Transbay Terminal project's repaving of Howard Street between Main and Beale Streets.

PAGE 3.

On June 11, 2009, change order No. 2, in the amount of \$10,000 for a new contract amount of \$1,477,510, was approved by the Executive Director/CEO to perform extra work as needed for conduit and pole foundation installation due to conflict with unforeseen underground obstructions at various locations.

Change order No. 3 will be for an amount not to exceed \$177,652 for a new contract amount of \$1,655,162. Since this change order will exceed 10 percent of the contract amount, the SFMTA Board must approve it. This change order authorizes the installation of:

1. An offset foundation and spread footing at 3rd/Marin Streets and 3rd/Mariposa Streets,
2. A PG&E power meter system, and
3. Additional reinforcement to mount the VMS to its support structure.

During the construction of the VMS foundations, Phoenix Electric Company encountered an unmarked utility pipeline at the 3rd Street locations. The existing utilities did not allow for the original foundation to be built, so special foundations were designed at the 3rd Street locations. In addition, it was not anticipated that PG&E would require a meter to monitor each VMS' power consumption. This change order will provide funds for PG&E to supply the required service for the VMSs. During construction, Phoenix Electric Company pointed out that there was insufficient information on how to mount the VMS to the support structure. This change order will correct this oversight and increase the number of all connecting bolts and I-beams quantities needed to mount the VMS to its support structure. The time extension for this change order work is 100 calendar days.

The Human Rights Commission has established a 20% Local Business Enterprise (LBE) subcontractor participation goal for this contract. The 20% LBE participation goal also applies to the change order.

The City Attorney has reviewed this calendar item.

ALTERNATIVES CONSIDERED

Instead of executing change order No. 3, the following alternatives were also considered:

- No-Build Option – This option was not chosen because this change order was found to promote several of SFMTA's goals; in particular, the system performance of reducing congestion and managing parking supply.
- Alternate VMS Locations – SFMTA staff analyzed several alternate VMS locations in the vicinity of the project area. However, the site conditions made it infeasible to install a VMS. In addition, the VMS would not be at an effective location to direct motorists to alternate routes during street closures. This option was not chosen because the underground obstruction was present along the entire block of both project sites.
- Use of SFMTA Staff – Installation of the new VMS and PG&E power meter system by SFMTA staff is not feasible because the SFMTA does not have the staff resources to perform such work.

PAGE 4.

Staff concluded that executing change order No. 3 would further the goals of the Strategic Plan by using technology to reduce congestion on major corridors and manage parking supply to align with SFMTA and community goals.

FUNDING IMPACT

Funding is available to execute change order No. 3 through Proposition K half-cent sales tax funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Department of Public Works to execute change order No. 3 to DPW Contract No. 1099J, SFgo Various Locations Contract, with Phoenix Electric Company for an amount not to exceed \$177,652 for a new contract amount of \$1,655,162 and time extension of 100 calendar days.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On January 6, 2009, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 09-006, which authorized the Department of Public Works (DPW) to award Contract No. 1099J: SFgo Various Locations Contract, for the installation of seven variable message sign (VMS) displays and 11 closed circuit television cameras at various locations along 3rd Street, the Fell and Oak Street corridors, Octavia Blvd., and in the South of Market area, for a total contract amount not to exceed \$1,073,888; and,

WHEREAS, The Executive Director/CEO approved change orders Nos. 1 and 2 to Contract No. 1099J in the amounts of \$53,700 and \$10,000, respectively; and

WHEREAS, Various unforeseen problems have occurred with the installations that require a change order to Contract No. 1099J in an amount not to exceed \$177,652, and a time extension of 100 calendar days; now therefore, be it

RESOLVED, The SFMTA Board authorizes the Department of Public Works to execute change order No. 3 to Contract No. 1099J SFgo Various Locations Contract, with Phoenix Electric Company to install special VMS foundations at 3rd/Marin Streets and 3rd/Mariposa Streets, a PG&E power meter system, and additional reinforcement to mount the VMS to its support structure, for an amount not to exceed \$177,652 for a new contract amount of \$1,655,162 and time extension of 100 calendar days.

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

Enclosure #2

**Department of Public Works Contract No. 1099J: SFgo Various Locations Contract No. 1
Project Budget and Financial Plan**

PROJECT BUDGET

Category	Budget Amount
DPT Traffic Engineering & DPW Bureau of Engineering (Design, Planning Coordination, & Detailed Electrical Design)	\$136,000
Detailed Engineering Estimate for Construction Contract Cost, 10% Construction Cost Contingency, Other Direct Costs (Electrical Service, 911 Call Boxes, & Cable Car Switches), and variable message signs and closed circuit television cameras. DPW Bureau of Construction Management (BCM) & Bureau of Engineering (BOE) (Contract Preparation, Public Affairs, Materials Testing Lab, Wage Check & Construction Engineering)	\$1,187,581
Construction Change Orders	\$241,352
DPT Traffic Engineering & Signal Shop (Construction Support)	\$90,229
TOTAL (DESIGN AND CONSTRUCTION PHASES)	\$1,655,162

FINANCIAL PLAN

Funding Source	Amount	Percentage
Local Half Cent Sales Tax - Proposition K	\$1,655,162	100%
TOTAL	\$1,655,162	100%

THIS PRINT COVERS CALENDAR ITEM NO. : 10.8

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Requesting approval for the plans and specifications and authorization for bid call for San Francisco Municipal Transportation Agency Contract No. 1234, 21 Hayes Pole Replacement and Miscellaneous Overhead Construction Project.

SUMMARY:

- The 21 Hayes Pole Replacement and Miscellaneous Overhead Construction Project, San Francisco Municipal Transportation Agency Contract No. 1234, is a part of the Overhead Rehabilitation Program for various trolley coach overhead lines.
- The scope of work for this project is to replace the existing trolley poles along the 21 Hayes Line; traffic signals, streetlights, curb ramps, and overhead contact system at selected intersections along Hayes between Stanyan and Market Streets; overhead switches and crossover assemblies in the Presidio Trolley Coach Facility; and to convert McAllister Street from one-way to two-way traffic between Hyde and Market streets.

ENCLOSURES:

1. SFMTAB Resolution

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

The purpose of this calendar item is to obtain approval from the SFMTA Board of Directors for the plans and specifications and authorization for bid call for SFMTA Contract No. 1234, 21 Hayes Pole Replacement and Miscellaneous Overhead Construction Project.

GOAL

Contract No. 1234 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 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 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

Contract No. 1234 is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under the Infrastructure Program and within the Overhead Rehabilitation Program. The Infrastructure Program consists of capital projects to build and maintain the fixed guideway elements such as the trolley overhead system, which includes replacement of the overhead wires, related poles, and traction power systems serving the light rail and trolley coach lines. Rehabilitation of the overhead system would reduce operational problems, reduce maintenance, and increase system reliability.

The scope of work for the project includes replacing the deteriorated trolley poles and associated elements of the overhead system along the 21 Hayes line and the overhead contact system at selected intersections between Sanyan and Market Streets; replacing traffic signals, streetlights, curb ramps at selected intersection; replacing overhead switches and crossover assemblies in the

PAGE 3.

Presidio Trolley Coach Facility; and converting McAllister Street from one-way to two-way traffic between Hyde and Market streets.

The time allotted to substantially complete construction of the project is 365 calendar days from the date of the written Notice to Proceed with the work. Liquidated damages are \$3,500 per calendar day for failure to complete the work on time.

The plans and specifications are not included as enclosures to this calendar item. They are available for review at 1 South Van Ness Avenue, 3rd floor, SFMTA Transportation Planning and Development Division.

ALTERNATIVES CONSIDERED

The project team held discussions with Maintenance staff concerning whether the work should be done by in-house staff. The preference was to have a contractor to perform the work because contractors have enough crews with electrical and construction expertise to complete the work in a timely manner with minimal impact to Operations. Staff determined that contracting out to contractors was the practical alternative.

FUNDING IMPACT

Funding for the entire project comes from a combination of programmed Federal Transit Administration funds and local funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Contract Compliance Office has established a Small Business Enterprise goal of five percent for this contract. The City Attorney's Office reviewed this calendar item.

No other approvals from any other agency are required for this item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve the plans and specifications and authorize bid call for Contract No. 1234, 21 Hayes Pole Replacement and Miscellaneous Overhead Construction Project.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1234, 21 Hayes Pole Replacement and Miscellaneous Overhead Construction Project, is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under the Infrastructure Program and within the Overhead Rehabilitation Program; and,

WHEREAS, The work to be performed under this project will replace the existing trolley poles along the 21 Hayes Line; traffic signals, streetlights, curb ramps, and overhead contact system at selected intersections along Hayes between Stanyan and Market Streets; overhead switches and crossover assemblies in the Presidio Trolley Coach Facility; and to convert McAllister Street from one-way to two-way traffic between Hyde and Market streets; and,

WHEREAS, The time allotted to substantially complete the construction work is 365 calendar days after issuance of the Notice to Proceed, with liquidated damages of \$3,500 per calendar day for failure to complete the work on time; and,

WHEREAS, Funds for this contract are available and the project is funded Federal grants (80%) and by local funding sources (20%); and,

WHEREAS, SFMTA Contract No. 1234, 21 Hayes Pole Replacement and Miscellaneous Overhead Construction Project, 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; Goal No. 2 (System Performance) – to get customers where they want to go; when they want to be there; 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 Contract Compliance Office has established a five percent Small Business Enterprise participation goal for this contract; now, therefore, be it,

RESOLVED, That SFMTA Board of Directors approves the plans and specifications and authorizes bid call for Contract No. 1234, 21 Hayes Pole Replacement and Miscellaneous Overhead Construction Project.

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. 10.9

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

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Approve the plans and specifications and authorize the Executive Director to advertise for bid San Francisco Municipal Transportation Agency Contract No. 1235, Saint Francis Circle Rail Replacement Project.

SUMMARY:

- San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1235, Saint Francis Circle Rail Replacement Project, is to replace worn trackwork and related work from West Portal Avenue and 15th Avenue through the Saint Francis Circle intersection, and continue into the K-Line exclusive right-of-way on Junipero Serra Boulevard to the south and into the M-Line semi-exclusive right-of-way to the west of Junipero Serra Boulevard.
- The scope of work under Contract No. 1235 consists of: replacing existing trackwork, Overhead Contact System (OCS), electrical street lightings, track circuit wiring, Vetag loop, sewer work, and street repavement.
- The estimated cost for the construction contract is between \$11 and \$12 million. The work is to be substantially completed within 480 calendar days from the Notice to Proceed.

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

Attn: Gigi Pabros

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Approve the plans and specifications and authorize the Executive Director to advertise for bid San Francisco Municipal Transportation Agency Contract No. 1235, Saint Francis Circle Rail Replacement Project.

San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1235, Saint Francis Circle Rail Replacement Project, is to replace worn trackwork and related work from West Portal Avenue and 15th Avenue through the Saint Francis Circle intersection, and continue into the K-Line exclusive right-of-way on Junipero Serra Boulevard to the south and into the M-Line semi-exclusive right-of-way to the west of Junipero Serra Boulevard.

GOAL

Contract No. 1235 would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

- 1.1 Improve safety and security across all modes of transportation
- 1.4 Improve accessibility across transit services

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

- 2.1 Improve transit reliability to meet 85% on-time performance standard
- 2.2 Ensure efficient transit connectivity and span of service
- 2.4 Reduce congestion through major corridors

Strategic Plan Goal 5 – SFMTA Workforce: To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency’s mission and vision and leads the agency into the evolving, technology-driven future

- 5.1 Increase resources available for employees in performing their jobs (tools, staff hours, etc)

DESCRIPTION

The project location designated for rail replacement was identified by the SFMTA Rail Capital Planning Work Committee with input from SFMTA Maintenance. In general, rail needs to be replaced due to any or a combination of factors including: tight track curvature, soil movement, trackway and street pavement settlements, uneven LRV loadings, frequency of LRV movement, automobile traffic loading, and the strength and hardness of rail.

PAGE 3.

The Saint Francis Circle Rail Replacement Project consists of replacing worn trackwork and related work from West Portal Avenue and 15th Avenue through the Saint Francis Circle intersection, and continuing into the K-Line exclusive right-of-way on Junipero Serra Boulevard to the south and into the M-Line semi-exclusive right-of-way to the west of Junipero Serra Boulevard.

It is anticipated that the construction work for the Saint Francis Circle Rail Replacement Project will be substantially completed within 480 calendar days from the date of the written Notice to Proceed. The liquidated damages will be \$5,000 per day for failure to complete the work on time.

The Contract Compliance Office has established an SBE goal of 10% for this contract. The City Attorney's Office has reviewed this calendar item.

The plans and specifications are not included as enclosures to this Calendar Item. They are available for review at 1 South Van Ness Avenue, 3rd floor, SFMTA Transportation Planning and Development Division.

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 to contractors is the practical alternative.

FUNDING IMPACT

Funding for the Saint Francis Circle Rail Replacement Project has been secured from a combination of programmed Federal Transit Administration funds and local funds as detailed in the Project Budget and Financial Plan tables presented in Enclosure 2.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required for this item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve the plans and specifications and authorize bid call for Contract No. 1235, Saint Francis Circle Rail Replacement Project.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION NO. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No.1235, Saint Francis Circle 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 worn trackwork and related work from West Portal Avenue and 15th Avenue through the Saint Francis Circle intersection, and continue into the K-Line exclusive right-of-way on Junipero Serra Boulevard to the south and into the M-Line semi-exclusive right-of-way to the west of Junipero Serra Boulevard; and,

WHEREAS, The time allotted to substantially complete the construction work is 480 calendar days, with liquidated damages of \$5,000 per day for failure to complete the work on time; and,

WHEREAS, The engineer's estimate for this construction contract is between \$11 and \$12 million; and,

WHEREAS, Federal and local grants are funding the project; and,

WHEREAS, The Saint Francis Circle Rail Replacement Project will assist the SFMTA in meeting Strategic Plan Goal 1 – Customer Focus by providing safety, security and accessibility in transit services; Strategic Plan Goal 2 – System Performance: To get customers where they want to go, when they want to be there; and in meeting Strategic Plan Goal 5 – SFMTA Workforce, by increasing resources available for employees in performing their jobs, and improving facilities in which people are working; and,

WHEREAS, The Contract Compliance Office has established a 10% SBE participation goal for this contract; now, therefore, be it,

RESOLVED, That the SFMTA Board of Directors approves the plans and specifications and authorizes bid call for Contract No.1235, Saint Francis Circle Rail Replacement Project.

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

**Saint Francis Circle Rail Replacement Project
San Francisco Municipal Transportation Agency Contract No. 1235
Project Budget and Financial Plan**

Category	Budget
Conceptual Engineering	\$668,000
Detail Design	\$2,280,000
Construction	
Construction Contract (Engineer's Estimate):	\$11,000,000 - \$12,000,000
Construction Support:	\$2,350,000
Contingency	\$2,085,000 - \$1,085,000
Total	\$18,383,000

FINANCIAL PLAN

Project Funding Source	Amount
Federal Grants: FTA	\$14,546,400
Local Grants:	
ABB664 Bridge Toll Funds	\$526,600
Proposition K	\$2,210,000
DPW	\$1,100,000
Total	\$18,383,000

THIS PRINT COVERS CALENDAR ITEM NO. : 10.10

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Requesting approval to reject all bids for San Francisco Municipal Transportation Agency Contract No. 1220, Muni Traction Power Station E and Richmond Substations Upgrade Project, and authorize the Executive Director/CEO to re-advertise the project as Contract No. 1220R.

SUMMARY:

- On November 20, 2007, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 07-178, authorizing bid call for Contract No. 1220, Muni Traction Power Station E and Richmond Substations Upgrade Project.
- The project consists of replacing and upgrading the aging and damaged substation power equipment at Station E and Richmond Substations, modifying the existing floor slab that supports the electrical equipment to create a waterproof barrier at Station E, and replacing a collapsed ductbank outside the Richmond Substation. The project will also include a new ductbank connecting Richmond Substation to Balboa Substation to minimize service disruptions during construction and to improve system reliability and redundancy.
- Three bids were received and publicly opened on March 4, 2009.
- Subsequently, two bid protests were received. Staff has determined that it will be beneficial for the Agency to reject all bids, clarify the specifications and rebid the project.

ENCLOSURES:

1. SFMTAB Resolution

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

San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1220R, Muni Traction Power Station E and Richmond Substations Upgrade Project, will replace and upgrade the aging and damaged substation power equipment at Station E and Richmond Substations to reduce operational problems, reduce maintenance, increase system reliability, and provide for increased future load demands. The purpose of this calendar item is to seek approval to reject bids and re-advertise the project.

GOAL

Contract No. 1220R 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

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 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

Station E has been shut down since 2002 due to damaged electrical equipment. The power previously distributed from Station E is currently being back-fed from surrounding substations. Having Station E in operation will allow SFMTA to efficiently manage its overhead power needs without stressing the electrical equipment in other substations and provides backup circuitry in case the surrounding substations' circuitry fails. The electrical equipment at the Richmond Substation is over 25 years old and past its useful life. Some of the components are no longer being manufactured. SFMTA risks outages and curtailment of service on the heavily used 1-California Line as redundant circuitry from other substations does not exist for two of its circuits.

PAGE 3

The Muni Traction Power Station E and Richmond Substations Upgrade Project is one of the priority projects in the Overhead Rehabilitation Program. The equipment at the two Substations needs to be replaced as soon as possible to alleviate potential problems.

Scope of Work

SFMTA Contract No. 1220R, Muni Traction Power Station E and Richmond Substations Upgrade Project, is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under Infrastructure Program and within the Overhead Rehabilitation Program. Rehabilitation of Station E and Richmond Substations would reduce operational problems, reduce maintenance, increase system reliability, and provide for increased future load demands.

The main scope of work for this project consists of replacing and upgrading the aging and damaged substation power equipment at Station E and Richmond Substations, modifying the existing floor slab that supports the electrical equipment to create a waterproof barrier at Station E, and replacing a collapsed ductbank outside the Richmond Substation. The project will also include a new ductbank connecting Richmond Substation to Balboa Substation to minimize service disruptions during construction and to improve system reliability and redundancy.

Bids and Bid History

The SFMTA Board of Directors adopted Resolution No. 07-178 on November 20, 2007, authorizing bid call for Contract No. 1220.

On March 4, 2009, SFMTA's Transportation Planning and Development Division received and publicly opened three bid proposals as follows:

	<u>Bidder</u>	<u>Bid Amount</u>
1	Shimmick Construction Company, Inc. 8201 Edgewater Drive #202 Oakland, CA 94621	\$9,244,500
2	Schembri Construction Company, Inc. 1485 Bayshore Blvd., #130 San Francisco, CA 94124	\$9,676,090
3	Blocka Construction, Inc. 4455 Enterprise Street Fremont, CA 94538	\$10,361,400

Following receipt of bids, SFMTA received bid protests from Schembri Construction and Shimmick Construction Company, Inc.

Staff analyzed the bid protests and determined that it will be beneficial for the Agency to clarify the specifications and rebid the project.

PAGE 4

Under provisions of the specifications for this contract, SFMTA reserves the right to reject any and all bids. Staff recommends that this Board rejects all bids received for San Francisco Municipal Transportation Agency Contract No. 1220.

ALTERNATIVES CONSIDERED

Staff has determined that awarding the contract without further clarifications to the Specifications is not advantageous to the Agency.

FUNDING IMPACT

As of April 1, 2009, the sales tax has increased by 1% and it will affect all purchases of materials on construction projects. Copper prices have also been rising. The project includes substantial usage of copper for traction power cables. The possibility of getting lower bids from a re-bid is unlikely due to the issues mentioned and the increases in equipment cost. Staff will review the scope and specifications of this project, re-evaluate the engineer's estimate, and develop contract award method to meet the available budget.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Contract Compliance Office has reviewed this calendar item and established a revised Small Business Enterprise goal of ten percent for the Contract. The City Attorney's office has reviewed this report

No other approvals from any other agency are required for this calendar item.

RECOMMENDATION

Staff requests the SFMTA Board of Directors authorize the SFMTA to reject all bids for San Francisco Municipal Transportation Agency Contract No. 1220, Muni Traction Power Station E and Richmond Substations Upgrade Project, and recommends that the Board of Directors authorize the Executive Director/CEO to re-advertise the project as Contract No. 1220R

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1220, Muni Traction Power Station E and Richmond Substations Upgrade Project, is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under Infrastructure Program and within the Overhead Rehabilitation Program; and,

WHEREAS, The work to be performed under this project will replace and upgrade aging and damaged substation power equipment at Station E and Richmond Substations, modify the existing floor slab at Station E that supports electrical equipment to create a waterproof barrier, replace a collapsed ductbank outside of the Richmond Substation, and install a new ductbank connecting Richmond Substation to Balboa Substation to minimize service disruptions during construction and to improve system reliability and redundancy; and,

WHEREAS, By rehabilitating Station E and Richmond Substations, SFMTA seeks to reduce operational maintenance, increase system reliability, and provide for increased future traction power load demands; and,

WHEREAS, On November 20, 2007, the SFMTA Board of Directors adopted Resolution No. 07-178, authorizing bid call for Contract No. 1220, Muni Traction Power Station E and Richmond Substations Upgrade Project; and,

WHEREAS, On March 4, 2009, SFMTA received and publicly opened three bid proposals in response to its invitation for bids; and,

WHEREAS, Staff reviewed the bid protests and recommends that it will be beneficial for the Agency to review the project scope, clarify the specifications, and re-advertise the contract; and,

WHEREAS, The Contract Compliance Office has established a revised Small Business Enterprise goal of ten percent for the Contract; and

WHEREAS, SFMTA Contract No. 1220, Muni Traction Power Station E and Richmond Substations Upgrade Project, 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; Goal No. 2 (System Performance) – to get customers where they want to go; when they want to be there; 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; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the rejection of all bids received on March 4, 2009 for San Francisco Municipal Transportation Agency Contract No. 1220, Muni Traction Power Station E and Richmond Substations Upgrade Project; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Executive

Director/CEO to re-advertise the project as Contract No. 1220R.

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. : 10.11

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Taxis and Accessible Services

BRIEF DESCRIPTION:

Requesting the San Francisco Municipal Transportation Agency Board of Directors to adopt amended criteria to support the investigation of illegal operations of taxi businesses and vehicles.

SUMMARY:

- California Government Code §§ 53075.7-53075.9 authorize the SFMTA to adopt criteria that, if shown, would be sufficient to warrant initiating an investigation against an illegal taxi service provider (one without a permit issued by the SFMTA or predecessor agency).
- The SFMTA Board adopted Resolution No. 09-066 on April 21, 2009 to establish such criteria so that staff could proceed to enforce Government Code §§ 53075.7-53075.9. The April 21 Resolution also established a \$5,000 administrative fine for providing illegal taxi services.
- Staff recommends that the previously adopted criteria be amended to require either the second factor or the third factor to be shown to justify proceeding with enforcement, but that the two factors should not both be required or it would be too difficult to meet the burden of proof. Accordingly, staff re-submits this resolution with a single word changed: the word “and” between paragraphs 2 and 3 of the Board’s criteria is changed to “or” for the purpose of improving the agency’s enforcement capacity against illegal taxi vehicles.

ENCLOSURES:

1. SFMTAB Resolution
2. Government Code §§ 53075.7-53075.9

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Chris Hayashi

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

To adopt amended criteria that would support initiation of investigations against taxi business and vehicle operators.

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

This item will improve the safety of taxi customers by reducing the probability that they will use illegal taxi services that do not use trained or screened, and which may not be properly insured.

DESCRIPTION

California Government Code §§ 53075.7-53075.9 authorize a local taxi regulator to establish criteria for the purpose of commencing enforcement against persons or corporations who illegally hold out taxi services to the public without a permit issued by the SFMTA or predecessor agency. This item amends criteria that were previously adopted by the Board on April 9, 2009 for the purpose of enforcing the Government Code provisions.

The Resolution adopted by the Board on April 21, 2009 sets forth the criteria for initiating an investigation as follows:

1. That the business or vehicle does not have a permit issued by the SFMTA or predecessor agency to operate the business or the vehicle; and
2. That the business or vehicle picks up passengers from street hails and/or by dispatch; and
3. That the business or vehicle holds itself out to the public as a taxicab service by any indicia, including but not limited to factors such as vehicle dress, operator insignia, business advertising or signage, or any other perceptible means of soliciting passengers for hire.

In order to maximize the effectiveness of enforcement resources, staff recommends that the word “and” between paragraphs 2 and 3 above should be expressed as “or”, or else the SFMTA will have to catch illegal vehicles in the act of carrying or soliciting passengers in order to proceed with enforcement. If paragraphs 2 and 3 are expressed as alternatives, then it will be sufficient to prove that a person was in a vehicle that was impersonating a taxicab and making itself available to the public as a taxi service.

The City Attorney has reviewed this report.

PAGE 3.

ALTERNATIVES CONSIDERED

If the resolution is not amended then it will be necessary to catch illegal vehicles in the act of soliciting or carrying passengers in the act in order to support petition for an order from a magistrate for initiating enforcement action under the Government Code provisions.

FUNDING IMPACT

There are estimated to be at least 30 illegal taxi businesses in San Francisco. If, after investigation and hearing, each one is fined \$5,000 and the fine is collected, the resulting revenue would amount to \$150,000. To the extent that the investigations and hearings increase agency costs, those costs can be assessed against the violators or recovered from the fine revenues.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

Staff requests the SFMTA Board of Directors to adopt these amended criteria so that the Division of Taxis and Accessible Services can implement enforcement measures against operators of illegal taxi businesses and vehicles.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, There are 1500 licensed taxicab vehicles in San Francisco, and nearly seven thousand drivers holding San Francisco taxi driver permits; and,

WHEREAS, Legitimate San Francisco taxi drivers have to compete for fares with unlicensed operators, and legitimate taxi businesses lose customers who call for service to unlicensed operators for taxi service from Yellow Pages listings; and,

WHEREAS, California Government Code §§ 53075.7-53075.9 authorize a local regulator to initiate a complaint against an illegal taxi operator upon making certain findings bases on criteria defined by the local regulator; and,

WHEREAS, The SFMTA Board of Directors wishes to adopt criteria for initiating investigation against illegal taxi operators and to establish a fine amount for illegal operation of a taxi service; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors adopts the following criteria establishing the type of information, which, if contained in a complaint against person or a corporation engaged in the illegal operation of a taxi business or vehicle, would be sufficient to warrant an investigation pursuant to California Government Code §§ 53075.7-53075.9:

1. That the business or vehicle does not have a permit issued by the SFMTA or predecessor agency to operate the business or the vehicle; and
2. That the business or vehicle picks up passengers from street hails and/or by dispatch; or
3. That the business or vehicle holds itself out to the public as a taxicab service by any indicia, including but not limited to factors such as vehicle dress, operator insignia, business advertising or signage, or any other perceptible means of soliciting passengers for hire.

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

SFMTA BOARD OF DIRECTORS MEETING
SEPTEMBER 1, 2009

California Government Code Provisions Regarding Illegal Taxi Services (SB 1519)

Sec. 53075.7.

(a) Upon receipt of a complaint containing sufficient information to warrant conducting an investigation, the local agency shall investigate any business that advertises or operates taxicab transportation service for hire. The local agency shall, by ordinance, resolution, or other appropriate procedure, adopt criteria that establishes the type of information, if contained in a complaint, that is sufficient to warrant an investigation. Pursuant to this investigation, the local agency shall do all of the following:

- (1) Determine which businesses, if any, are required to have in effect a valid taxicab certificate, license, or permit as required by ordinance, but do not have that valid authority to operate.
- (2) Inform any business not having valid authority to operate that it is in violation of law.
- (3) Within 60 days of informing the business pursuant to paragraph (2), institute civil or criminal proceedings, or both, pursuant to the governing municipal code or other authority of jurisdiction.

(b) For purposes of this section:

- (1) "Advertises" means any action described in subdivision (b) of Section 53075.9.
- (2) "Local agency" means the local entity responsible for the regulation, including, but not limited to, the certification, licensing, or permitting of, and enforcement of rules, regulations, or ordinances governing, taxicabs within the local jurisdiction.

Sec. 53075.8. (a) The Legislature finds and declares that advertising and use of telephone service is essential for a taxicab transportation service to obtain business and conduct intrastate passenger transportation services. Unlawful advertisements by taxicabs operating without a valid taxicab certificate, license, or permit required by any ordinance has resulted in properly certificated, licensed, and permitted taxicab operators competing with these taxicabs operating without a proper taxicab certificate, license, or permit using unfair business practices. Taxicabs operating without a proper taxicab certificate, license, or permit have also exposed passengers to unscrupulous persons who portray themselves as lawful operators. Many of these taxicabs operating without a proper taxicab certificate, license, or permit have been found to have also been operating without insurance, or in an unsafe manner, thereby placing their passengers at risk.

(b) (1) The Legislature further finds and declares that the termination of telephone service utilized by taxicabs operating without proper authority is essential to ensure the public safety and welfare. Therefore, local agencies should take enforcement action, as specified in this section, to disconnect telephone service of unauthorized taxicab operators who unlawfully advertise passenger transportation services in yellow page directories and other publications. The enforcement actions provided for by this section are consistent with the decision of the California Supreme Court in *Goldin v. Public Utilities Commission* (1979) 23 Cal. 3d 638.

(2) For purposes of this section, a telephone corporation or telegraph corporation, or a corporation that holds a controlling interest in the telephone or telegraph corporation, or any business that is a subsidiary or affiliate of the telephone or telegraph corporation, that has the name and address of the subscriber to a telephone number being used by a unauthorized taxicab operator shall provide the local agency, or an authorized officer or employee of the local agency, upon demand, and the order of a magistrate, access

SFMTA BOARD OF DIRECTORS MEETING
SEPTEMBER 1, 2009

California Government Code Provisions Regarding Illegal Taxi Services (SB 1519)

to this information. A magistrate may only issue an order for the purposes of this subdivision, if the magistrate has made the findings required by paragraph (2) of subdivision (f).

(c) (1) In addition to any other remedies that may be available bylaw, if a local agency determines that a taxicab transportation service has operated within the local agency's jurisdiction in violation of the local agency's ordinance adopted under Section 53075.5, the local agency may notify the taxicab operator that the local agency intends to seek termination of the operator's telephone service. The notice shall be sent by certified mail to the operator at the operator's last known mailing address. If the local agency is unable to determine the operator's mailing address, the local agency shall post the notice for at least 10 calendar days.

(2) The notice shall contain sufficient information to identify the taxicab transportation service, to inform the taxicab operator of the alleged violations of the local agency's ordinance, and the procedures for protesting the allegations contained in the notice.

(d) The taxicab operator, within 10 calendar days of the date of the notice, may contest the allegations contained in the notice by filing a written protest with the local agency. The local agency shall schedule a hearing on the protest within 21 calendar days of receiving the protest.

(e) The governing body of the local agency, or any person or persons as may be designated by the governing body, shall hear the protest. The local agency shall have both the burden of providing that the use made, or to be made, of the telephone service is to holdout to the public to perform, or to assist in performing, services as a taxicab transportation service, and that the telephone services being, or is to be, used as an instrumentality, directly or indirectly, to violate, or assist in violating, the local agency's applicable ordinance. The taxicab operator, or his or her designated representative, shall be allowed to present evidence to answer or refute any allegations presented to the hearing body by the local agency. The hearing body may continue the hearing from time to time. Within 10 calendar days of the close of the hearing, the hearing body shall issue a written decision to uphold or reject, in whole or in part, the allegations contained in the notice. If the hearing body upholds the allegations in whole or in part, the written decision shall state either that the allegations are sufficient to justify seeking termination of the taxicab operator's telephone service, or that the allegations are not sufficient.

(f) (1) If the local agency does not receive a timely protest, or, after a protest hearing held pursuant to subdivision (d), the hearing body has determined that the allegations are sufficient to justify seeking termination of the telephone operator's telephone service, the local agency may seek termination of the taxicab operator's telephone service as provided in this section.

(2) A telephone or telegraph corporation shall refuse telephone service to a new subscriber and shall disconnect telephone service from an existing subscriber only after it is shown that other available enforcement remedies of the local agency have failed to terminate unlawful activities detrimental to the public welfare and safety, and upon receipt from any authorized officer or employee of the local agency of a writing, signed by a magistrate, as defined by Sections 807 and 808 of the Penal Code, finding that probable cause exists to believe that the subscriber is advertising or holding out to the public to perform

SFMTA BOARD OF DIRECTORS MEETING
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taxicab transportation services in violation of the local agency's applicable ordinance, or that the telephone service otherwise is being used or is to be used as an instrumentality, directly or indirectly, to violate or assist in violation of the laws requiring a taxicab operator to have valid operating authority. Included in the writing of the magistrate shall be a finding that there is probable cause to believe that the subject telephone facilities have been, or are to be, used in the commission or facilitation of holding out to the public to perform taxicab transportation services in violation of the local agency's applicable ordinance.

(g) The telephone or telegraph corporation, immediately upon refusal or disconnection of service in accordance with paragraph (2) of subdivision (f), shall notify the subscriber in writing that the refusal or disconnection of telephone service has been made pursuant to a request of a local agency and the writing of a magistrate, and shall include a copy of this section, a copy of the writing of the magistrate, and a statement that the customer of the subscriber may request information from the local agency concerning any provision of this section and the manner in which a complaint may be filed.

(h) The provisions of this section are an implied term of every contract for telephone service and a part of any application for telephone service. Applicants for, and subscribers and customers of, telephone service, have, as a matter of law, consented to the provisions of this section as a consideration for the furnishing of the telephone service.

(i) As used in this section, the terms "person," "customer," and "subscriber" include the subscriber to telephone service, any person using the telephone service of a subscriber, an applicant for telephone service, a corporation, a limited liability company, a partnership, an association, and includes their lessees and assigns.

(j) As used in this section, the following terms have the following meanings:

- (1) "Authorized officer or employee of the local agency" includes any employee of the local agency designated by the local agency's governing body.
- (2) "Local agency" has the same meaning as specified in subdivision (b) of Section 53075.7.
- (3) "Telegraph corporation" has the same meaning as specified in Section 236 of the Public Utilities Code.
- (4) "Telephone corporation" has the same meaning as specified in Section 234 of the Public Utilities Code.

Sec. 53075.9. (a) Every taxicab transportation service shall include the number of its certificate, license, or permit in every written or oral advertisement of the services it offers.

(b) For purposes of this subdivision, "advertisement" includes, but is not limited to, the issuance of any card, sign, or device tony person, the causing, permitting, or allowing the placement of any sign or marking on or in any building or structure, or in any media form, including newspaper, magazine, radio wave, satellite signal, or any electronic transmission, or in any directory soliciting taxicab transportation

SFMTA BOARD OF DIRECTORS MEETING
SEPTEMBER 1, 2009

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services subject to this chapter.

(c) Whenever the local agency, after a hearing, finds that any person or corporation is operating as a taxicab transportation service without a valid certificate, license, or permit or fails to include in any written or oral advertisement the number required by subdivision (a) of Section 50739, the local agency may impose a fine of not more than five thousand dollars (\$5,000) for each violation. The local agency may assess the person or corporation an amount sufficient to cover the reasonable expense of investigation incurred by the local agency. The local agency may assess interest on any finer assessment imposed, to commence on the day the payment of the fine or assessment becomes delinquent. All fines, assessments, and interest collected shall be deposited at least once each month in a fund established for the purpose of enforcing the provisions of this section.

(d) For purposes of this section, "local agency" has the same meaning as specified in subdivision (b) of Section 53075.7.

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology Systems

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO or his designee to submit proposed legislation to the San Francisco Board of Supervisors amending Chapter 8 and Chapter 10, Article XIII, of the San Francisco Administrative Code to repeal in their entirety Sections 8.29, 10.100-155, 10.100-157, 10.100-159, 10.100-162 and 10.100-164, concerning various transit-related special funds, and increasing the SFMTA's authority to accept gifts without Board of Supervisors approval from \$10,000 to \$100,000.

SUMMARY:

- The San Francisco Administrative Code currently contains a number of funds for specific purposes. These include Section 8.29 (Establishment of a Municipal Railway Video Production Fund); Section 10.100-155 (Municipal Transportation Capital Reserve Fund); Section 10.100-157 (Municipal Transportation Improvement Fund); Section 10.100-159 (Municipal Transportation Information Fund); Section 10.100-162 (Municipal Transportation Operators Lounge Facilities Fund); and Section 10.100-164 (Municipal Transportation Paratransit Fund).
- Following the passage of Proposition E in 1999 and Proposition A in 2007, the SFMTA has been given broad authority over its fiscal resources; thus, the separate special funds in the Administrative Code are no longer required.
- The monies contained in these funds will become part of the SFMTA's operating fund and will be maintained and accounted for in the Municipal Transportation Fund.
- Section 8.29 (Establishment of a Municipal Railway Video Production Fund) and Section 10.100-159 (Municipal Transportation Information Fund) also authorize the SFMTA to accept gifts without limitation for purposes consistent with these two funds; repealing these funds would remove this authority and mean that such gifts would be limited to \$10,000 unless approved by resolution of the Board of Supervisors, as is currently the case with all other gifts.
- Staff seeks authorization to submit legislation to the Board of Supervisors to repeal the funds listed above and raise the general authority of the SFMTA to accept gifts without Board of Supervisors approval from the current level of \$10,000 to \$100,000.

ENCLOSURES:

1. SFMTAB Resolution
2. Current San Francisco Administrative Code Sections proposed to be repealed

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR /CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO: Elena Chiong

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

Requesting authority for the Executive Director/CEO to submit to the San Francisco Board of Supervisors legislation that would amend the San Francisco Administrative Code by repealing special funds that are no longer needed by the SFMTA and increasing the authority of the SFMTA to accept gifts without Board of Supervisors approval from \$10,000 to \$100,000.

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 4.2 – Ensure efficient and effective use of resources

DESCRIPTION

The San Francisco Administrative Code establishes a number of special revenue funds, including the Municipal Railway Video Production Fund (Admin. Code Section 8.29); the Municipal Transportation Capital Reserve Fund (Admin. Code Section 10.100-155); the Municipal Transportation Improvement Fund (Admin. Code Section 10.100-157); the Municipal Transportation Information Fund (Admin. Code Section 10.100-159); the Municipal Transportation Operators Lounge Facilities Fund (Admin. Code Section 10.100-162; (d), and the Municipal Transportation Paratransit Fund (Admin. Code Section 10.100-164). These funds are maintained separately as special revenue funds and were created to receive monies for special purpose use at the time when Municipal Railway was still under either the Public Utilities Commission or the Public Transportation Commission.

With the passage of Proposition E in November 1999, the San Francisco Charter was amended to establish the San Francisco Municipal Transportation Agency (SFMTA) to replace the Public Transportation Commission. In addition, the Municipal Transportation Fund was created to receive monies from any source set aside to support the Agency. Upon incorporation into the Agency, the revenues of the Municipal Railway, the Department of Parking and Traffic, and the Parking Authority were to be maintained in the Municipal Transportation Fund to support the transit functions of the Agency. Any amounts unspent or uncommitted at the end of any fiscal year together with any interest earned are carried forward in the Municipal Transportation Fund. The passage of Proposition A in 2007 further enhanced the SFMTA's authority over its finances.

In light of the establishment of the Municipal Transportation Fund and the SFMTA's broad authority over its fiscal resources, it is no longer necessary to maintain the special revenue funds described above. Two of these funds, the Paratransit Fund and the Municipal Transportation Information Fund are now closed. The other funds can be included in the Municipal Transportation Fund, although consistent with the collective bargaining agreement between the SFMTA and Transport Workers Union (TWU) Local 250-A, funds in the Municipal Transportation Operators Lounge Facilities Fund should continue to be used exclusively for the purpose of establishing and maintaining lounge and rest facilities for the SFMTA operators.

Consistent with the purpose of maintaining a single Fund, staff recommends submitting proposed legislation to the San Francisco Board of Supervisors that would amend the San Francisco Administrative Code to repeal Sections 8.29, 10.100-155, 10.100-157, 10.100-159, 10.100-162, and 10.100-164 in their entirety in order to consolidate funds currently maintained in these sections into the Municipal Transportation Fund.

In addition to establishing the revenue funds described above, Section 8.29 (Establishing the Municipal Railway Video Production Fund and Section 10.100-159 (the Municipal Transportation Information Fund) authorize the acceptance of gifts for those Funds, without restricting the amount of such gifts. Thus, these provisions create an exception to the generally applicable limitation under Administrative Code Section 10.100-305, which requires that gifts to City departments (including gifts to the SFMTA for other purposes) in excess of \$10,000 be approved by resolution of the Board of Supervisors. The repeal of these provisions would mean that the acceptance of any gifts to the SFMTA for these purposes in excess of \$10,000 would be subject to approval by Board of Supervisors. Rather than being restricted by this limitation, staff recommends that legislation be submitted to the Board of Supervisors to increase the SFMTA's general authority to accept gifts without approval by the Board of Supervisors from the current \$10,000 to \$100,000, this will provide the MTAB the authority to accept gifts and other funds.

ALTERNATIVES CONSIDERED

By not amending the San Francisco Administrative Code sections, funds in these sections will continue to be deposited and maintained separately as special revenue funds. This would be inconsistent with the purpose and requirement of creating the single Municipal Transportation Fund.

FUNDING IMPACT

There is no funding impact. This action will consolidate all funds received from any source, including funds previously received and accounted for as special revenues, in the Municipal Transportation Fund for the sole and exclusive support of the Agency.

OTHER APPROVALS RECEIVED OR STILL REQUIRED:

The City Attorney's office has reviewed this item. The Board of Supervisors must approve legislation to enable implementation.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve the attached resolution authorizing the Executive Director/CEO or his designee to submit to the San Francisco Board of Supervisors legislation that would amend Chapter 8 and Chapter 10, Article XIII, of the San Francisco Administrative Code by repealing in their entirety Sections 8.29, 10.100-155, 10.100-157, 10.100-159, 10.100-162 and 10.100-164, and amend Chapter 10, Article XIII of the San Francisco Administrative Code by amending Section 10.100-305 to enable the SFMTA to accept gifts of up to \$100,000 without approval of the Board of Supervisors.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Administrative Code establishes a number of special revenue funds for matter now under the control of the San Francisco Municipal Transportation Agency (SFMTA), including the Municipal Railway Video Production Fund (Section 8.29); the Municipal Transportation Capital Reserve Fund (Section 10.100-155); the Municipal Transportation Improvement Fund(Section 10.100-157); the Municipal Transportation Information Fund (Section 10.100-159); the Municipal Transportation Operators Lounge Facilities Fund (Section 10.100-162); and the Municipal Transportation Para Transit Fund (Section 10.100-164); and

WHEREAS, These Funds were created to receive monies for special purpose use at the time when Municipal Railway was still under either the Public Utilities Commission or the Public Transportation Commission; and

WHEREAS, The San Francisco Charter was amended in 1999 by establishing the San Francisco Municipal Transportation Agency (SFMTA) to replace the Public Transportation Commission, and creating the Municipal Transportation Fund to receive monies set aside for the support of the Agency; and

WHEREAS, Although the SFMTA has continued to deposit and maintain monies received under these San Francisco Administrative Code sections as special revenue funds after the creation of the single Municipal Transportation Fund in 1999, these special revenue funds are no longer needed; and

WHEREAS, Under current law, except for gifts made to the Municipal Railway Video Production Fund and the Municipal Transportation Information Fund, all such gifts to the SFMTA in excess of \$10,000 require approval by the Board of Supervisors; and

WHEREAS, Staff recommends that the Administrative Code sections establishing these funds be repealed in order to consolidate all funds received in the Municipal Transportation Fund; and

WHEREAS, Staff further recommends that the Administrative Code be amended to enable the SFMTA to accept gifts of up to \$100,000 without requiring Board of Supervisors approval; now therefore be it;

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to submit to the San Francisco Board of Supervisors legislation to amend San Francisco Administrative Code Chapter 8 and Chapter 10, Article XIII, by repealing Section 10.100-155 (Municipal Transportation Capital Reserve Fund), Section 10.100-157 (Municipal Transportation Improvement Fund), Section 10.100-159 (Municipal Transportation Information Fund), Section 10.100-162 (Municipal Transportation Operators Lounge Facilities Fund), and Section 10.100-164 (Municipal Transportation Para Transit Fund), and amending Section 10.100-305 to enable the SFMTA to accept gifts of up to \$100,000 without approval by the Board of Supervisors.

I hereby 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

Attachment A
San Francisco Administrative Code Sections

SEC. 8.29. ESTABLISHMENT OF A MUNICIPAL RAILWAY VIDEO PRODUCTION FUND.

(a) Authority. The Public Utilities Commission is hereby authorized to publish and sell, at no cost to the City and County, materials, including but not limited to pamphlets, books and videos relating only to transit-related training.

(b) Establish Fund. There shall be established in the treasury of the City and County of San Francisco a special fund to be known and designated as the Municipal Railway Video Production Fund into which shall be deposited all monies received from the sale of any and all materials published pursuant to the authority herein contained.

The Public Utilities Commission is hereby authorized to accept any gift, device or bequest for this purpose.

(c) Use of Money in Training Fund. The monies received into the training fund must be appropriated pursuant to the fiscal and budgetary provisions of the Charter exclusively for the purpose of developing, producing and selling transit-related video programs authorized and approved by the Public Utilities Commission.

(d) Administration and Expenditure from Video Production Fund. The sales price for said items shall be fixed by the Public Utilities Commission. Balances remaining in the fund at the close of any fiscal year shall be deemed to have been provided for a specific purpose within the meaning of Section 6.306 of the Charter, and shall be carried forward and accumulated in said fund for the purposes recited herein.

The Public Utilities Commission shall annually submit in writing to the Mayor, to the Controller and to the Board of Supervisors a report showing the total receipts and disbursements of the preceding year together with a description of the items published.

(Added by Ord. 393-87, App. 9/18/87; amended by Ord. 156-99, File No. 990743, App. 6/2/99)

SEC. 10.100-155. MUNICIPAL TRANSPORTATION CAPITAL RESERVE FUND.

(a) Establishment of Fund. The Municipal Transportation Capital Reserve Fund is established as a category eight fund to receive all monies generated under any Agreement intended to come within the provisions of Section 168 of the Internal Revenue Code ("Section 168 Agreement") and/or any related Agreement with San Francisco Municipal Railway Improvement Corporation intended to facilitate a Section 168 Agreement, and for the further purpose of receiving such other monies as may from time to time be designated by the Board of Supervisors.

(b) Use of Fund. Monies in the fund may be used solely to make any disbursements necessary to make indemnity payments required under any Section 168 Agreement, and any disbursements necessary to reacquire clear title to any mass commuting vehicle, and to effectuate a release of any security interest established under any Agreement entered into with San Francisco Municipal Railway Improvement Corporation facilitating a Section 168 Agreement, and any disbursements necessary to pay fees for legal counsel, financial consultants, and other services incidental to the execution of such Agreements are, to the extent that the fund contains sufficient funds therefor, hereby appropriated for such purposes, authorized and approved. All other funds in the fund shall be expended for capital purposes of the Municipal Transportation Agency.

(Added by Ord. 316-00, File No. 001911, App. 12/28/2000)

SEC. 10.100-157. MUNICIPAL TRANSPORTATION IMPROVEMENT FUND.

(a) Establishment of Fund. The Municipal Transportation Improvement Fund is established a category six fund to receive all amounts certified by the Controller and identified in the Memorandum of Understanding between the Transport Workers Union and the City and County of San Francisco effective July 1, 1996, as amounts which the City agreed to pay into the Transport Workers Union-San Francisco Municipal Transportation Trust Fund in fiscal years 1994/95 and 1996/97 which exceed the level of permissible payments to the Transport Workers Union-San Francisco Municipal Railway Trust Fund.

(b) Use of Fund. The fund shall be used exclusively for the purposes of improving operations, efficiency and service of the Municipal Transportation Agency and may include any expenditure lawful under the City Charter, which may include but are not limited to such uses as the implementation of the "Ambassador" program and "Friends of Muni" programs currently under discussion between the Municipal Railway Department and the Transport Workers Union; employee health facilities; and employee child care facilities.

(c) Exceptions to Fund Category. Such expenditures shall be authorized by majority vote of the same individuals serving as the Trustees of the Municipal Railway Trust Fund.

(Added by Ord. 316-00, File No. 001911, App. 12/28/2000)

SEC. 10.100-159. MUNICIPAL TRANSPORTATION INFORMATION FUND.

(a) Establishment of Fund. The Municipal Transportation Information Fund is established as a category six fund to receive all proceeds from (1) the sale of monograms and illustrated printed materials dealing with San Francisco transit history and operations, (2) souvenir items, including those converted from the transit system's scrap and waste materials, and (3) any gift, devise or bequest for the purposes authorized in (b). The Municipal Railway is hereby authorized to accept any gift, devise or bequest for this purpose. The department is hereby authorized to reproduce or otherwise prepare and sell such materials.

The sales price for said items shall be fixed jointly by the General Manager of the Municipal Transportation Agency and the Purchaser of Supplies.

(b) Use of Fund. The monies received into the fund are to be used exclusively to encourage patronage of the Municipal Transportation Agency through increased public awareness of the advantages of its services, facilities and programs.

(c) Exceptions to Fund. Any balance remaining in the fund at the end of any fiscal year greater than \$10,000 shall be transferred to the General Fund.

(d) Administration of Fund. An annual report shall be submitted in writing to the Mayor, the Controller, and the Board of Supervisors showing the total receipts and disbursements of the preceding year together with a description of the items prepared for sale. The provisions of Section 8.12 of Chapter 8 of this Administrative Code shall not apply to monographs and sales made under the authority of this Section.

(Added by Ord. 316-00, File No. 001911, App. 12/28/2000)

SEC. 10.100-162. MUNICIPAL TRANSPORTATION OPERATORS LOUNGE FACILITIES FUND.

(a) Establishment of Fund. The Municipal Transportation Operators Lounge Fund is established a category six fund for the purpose of receiving the net proceeds from sales from vending machines installed in Municipal Transportation Agency galley rooms or other appropriate places as designated by the Municipal Transportation Commission, which authority it may delegate to the General Manager of the Municipal Transportation Agency.

(b) Use of Fund. Notwithstanding the provisions of Section 4.5 of this Code, the fund shall be used exclusively for the purpose of establishing and maintaining lounge and rest facilities for Municipal Transportation Agency operators.

(c) Exceptions to Fund Category. All expenditures therefrom shall be approved by the Municipal Transportation Commission, which approval authority it may delegate to the General Manager of the Municipal Transportation Agency.

(Added by Ord. 316-00, File No. 001911, App. 12/28/2000)

SEC. 10.100-164. MUNICIPAL TRANSPORTATION PARA TRANSIT FUND.

(a) Establishment of Fund. The Municipal Transportation Paratransit Fund is established as a category eight fund to be known as the Municipal Transportation Paratransit Fund for the purpose of receiving all donations of money, property and personal services which may be offered to the City and County of San Francisco through the Municipal Transportation Commission for the use and benefit of the Paratransit Fund.

(b) Use of Fund. Monies in the fund are to be expended solely to provide and improve paratransit services offered by the Municipal Transportation Agency.

(c) Exceptions to Fund Category. Money, property and personal services comprising the Paratransit Fund shall be used and expended at the discretion of

the General Manager and approved by the Municipal Transportation Commission.

(Added by Ord. 316-00, File No. 001911, App. 12/28/2000)

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorize the Executive Director/CEO to execute a new ten year Agreement for Management and Operation of Cable Car Museum with Friends of the Cable Car Museum, Inc.

SUMMARY:

- Since November 21, 2000, the San Francisco Municipal Transportation Agency (SFMTA) has had an Operating Agreement and License (Agreement) with the Friends of the Cable Car Museum, Inc. (FCCM) for the management and operation of the Cable Car Museum and Gift Shop for a five-year period.
- This Agreement was amended and extended from the 2005 expiration date to June 30, 2009.
- FCCM owns several of the historic artifacts on display at the Cable Car Museum. During these extensions, staff attempted to negotiate a new long-term operation and management agreement that would include the transfer of ownership of the artifacts from FCCM to the SFMTA.
- After intensive and lengthy negotiations to establish the terms and conditions regarding the transfer of the artifacts and FCCM’s long-term management and operation of the Cable Car Museum, SFMTA and FCCM were unable to reach agreement prior to June 30, 2009. Both parties continued the negotiations into the months of July and August on old issues and reopened the negotiations on new issues. At the same time SFMTA was awaiting for FCCM to submit a workable Marketing Plan. After this period of delay, both parties have finally reached a new agreement.
- The agreement is for ten years with two additional five year options to extend for the management and operation of Cable Car Museum with the Friends of the Cable Car Museum commencing on July 1, 2009, and ending on June 30, 2019.

ENCLOSURES:

1. SFMTAB Resolution
2. Agreement with FCCM
3. FCCM Marketing Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION TO BE RETURNED TO: Ken Yee

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The proposed ten -year Agreement for Management and Operation of Cable Car Museum with the Friends of the Cable Car Museum, Inc. (FCCM) will allow the San Francisco Municipal Transportation Agency (SFMTA) the ability of effective resource utilization which includes an equivalent of \$50,000 in annual concession payment toward SFMTA's acquisition of the historical Artifacts. The 2009 Agreement provides that FCCM shall convey the artifacts to the SFMTA upon either the expiration or early termination of the 2009 Agreement.

GOAL

The newly negotiated 2009 Agreement will give the SFMTA the ability to further the following goal and objective of the Strategic Plan:

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

DESCRIPTION

The Municipal Railway's Cable Car Museum, which has been operating since 1974, is located on a mezzanine in the Cable Car Barn, overlooking the cable machinery and a machine shop. Since August of 1993, as first authorized by the Public Utilities Commission, the operator of the Museum has been the Friends of the Cable Car Museum, Inc., a non-profit organization. On November 21, 2000, the SFMTA Board adopted Resolution No. 00-117, which approved an Operating Agreement and License (Agreement) between the City and FCCM for a five-year term beginning December 1, 2000. Under the Agreement, FCCM has been obligated to curate the exhibits in the museum and to pay the SFMTA a minimum of \$50,000 per year for the license to operate the gift shop.

On November 15, 2005, the SFMTA Board adopted Resolution No. 05-170, which authorized a one-year extension of the Agreement (First Amendment) with the FCCM, in order to conduct a thorough and careful competitive process for selecting a new licensee. However, complicating that process was the fact that the FCCM owns several of the exhibits in the Museum. Due to the fear that ownership of the artifacts would give FCCM an unfair advantage in any competitive process, SFMTA staff determined that the ideal solution would be for the City to acquire the artifacts.

To allow time to negotiate the acquisition of the artifacts, the SFMTA Board authorized a second one-year extension (Second Amendment), by Resolution No. 06-147 on November 21, 2006. The SFMTA hired an appraiser to establish the value of the artifacts. On September 18, 2007, the SFMTA received a report from Railway Preservation Resources, Inc, that determined the fair market value of the artifacts to be \$370,000. Staff then determined that the best way to resolve the matter of the ownership of the artifacts would be to enter into a sole-source Agreement with the FCCM, under which FCCM would continue to manage the Museum for a period of years, with no license fee required, at the end of which time the SFMTA would own the artifacts.

PAGE 3.

The details of such an Agreement, however, remained to be negotiated, due in part to the fact that the value of the artifacts was still in dispute and the FCCM was in the process of obtaining its own appraisal through Bonhams and Butterfields Auctioneers Corp. to establish the value of the artifacts. Bonhams and Butterfields Auctioneers Corp. determined the replacement value of the artifacts to be \$1,021,500.

A third extension of the Agreement (2008 Agreement) was authorized by the SFMTA Board, by Resolution No. 08-008 on January 15, 2008 for the SFMTA and FCCM to negotiate the value of the artifacts. After intensive negotiations to determine the best structure for this complex new Agreement, the SFMTA and FCCM were unable to reach agreement. Finally, the parties agreed to a short-term extension of the 2008 Agreement in order to negotiate a long-term operations and management agreement which includes a transfer of the artifacts. That extension takes the form of a First Amendment (2008 Agreement Extension) to the Operating Agreement and License between the City and County of San Francisco, acting by and through its Municipal Transportation Agency, and the Friends of the Cable Car Museum, with a term that extends from December 1, 2008 through June 30, 2009, with all other material terms remaining the same as in the current Agreement.

After intensive and lengthy negotiations to establish the terms and conditions regarding the valuation and transfer of the artifacts and FCCM's long-term management and operation of the Cable Car Museum, SFMTA and FCCM have finally agreed on mutually acceptable terms in the 2009 Agreement (attached). The new 2009 Agreement allows FCCM continuing to manage and operate the Cable Car Museum as a sole-source vendor. It also allows SFMTA the ability to effectively use resources and provides for the FCCM's conveyance and vesting title of the artifacts to the SFMTA upon termination of this Agreement.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

The other alternative that was considered was the option of conduct a new solicitation by issuing a new RFP for an operator for the Cable Car Museum and Gift Shop without the historic artifacts. However, having this valuable collection available to the public is important to the Agency. Public ownership ensures public access. Therefore, staff recommends the Agency's acquisition of the historic artifacts through a new management and operation agreement with the FCCM.

FUNDING IMPACT

This action will have minimal funding impact. The Friends of the Cable Car Museum, Inc, will continue to operate the Museum and will credit the SFMTA \$50,000 in annual concession payment toward the SFMTA's acquisition of the historical artifacts during the course of the new 2009 Agreement with the SFMTA. Upon the termination of the attached 2009 Agreement, the SFMTA shall pay the FCCM \$160,000 on the remainder value of the artifacts. In the event the 2009 Agreement is terminated prior to the expiration of the ten-year term, the remaining value of

the artifacts will be prorated in the amount of \$4,166.67 per month plus the remainder value of \$160,000. The FCCM shall convey all right, title and interest in the historic artifacts to the SFMTA upon termination of this Agreement.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Board of Supervisors is required to act on this matter because the Agreement's term is over a ten year period. The Friends of the Cable Car Museum, Inc. will approve the Agreement prior to SFMTA Board action.

RECOMMENDATION

The SFMTA Board of Directors should authorize the Executive Director/CEO to execute this new Agreement for Management and Operation of Cable Car Museum between the City and County of San Francisco, acting by and through its San Francisco Municipal Transportation Agency, and the Friends of the Cable Car Museum, Inc.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Cable Car Museum in the Municipal Railway's Cable Car Barn provides a free and educational museum experience for residents and tourists alike; and

WHEREAS, On November 21, 2000, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No. 00-117, which approved a five-year Operating Agreement and License (Agreement) between the City and Friends of the Cable Car Museum, Inc. (FCCM) for a term beginning December 1, 2000; under the Agreement, FCCM is obligated to curate the exhibits in the Museum and to pay the SFMTA \$50,000 per year for the license to operate the Museum and Gift Shop; and

WHEREAS, On November 15, 2005, the SFMTA Board of Directors adopted Resolution No. 05-170, which approved a one-year extension of the Agreement (First Amendment), under the same terms as in the original Agreement; and

WHEREAS, On November 21, 2006, the SFMTA Board adopted Resolution No. 06-147, which approved a second one-year extension of the Agreement (Second Amendment); and

WHEREAS, On January 15, 2008, the SFMTA Board adopted Resolution No. 08-008, authorizing a new Agreement (2008 Agreement), expiring on November 30, 2008, with all other material terms remaining the same as in the Agreement entered into on December 1, 2000; and

WHEREAS, The intent of the 2008 Agreement was to allow time for FCCM and SFMTA to reach agreement concerning the long-term ownership of certain historic artifacts in the Museum; and

WHEREAS, A First Amendment (2008 Agreement Extension) to the Operating Agreement and License with FCCM, commencing on December 1, 2008, and ending on May 31, 2009, with all other terms remaining the same as in the 2008 Agreement was executed on November 28, 2008; and

WHEREAS, The 2008 Agreement Extension to the Operating Agreement and License with FCCM provided an opportunity for SFMTA and FCCM to reach a new Agreement on mutually agreed terms; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute a new Agreement for Management and Operation of Cable Car Museum with the Friends of the Cable Car Museum, Inc, commencing on July 1, 2009, and ending on June 30, 2019, pending approval by the San Francisco Board of Supervisors

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

Friends of the Cable Car Museum Marketing Plan

July 28, 2009

Situational Analysis

Background

The Friends of the Cable Car Museum (FCCM) currently operate a concession that includes a museum containing historical displays and artifacts of San Francisco's cable car system. These historical and cultural displays date back to 1873 and span over a hundred years of development of San Francisco's iconic cable cars. The FCCM also staffs and maintains a small gift shop where visitors may purchase souvenirs relating to cable cars and other San Francisco memorabilia.

The museum is housed in the historic Ferries and Cliff House powerhouse, originally built in 1887. The privately owned structure has been part of the Municipal Railway system of San Francisco since it was purchased in 1944 along with two of four existing cable cars from the former Market Street Railway Company. In 1967, a mezzanine was built into the powerhouse to provide a space for displaying cable car historical articles.

The FCCM took over operation of the space in 1993 and has worked at improving the quality of both the experience of visiting the museum and the type of merchandise offered for sale at the gift shop. The goal: to create a more authentic and encompassing understanding of the City's cable car system, its place in local history (as well as worldwide in its day) and how it relates to San Francisco today. As part of this effort, the FCCM has available a wide array of resources to further this goal, including the diverse abilities and knowledge of the FCCM's Board of Directors. Through its Board, the museum strives to enhance both the content of the museum as well as expand outreach to new, potential visitors.

Current Customer Base

The museum has a wide customer base that the FCCM has been endeavoring to expand to be more inclusive of the Bay Area's diverse population, as well as to attract new visitors from the United States and beyond. Using guest books, interaction from the public on both a commercial (i.e., the gift shop) and individual basis (Directors are involved with the museum's daily operation), the FCCM has targeted a variety of existing and potential markets. The use of zip codes in the guestbook along with information gathered from internet sales has helped identify local, national, and foreign visitors to the museum. The FCCM also serves numerous organizations such as historical groups, filmmakers seeking research material and educational groups ranging from elementary to university level students. Additionally, other organizations and non-profit groups like San Francisco Beautiful have convened at the museum. FCCM Directors have also been invited guests to numerous fund-raising and commemorative events held outside the museum walls.

Museum attendance levels are approximated, as there is no entrance fee or gate to provide an exact count. Free access is one of the museum's great strengths, as identified from customer comments and e-mails. Yet the lack of quantitative information makes tracking an audience problematic. Citing positive public feedback and the current economic situation, the FCCM has no plans to institute an entrance fee. With visitors straining to make ends meet, any charge—however slight—could certainly have a negative impact on museum attendance. The dour economic situation, however, works in the museum's favors as people are taking shorter vacations within their own communities and acquainting themselves with more easily accessed, inexpensive local activities. Particularly with parents, budgets are limited and people are looking for things to do that they can enjoy as a family. The museum strives to offer that experience.

Economic forces, as well as accessibility and time, are major factors in determining how visitors to the area will allocate their resources. While the museum is free of charge, parking is extremely limited in the vicinity of the powerhouse and often costly at neighboring garages. A cable car is the most logical—and pleasurable—means of visiting the museum, though the cost may be prohibitive even for a small family. While the cable car gripmen are supportive in announcing the museum's location, the cost of transportation doubles if visitors disembark at the museum and then reboard a car afterwards. This has proven to have a negative impact on attendance from tourists, one of the museum's main target groups.

Although the museum is unique in its offerings, San Francisco boasts many museums and attractions and competition is rigorous. Currently the FCCM distributes informational brochures to leading hotels and heavily trafficked tourist centers in the City, such as Fisherman's Wharf and the downtown area. The museum is also combining its resources with other organizations in San Francisco, such as the Market Street Railway and the San Francisco Historical Society to develop cross-promotional campaigns. More remains to be done on this front and the Board foresees these cross-promotional relationships as an important means of building attendance.

As with most tourist attractions, weather and time of year have an impact on attendance. The museum, however, may be the exception to the rule with steady attendance and sales throughout the year, with the exception of a few months during the winter season.

The addition of a Web site has proven to enhance both sales and visitor contact. In addition to selected merchandise available on the museum's Web site, rotating photograph galleries and "virtual" exhibits are routinely added and updated. This is another area the FCCM is planning to expand and improve. In addition, Web site usage is also a valuable tool for improved visitor tracking, customer contact, and follow-up. The geographic location of Web users can be useful in assisting in determining the size of the market inside and outside the Bay Area. The Web site also provides additional marketing opportunities for the FCCM, enabling the museum to promote new exhibits, hallmark events (such as the annual bell ringing contest) and promote new or seasonal merchandise being offered at the gift shop.

The FCCM has been operating under a series of temporary extensions since 2005, and

has been somewhat restricted in formulating and implementing long-range marketing goals. With the introduction of new agreements with the SFMTA and Municipal Railway, the FCCM can consolidate and expand its efforts to attract new demographics as well as retain repeat visitors. The Board proposes to audit and analyze marketing data to identify strengths and weaknesses on an ongoing basis, which includes at least one annual meeting where policies, staff, structure, resources and objectives can be evaluated with respect to goals and results.

Marketing Opportunity

The traditional market for the Cable Car Museum has been visiting tourists. While patronage has been brisk and increased over the past years, there remain other potential market segments that can and should be targeted. According to ad hoc data (i.e., zip code tracking and outreach efforts by Board Directors), many locals either do not know of the museum's existence or have not visited it for many years, if at all. The Directors plan to address this underserved, local market as a logical, first step in increasing museum attendance.

To do this, the local demographic needs to be identified and targeted through a variety of methods. Cross-promotional activities with other visitor destinations, while existing on a limited basis, need to be expanded. In addition to other railway museums and visitor bureaus and centers, the Directors plan to update and distribute brochures to appropriate venues. Mass mailings dilute the museum's limited resources and are a poor return on investment. As a result, the Directors have begun the process of targeting specific markets using a variety of categories, such as age and other demographic factors, special interest groups, seasonal factors and geographic locations. Using this approach, resources can be better utilized to tailor materials addressing the specific needs and interests of targeted audiences.

Education

The FCCM continues to develop and grow relationships with various educational concerns, such as the Presidio Trust Teachers Program and some local schools. The annual Presidio program, attended by a large number of school teachers, has provided significant exposure for the museum. Both guided tours and field trips to the museum by educational institutions have increased. The Directors plan to improve their educational outreach program through more effective use of promotional material specifically created and directed towards schools. These materials will address regularly scheduled tours, provide supplementary material for teachers' use, and include a docent manual. These materials can be sent to schools in advance of visitation or for the purpose of stimulating interest and attendance by students on their own time. Economic woes have also had a tremendous impact upon local schools and many educational budgets do not currently allow for organized field trips. However, the Directors believe that contacting a wider audience through individual districts will spark interest in the museum and inspire individual or family visits.

Outreach on a higher educational level, as well as outside the walls of academia, has been implemented through Board member lectures on the historical aspects of the

cable car system. Other presentations have included U.C. Berkeley's Summer Teachers Institute as well as forthcoming talks scheduled at the San Francisco Museum and Historical Society. Various Board Directors have also written promotional articles for periodicals such as Argonaut magazine.

Civic and Historical Organizations

Additionally, the Directors have been active making presentations to local civic organizations such as San Francisco Beautiful as well as hosting various community events and contributing merchandise to various fund raising activities to elevate the museum's profile. The FCCM has also been a loyal and active participant in the annual Municipal Railway Bell Ringing Contest for many years, providing advertisement banners and souvenir buttons, judges for the preliminary and final events and a custom designed cable car bell awarded to the winner of each year's competition.

Further, the FCCM has been extremely active in larger historical events not directly associated with the museum. The Directors have supported historical restoration efforts by providing authentic hardware such as roof gongs and information on signage to organizations including the Poway Railroad Park and the Wellington, New Zealand Tramway museum. Directors have provided research information to documentarians throughout the United States (the Discovery Channel, U.S. Government), foreign filmmakers and local doctoral candidates in the field of urban transportation.

Community Outreach

In 2008, Directors met with various community members associated with historical cable car sites to identify and preserve artifacts on site, such as Albertson's Grocery on the site of the former McAllister Street Cable Car Powerhouse and Car Barn. The FCCM also cast and installed a bronze plaque at the New Whole Foods store in Oakland to identify and commemorate its location as the former residence of the Piedmont Consolidated Cable Car Powerhouse.

The FCCM plans to continue and expand its outreach to these historical sites, as well as identify new ones relevant to the museum's history. Visitor surveys at the museum and through Web site contact will enable the Directors to determine not only where potential visitors live, but also when they visit and why they visit. Zip code analysis can identify areas where markets are strong and where there is room for improvement through use of programs such as PRIZM. This information will provide a more specialized look at the museum's clientele, and assist in directing future efforts to targeted groups such as senior citizens, special interest organizations and specific ethnic groups. These groups tend to have specific concerns and needs that set them apart from other groups and should be exploited to maximize museum attendance.

Setting Market Objectives

The FCCM's objectives are to increase overall attendance at the museum and increase user traffic via the Web site, www.cablecarmuseum.org. The Board will also focus on increasing revenue through the gift shop and from the Web site's online store. The

Board is particularly committed to increasing sales during the slower months of winter and early spring. A concerted effort to increase both attendance and merchandise sales will be launched during this time.

These goals will be addressed in existing market segments and new market segments that the museum wishes to inform and attract. Educational, community and historical groups will continue to be a vital part of the museum's target audience. The museum will continue to participate in educational forums and seminars and launch a new program implemented to "kick start" interest in the museum and its exhibits.

Heightened public awareness of the museum and its mission will also be generated locally via print, television and radio ads. Additionally, the Directors will work to revise existing displays to improve continuity and add new material, including some kept in storage at present. Displays will continue to focus on the historical and contemporary use of the San Francisco cable car system, but will also expand to include other cable car systems worldwide as well as associated transit displays connected to cable car technology. The Web site will also be updated and improved to address some of these same issues and feature new articles, links, and programs designed to inform and attract visitors. The FCCM will continue to seek out new, quality merchandise to appeal to the wide range of visitors who visit the museum gift shop or its Web site to purchase memorabilia.

The Directors will continue to build alliances with fraternal organizations like Market Street Railway and the San Francisco Museum and Historical Society to effectively consolidate resources, inform a wider audience and work cooperatively to showcase the City's many tourist assets. Membership in associations connected with tourism will also be considered by the Directors, with an eye to using resources in a cost effective manner to address as wide an audience as possible.

Strategy and Program Development

Marketing Position

Directors will continue to meet and devise new strategies to improve the museum experience. The FCCM will strive to combine current exhibits with additional displays and exhibits intended to attract target groups and address their specific interests as a means of increasing attendance. This approach includes a combination of historical presentation, civic identity and modern significance of a once extensive and viable transportation system. Contemporary use of the cable car system will be placed within the framework of the SFMTA, responsible for oversight of the City's ground transportation system that includes buses, streetcars, light rail vehicles and taxis. The cable car's use of clean and efficient energy and its adherence to modern green metropolitan policies will also be incorporated into promotional efforts. The museum's unique setting in an authentic working powerhouse will also be highlighted and is yet another means of attracting visitors to the site.

1. Product

The FCCM will offer the visitor to the Cable Car Museum a unique experience in several

ways. Visitors will have the opportunity to view valuable historical artifacts up close set within a context of early American transit systems of the 19th Century. To this end, the FCCM will continue to acquire new artifacts as they become available, while maintaining and enhancing the presentation of existing exhibits including the 1873 Clay Street Hill Dummy and the 1875 Sutter Street Dummy and Trailer displays. The Board has discussed tentative plans to provide restoration for both cars, as well as methods of protecting and preserving the cars from corrosion due to age and environment. Other artifacts such as grips, tools, trucks and cables need to be refurbished and set in new displays. The FCCM is working to make the experience of visiting the museum unique by setting the artifacts within a framework of a working cable car system, the last operational system in the world.

Along with the experience of viewing the powerhouse engines and cable actually driving the cable car system, the museum will endeavor to engage visitors by complementing the historical view of the system with an actual ride on a cable car. The Directors have proposed several ways to achieve this through special passes enabling visitors to board cable cars after touring the museum without paying additional fees, or possibly running special cars out of the car barn to accommodate visitors. As the FCCM has no administrative role in the actual running of the cars, this practice will need to be presented to the SFMTA and Municipal Railway for consideration and implementation. The topic has been put forth at recent meetings and the Directors are hopeful that positive dialogue has been started in this direction.

2. Pricing

This is both a non-issue and yet problematic for the FCCM. As a concession to the visiting public, we do not charge for admission to the museum nor do we charge for public events or the majority of private events hosted within the museum space. Visitors continue to appreciate the fact that admission is free, hours are convenient and that the museum is closed only a bare minimum of holidays.

Proceeds derived from the gift shop continue to be the main source of revenue for the FCCM. To that end, the Directors have endeavored to maintain a high quality of unique merchandise and to avoid marketing inferior products. All efforts are made to avoid customer dissatisfaction or establishing a reputation as a “tourist trap.” The FCCM will continue this philosophy and would like to consider providing added value to our visitors by exploring joint options with the SFMTA and Municipal Railway (as noted above in “Product”). The FCCM feels that implementing these types of changes would maintain and improve revenue as much as acquiring new promotional items.

The Directors have also approved production of a photographic and informational history chronicling San Francisco’s cable car system from its inception to present. This compilation is slated for publication later this year. The FCCM also has plans to issue a yearly calendar featuring historical photographs from its own extensive photo archives. Commemorative items such as pins and t-shirts will also be produced at appropriate occasions while the FCCM plans to continue providing free memorabilia for public celebrations like the Cable Car Bell Ringing contest. Selected items will also be added to the online store as they become available and as the Directors deem appropriate.

3. Promotion

This will be a crucial part of the overall marketing strategy and will entail creating heightened awareness of the museum's existence, its mission and of the total cable car experience.

As a non-profit, the museum budget for promotional activities is limited regarding acquisition of traditional media buys such as radio, television, or print. However, the Directors have established a pattern of contact with other agencies that the Board hopes to maintain and expand to new marketing segments. Brochures, informational pamphlets and displays will continue to be produced by Board members and updated and revised yearly to keep current with museum changes and market demographics. Directors will also contribute to local and regional travel media via informational blurbs and capsule historical articles. As this entails public relations, the FCCM will continue to seek out new contacts with other organizations involved in local history and community activities. This will continue to include local school groups, educational gatherings similar to the 2008 nationwide librarian's convention held in the East Bay to which the FCCM supplied promotional materials and souvenirs, and the annual Presidio Teacher's Night.

The Board has also discussed tentative plans to create new material for our Web site including a proposed interactive map of San Francisco cable car lines that links points of historical interest along each route. Other material will feature rotating articles of topical interest regarding cable cars in San Francisco. The FCCM also plans to continue to work cooperatively with the SFMTA and Municipal Railway on joint advertising projects (e.g., adopting cable cars, signage in transit depots and vehicles) and supporting transit system community celebrations and activities.

The Board will initiate and review these proposals at scheduled meetings as well as adopt an intensive yearly review of goals, strategies and program evaluations.

4. Place

The Directors intend to enhance visitor experience at the museum by instituting a number of improvements to the displays as well as their respective housings. The FCCM has been working on a new display to be installed at the main entrance to the museum and powerhouse that features historical photographs, signage and a statue of Andrew Hallidie, founder and creator of San Francisco's cable car system. The new display will create a positive first impression of the museum in an area where few artifacts and signs are currently present. The FCCM also plans to include a greater number of exhibits—many currently held in storage. Plans are also being discussed to refurbish and rotate exhibits, such as the Dr. George Rahilly models of vintage cable cars, each featuring a different design, company scheme or function (i.e., U.S. Postal Service mail cars). These exhibits will also be used to increase space by displaying artifacts collaboratively with other museums as is now done with the Market Street Railway in its Steuart Street location. This strategy increases public awareness to the Cable Car Museum's collections, provide cross-promotional advertising and increases awareness of the museum's mission outside of its own walls.

Through the operating budget proposed under the pending SFMTA and Municipal Railway contracts, the FCCM hopes to significantly expand its promotional efforts (i.e., more comprehensive brochures, educational materials, guides, publications, special events participation, membership in tourism organizations and donations to fund-raising events and brother historical associations). Along with acquiring new artifacts and restoring old ones, an appropriate portion of the budget will be allocated for improving market research to help facilitate many of the proposals included in this report. Directors will vote on the specific allocation of funds once the current contract is ratified and the FCCM's finances are discussed in full quorum.

**AGREEMENT FOR MANAGEMENT AND OPERATION OF
CABLE CAR MUSEUM BETWEEN
CITY AND COUNTY OF SAN FRANCISCO AND
FRIENDS OF THE CABLE CAR MUSEUM**

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**AGREEMENT FOR MANAGEMENT AND OPERATION OF
CABLE CAR MUSEUM BETWEEN
CITY AND COUNTY OF SAN FRANCISCO AND
FRIENDS OF THE CABLE CAR MUSEUM**

This Management and Operation Agreement ("**Agreement**"), dated as of _____, 2009, is made by and between the City and County of San Francisco, a municipal corporation ("**City**"), by and through its San Francisco Municipal Transportation Agency ("**SFMTA**") and Friends of the Cable Car Museum, Inc. ("**Operator**").

RECITALS

A. City owns the San Francisco Cable Car Museum located at 1201 Mason Street in San Francisco (the "**Cable Car Museum**").

B. Operator owns various artifacts and displays relating to the history of cable cars in San Francisco, including the Clay Street Hill Railroad Cable Car No. 8, the Sutter Street Cable Railway dummy #46 and trailer #54 (collectively, the "**Artifacts**").

C. Operator desires to operate and manage the Cable Car Museum as well as the Cable Car gift shop (the "**Gift Shop**").

D. City desires to have Operator manage the Cable Car Museum and Gift Shop pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, In consideration of the covenants and agreements contained in this Agreement, and other good and valuable consideration, receipt of which is acknowledged, it is hereby agreed as follows:

1. Operation and Management Services.

1.1. Authority to Operate. Operator is hereby given the general authority to operate and manage the day-to-day operation of the Cable Car Museum and to perform the specific duties hereinafter set forth, subject to, governed by, conditioned upon, and in accordance with the terms and provisions of this Agreement, in the following areas of the Cable Car Barn at Washington and Mason Streets in San Francisco:

(a) First floor mezzanine area, and the lobby and stairway from the ground level to the mezzanine at the Mason Street entrance to the corner of Washington Street. City also grants Operator, its customers, patrons, invitees, purveyors, suppliers, employees, officers and agents direct access and egress to and from the Museum Areas through the Cable Car Barn during normal business hours. Said access and egress shall be through the regular entrance on Mason Street at Washington Street, and not through SFMTA maintenance or repair areas.

This Agreement is subject to the terms, conditions and restrictions set forth below. This Agreement gives Operator the right to occupy, operate and manage the Museum Areas only. This Agreement does not constitute a grant by City of any ownership, leasehold,

easement or other property interest or estate whatsoever in the Museum Areas, or any portion thereof. The privilege given to Operator under this Agreement is effective only insofar as the rights of City in the Museum Areas are concerned, and Operator shall obtain any further permission necessary because of any other existing rights affecting the Museum Areas.

1.2. Use of Concession Area. The concession area shall be used as a museum gift shop, solely for the sale of gifts; merchandise, souvenirs, art work, stationary products, photographic supplies, and books, primarily relating to cable car and other forms of past and present urban transportation, but not exclusively so. Additional products or merchandise may be sold by Operator with the prior written consent of the Executive Director ("**Director**") of the SFMTA.

If, during the term of this Agreement, SFMTA manufactures or markets merchandise for retail sale, Operator agrees to sell said articles for SFMTA in the museum Gift Shop. The terms and conditions of any such merchandising activity shall be set forth in a separate agreement between the parties.

1.3. Trade Fixtures. Operator may install in the concession area such trade fixtures as may be deemed necessary to accommodate the sale of the merchandise described above. No racks or other displays of merchandise or trade fixtures shall be placed or installed outside the boundaries of the concession area. Any racks, displays of merchandise or trade fixtures which remain in the Museum Areas more than 30 days after the termination of this Agreement shall be the property of the City.

1.4. Relocation of Concession Facilities. City reserves the right, in Director's sole discretion, to require Operator to relocate the concession facilities to another area within the Cable Car Barn if such relocation is deemed necessary to assure safe operation and maintenance of the machinery and equipment kept in the Cable Car Barn.

1.5. Use of Museum Areas. Operator shall act as curator of the Cable Car Museum. Operator shall establish displays within the museum areas for permanent and temporary exhibits related to the operation of the cable car system. In the museum areas, Operator shall be responsible for the placing and display of exhibit items, said responsibility to include arrangements and graphics necessary for tasteful exhibition. Operator shall have sole authority for determining the time, place, and manner of museum displays. Said authority shall be exercised in a reasonable manner. Operator shall provide professional quality graphics following a central theme adaptable and consistent to the Cable Car Barn motif, and said theme shall also be evident in the concession area. Any displays or exhibit items brought to the Museum Areas by Operator and which remain in the Museum Areas more than 30 days after the termination of this Agreement shall be the property of the City.

Operator's right to display any exhibits provided by City shall be no greater than the City's rights in those exhibits.

2. Term of Agreement; Option to Extend.

2.1. Term of Agreement. The term of this Agreement shall be for a period of ten (10) years ("**Term**"), commencing on _____, 2009 ("**Commencement Date**") and terminating on _____, unless sooner terminated as provided herein.

2.2. Extension of Term. The Term of this Agreement may be extended for up to a maximum of two (2) additional five (5) year terms upon the mutual written agreement of the Operator and the City. If Operator elects to extend the Term of this Agreement, it may do so by providing notice of intent to extend to City at least ninety

(90) days prior to expiration of the Term and not more than one hundred eighty (180) days prior to the expiration of the Term. Such extension shall be on the same terms and conditions of this Agreement, except as otherwise provided herein. SFMTA shall respond to Operator's notice of intent to extend the Term within thirty (30) days receipt of said notice.

3. Concession Payments.

During the term of this Agreement, the Concession Payment payable to SFMTA shall be calculated as Fifty Thousand Dollars (\$50,000) per year (the "**Concession Payment**"). The parties agree that no Concession Payment shall be due during the initial Term of this Agreement. If the parties elect to extend the Term of this Agreement, the Concession Payment shall be adjusted by three percent (3%), compounded annually over the duration of the extension of the Term.

4. Security for Performance.

At or before the date for commencement of this Agreement, Operator shall deposit with City the sum of Ten Thousand Dollars (\$10,000) to secure Operator's faithful performance of all terms and conditions of this Agreement, including, without limitation, its obligation to surrender the Museum Areas in the condition required by this Agreement. Such deposit shall be in the form of cash. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Operator shall not be entitled to interest on the security deposit. The amount of the security deposit shall not limit Operator's obligations under this Agreement. In lieu of such security deposit, Operator may deliver to City a valid surety bond in the sum equal to amount specified, issued by a surety company acceptable to City's Controller in such form as approved by the City Attorney, or a clean irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, issued by a financial institution with at least a Moody's A rating and having at least one branch office within the City and County of San Francisco. The Operator shall keep such surety bond or letter of credit, at its expense, in full force and effect until the thirtieth (30th) day after the expiration or sooner termination of this Agreement, to insure the faithful performance by Operator of all of the covenants, terms and conditions of this Agreement. Such bond or letter of credit shall provide thirty (30) days' prior written notice to City of cancellation or material change thereof.

5. Operation of Premises and Concessions.

5.1. Hours of Operation. The hours of operation of the Cable Car Museum and Gift Shop shall be from 10:00 a.m. to 6:00 p.m., April through October, and from 10:00 a.m. to 5:00 p.m., November through March, daily, including Saturdays and Sundays.

At all times entrance to the Cable Car Museum shall be free of charge.

Operator may close the Cable Car Museum and Gift Shop on Thanksgiving, Christmas and New Year's Day. Subject to mutual agreement between City and Operator, hours of operation may be modified. Operator shall be responsible for opening and closing the Cable Car Museum and Gift Shop.

5.2. Professional Manner of Operation. Operator shall operate the Museum Areas, using its best efforts to further the operation thereof. Operator shall conduct and operate the Museum Areas in a professional and dignified manner satisfactory to

Director. All employees of Operator or of any of its subcontractors shall be neatly dressed and shall be courteous at all times. Each employee of Operator shall wear a badge bearing either his/her number or his/her name so that the employee may be identified. In the operation of the Museum Areas, Operator shall comply with all federal, state and local laws, and all rules and regulations as the City shall from time to time reasonably prescribe.

5.3. Operator Representative. Operator shall, during business hours, retain in the concession area a qualified representative, authorized to represent and act for Operator in matters pertaining to the concession, and shall keep Director informed in writing of the identity of such person or persons, provided that Operator shall not be required to update the list of qualified representatives more than twice yearly.

6. Other Uses.

6.1. City Retained Rights. Operator recognizes and acknowledges that the areas governed by this Agreement may from time to time be used by City for its functions. The City retains exclusive right to Museum Areas and to govern additional uses of the Cable Car Barn, including the concession and museum areas. The City will give the Operator two (2) weeks' notice of such events.

6.2. Insurance, Payments by Other Users. Where the City issues a temporary use agreement for use of the Cable Car Museum outside normal business hours, the temporary use operator will be required to maintain insurance during the full term of the Agreement to limits established by the City and naming the City and County of San Francisco, its officers, agents, and employees, Director, and Operator as additional insureds.

In order that the museum Gift Shop be open during such events, the City shall require from the Temporary Use Operator a payment of Five Hundred Dollars (\$500) to the Operator.

7. Operator Performance Standards.

Operator shall, annually on the anniversary of the Commencement Date, submit the following to City: (a) marketing plan, (b) performance goals and standards for the following twelve (12) months, (c) maintenance requests, and (d) any such other information related to the performance of this Agreement. City and Operator agree to meet every six (6) months to evaluate and discuss Operator's adherence to and satisfaction of the marketing plan and performance goals and standards.

At least one representative of Operator shall be present at each meeting. Neither party shall be default of its obligation to meet with the other party if the party has made a good faith effort to schedule such meeting by providing the other party with a list of at least five (5) dates that it is available to meet.

8. Prohibited Uses.

The Museum Areas shall be used only for the purposes specified in Sections 1.1.2 and 1.1.5 of this Agreement. Operator shall at all times during the Term of this Agreement actively use the Museum Areas for those purposes and shall not at any time leave them vacant without the written consent of Director. Operator shall not do or allow anything to be done in or about the museum or Museum Areas, or bring or keep anything in the Museum Areas, which will in any way increase the risk of fire hazard upon the Cable Car Barn or any of its contents, or which will in any way conflict with any law, ordinance,

rule or regulation which may now or hereafter be enacted or promulgated by any public authority. Operator shall not create a nuisance or allow the Museum Areas to be used for any improper, immoral, unlawful or objectionable purpose. Operator shall not place any loads upon the floor, walls or ceiling which endanger the structure, or obstruct the sidewalk or passageways or stairways in front of, within, or adjacent to the Museum Areas, or do or permit any of its agents to do anything in any way tending to disturb the occupation of neighboring property or tending to injure the reputation or appearance of buildings.

9. Sanitation and Waste Disposal.

Operator agrees to keep the Museum Areas and all fixtures, and equipment clean, neat, safe, sanitary and in good order at all times. All waste matter shall be stored in a manner satisfactory to Director.

Operator shall not store any hazardous materials, as defined under federal, state or local law, in the Museum Areas without permission of Director. Operator shall not cause, nor shall Operator allow any of its agents or invitees (as defined in Section 14 below) to cause any hazardous material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Museum Areas, or transported to or from the Museum Areas. Operator shall immediately notify City when Operator learns of, or has reason to believe that, a release of hazardous material has occurred in, on or about the Museum Areas. Operator shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Operator or its agents or invitees cause a release of hazardous material, Operator shall, without cost to City and in accordance with all laws and regulations, return the Museum Areas to the condition immediately prior to the release. In connection therewith, Operator shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent, decree or other compromise proceeding involving hazardous material. For purposes of this Agreement, "hazardous material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment. Hazardous material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Museum Areas or are naturally occurring substances in the Museum Areas, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to hazardous material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Museum Areas.

10. Artifacts.

10.1. Possession of Artifacts. Operator shall display the Artifacts in the Cable Car Museum as long as the Museum remains open and Operator continues to operate and manage the Cable Car Museum pursuant to this Agreement.

10.2. Value of Artifacts; Transfer of Title of Artifacts. For the purpose of this Agreement, the parties agree that the Artifacts shall be valued at Six Hundred Sixty Thousand Dollars (\$660,000).

Upon the expiration of the Term or earlier termination of this Agreement, Operator shall convey all right, title and interest in the Artifacts to the City. Operator shall execute a corporate resolution, substantially in the form attached hereto as Exhibit _____. Such corporate resolution shall be executed by Operator, certified by Operator's corporate Secretary, and delivered to SFMTA upon the earlier of the last day of the Term of this Agreement, or within thirty (30) days of any earlier termination of this Agreement.

10.3. Maintenance of the Artifacts. For so long as Operator operates and manages the Cable Car Museum under the terms of this Agreement, including any amendments hereto or extensions hereof, Operator shall, at its own expense maintain the Artifacts in their current or better condition using appropriate methods of historic conservation and (where appropriate) renovation accepted for museum use. Operator agrees to arrange for the erection and maintenance of an enclosure for the Clay Street Hill Cable Car No. 8. City agrees to contribute up to Twenty-Five Thousand Dollars (\$25,000) to pay for such an enclosure.

10.4. Expiration of Operator. In the event that Operator should cease to exist through insolvency, abandonment, liquidation, or, if Operator shall lose its non-profit status in a final determination by the Internal Revenue Service, this Agreement shall terminate and all right, title and interest to the Artifacts shall vest in the City pursuant to Section 10.2 above and Section 10.5 below.

10.5. Purchase Price for Artifacts. Upon the expiration of the Term, in consideration of City's receipt of Operator's resolution conveying all right, title and interest in the Artifacts to the City, City shall pay Operator One Hundred Sixty Thousand Dollars (\$160,000) as the remaining value of the Artifacts.

In the event this Agreement is terminated prior to the expiration of the Term, the City shall have the exclusive right to purchase the Artifacts. In such case, the purchase price of the Artifacts shall be equal to the outstanding Concession Payments, prorated on a monthly basis (\$4,166.67), that would have been due to the City for the remainder of the Term.

For example, if this Agreement is terminated and there are 32 months remaining until the expiration of the Term, the purchase price for the Artifacts would be \$293,333.44 (32 months x \$4,166.67) + \$160,000.00.

11. Utilities.

City shall provide in or in the vicinity of the Museum Areas the following utility services: water, electricity, and sewage outlets. Any changes or alterations in utility installations shall be the sole responsibility of Operator. The user charge for said utility services will be paid by the City.

12. Janitorial Services.

Janitorial services and interior window washing in the Concession and museum areas shall be provided by Operator. City shall provide janitorial services for all public restrooms in the Cable Car Museum.

13. Notices.

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

To City: Finance and Information Technology Department
Attn: Real Estate Section
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103-5417

To Operator: Friends of the Cable Car Museum
Attn: Jose Godoy
1201 Mason Street
San Francisco, CA 94108

14. Indemnity.

Operator shall indemnify, defend and hold harmless City, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "losses"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Museum Areas, or any part thereof, whether the person or property of Operator, its officers, agents, employees, contractors or subcontractors (collectively, "agents"), its invitees, guests or business visitors (collectively, "invitees"), or third persons, relating in any manner to any use or activity under this Agreement, (b) any failure by Operator to faithfully observe or perform any of the terms, covenants or conditions of this Agreement, (c) the use of the Museum Areas or any activities conducted thereon by Operator, its agents or invitees, or (d) any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Operator, its agents or invitees, on, in, under or about the Museum Areas, any improvements agreed to thereon, or into the environment; except solely to the extent of losses resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Museum Areas and claims for damages or decreases in the value of adjoining property. Operator 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 indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Operator by City and continues at all times thereafter. Operator's obligations under this section shall survive the expiration or other termination of this Agreement.

Operator shall indemnify and hold City harmless from all loss and liability, including

attorney's 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 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.

15. Insurance. Operator shall procure and keep in effect at all times during the term of this Agreement, at Operator's expense insurance as follows:

15.1. General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage's for Contractual Liability, Personal Injury, Independent Contractors, Explosion, and Products Liability;

15.2. Automobile Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable; and

15.3. Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than Two Million Dollars (\$2,000,000) each accident.

15.4. Comprehensive Crime Insurance, including coverages for employee dishonesty, forgery or alteration, theft, disappearance and destruction, and robbery (inside and outside) in the amount of Ten Thousand Dollars (\$10,000), with any deductible not to exceed One Thousand Dollars (\$1,000).

15.5. Comprehensive Property Insurance, including coverage for the Artifacts with limits of not less than Six Hundred Sixty Thousand Dollars (\$660,000) each occurrence. The parties agree to share in the cost of the insurance premium for such comprehensive property coverage as set forth in Exhibit A attached hereto and incorporated herein by this reference.

15.6. All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (ii) specify 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. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose in whole or in part during the policy period.

15.7. All policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage to City.

Prior to the commencement date of this Agreement, Operator shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event Operator shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Operator, and the cost thereof shall be paid to City within five (5) days after delivery to Operator of bills therefore.

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 aggregate limit shall double the occurrence or claims limits specified above.

Should any of the required insurance be provided under a claims made form, Operator shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the Agreement expiration, to the effect that, should any occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

Upon City's request, Operator and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Operator for risks comparable to those associated with the Museum Areas, then City in its sole discretion may require Operator to increase the amounts or coverage carried by Operator hereunder to conform to such general commercial practice.

Operator's compliance with the provisions of this Section shall in no way relieve or decrease Operator's indemnification obligations under this Agreement or any of Operator's other obligations hereunder. Notwithstanding anything to the contrary in this Agreement, this Agreement shall terminate immediately, without notice to Operator, upon the lapse of any required insurance coverage. Operator shall be responsible, at its expense, for separately insuring Operator's personal property.

16. City's Right to Cure Defaults by Operator.

If Operator fails to perform any of its obligations under this Agreement, or if Operator defaults in the performance of any of its other obligations under this Agreement, then City may, at its sole option, remedy such failure on Operator's account and at Operator's expense by providing Operator with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Agreement, and nothing herein shall imply any duty of City to do any act that Operator is obligated to perform. Operator shall pay to City upon demand, all reasonable costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Operator's obligations under this Section shall survive the termination of this Agreement.

17. Sales of Unlicensed Muni Merchandise Prohibited.

17.1. No Sale or Display of Unlicensed Merchandise. Operator shall not sell or display any unlicensed merchandise bearing the following marks: "San Francisco Municipal Railway," "MUNI," "S.F. Muni," "S.F. Municipal Railway" and the symbols known as the "O'Shaughnessy" and the "MUNI Worm" ("Marks").

17.2. Penalty for Sale or Display of Unlicensed Merchandise. If Operator inadvertently sells or displays any unlicensed merchandise bearing trademarks belonging to the City, Operator shall inform City, in writing, within ten (10) business days, of Operator's discovery of the error and shall pay to City its net profits from the sale or display of such merchandise. If Operator fails to inform City in writing within ten (10) business days of its inadvertent sale or display of any unlicensed merchandise bearing

trademarks belonging to the City, Operator shall pay to City one hundred percent (100%) of the greater of the fair market value of the items or the entire proceeds that Operator receives for the sale or display of such items. This paragraph in no way limits or affects City's rights to any other revenues under this Agreement.

17.3. Operator Will Not Seek To Impair City's Marks. Operator agrees that it shall not do or cause to be done any act or thing contesting or in any way impairing or tending to impair any of City's rights, title or interests in or to the Marks, or any portion thereof. In the event Operator discovers or otherwise becomes aware that any of the rights embodied in the Marks have been or are being infringed upon by any third party, Operator shall promptly notify City of such infringement. Operator agrees to provide City reasonable assistance and cooperation concerning any such matter provided that Operator shall not incur any significant expense in so cooperating.

17.4. Merchandising License. City and Operator agree that they will enter into a short-term merchandising license for the design, manufacture and sale of transit souvenirs. This license shall become effective upon execution by the parties.

17.5. Mark Validity. In the event any Mark is held invalid, void, and/or unenforceable in a final order, decree or judgment by a court of competent jurisdiction, or there is a refusal by City to timely enforce a Mark against a known infringing competitor of Operator after thirty (30) business days written notice to City by Operator, or unenforceable by agreement between City and a third party, then this Agreement shall no longer apply to said Mark but shall continue in effect with reference to each other Mark.

18. No Waiver of Subsequent Breaches or Defaults.

The failure of either party at any time to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach of default in the terms, conditions and covenants contained herein.

19. No Liability Outside Terms of Agreement.

It is agreed that all duties, obligations and liabilities of either of the parties hereto must necessarily be founded upon the terms of this Agreement, that any liability in connection with the transaction contemplated by this Agreement is exclusively that of each of the principals appearing respectively as City and Operator, and that any Director, servant, agent, officer or employee of either party is not to be held liable for any act, neglect, default or alleged representation or statement.

20. Waiver of Claims/Consequential and Incidental Damages.

Neither City nor any of its commissions, departments, boards, officers, agents or employees, shall be liable for any damage to the property of Operator, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the use of the Museum Areas by Operator.

Without limiting any indemnification obligations of Operator or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, Operator fully releases, waives and discharges forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just

compensation under the law of eminent domain, or otherwise at equity, in the event that City exercises its right to revoke or terminate this Agreement.

Operator acknowledges that it will not be a displaced person at the time this Agreement expires by its own terms, and Operator fully releases, waives and discharges forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

21. Bookkeeping and Accounting.

Operator shall keep full, complete and proper books, records and accounts of its monthly gross receipts on a current basis. Any and all such records shall be kept on the premises or in a location satisfactory to Director, and shall be made available to City or its representative upon request.

22. Inspection and Audit.

City and its designated agents and employees shall have the right at any and all times, during the Term of this Agreement, during regular business hours, to examine and inspect all of the books and records of Operator for the purpose of investigating and verifying the accuracy of any of Operator's reports to the City. Operator shall, on an annual basis, provide City with a certified financial report related to the management and operation of the Cable Car Museum, certified by Operator's Board of Directors.

City may conduct an audit of the books and records of Operator on the third (3rd), sixth (6th) and ninth (9th) anniversaries of the Commencement Date of this Agreement.

23. Alteration and Repair.

23.1. Operator may not perform any alteration or repair work in the Museum Areas without the prior written approval of Director or his designee. Operator shall obtain permission, in writing, to perform any alteration or repair work in the Cable Car Museum. City shall respond to such request to perform alteration or repair work within ten (10) business days. Upon the Director's approval of any alteration and/or repair work, Operator shall give Director at least three (3) days written notice in order that City may post notices of non-responsibility until completion and acceptance of all such work. Operator shall obtain at its sole cost and expense all required agreements, licenses and permits and shall exhibit them to Director upon demand. In the event of any planned alteration or repair to the Museum Areas by City, City shall give Operator as least three (3) days notice.

23.2. Operator shall be responsible for painting the walls of the Museum and all other painted surfaces, when needed, and will repair minor vandalism to the Museum and its exhibits within a reasonable timeframe, up to a cost not to exceed Twenty-Five Thousand Dollars (\$25,000) over the term of this Agreement.

23.3. The Operator shall contact Mr. Chris Hill, Cable Car Maintenance Superintendent, at 415-292-2061 on all property and facility repair needs.

24. Events of Default; Remedies.

24.1. Events of Default. Each of the following events shall constitute an "Event of Default" by Operator upon which the City may terminate this Agreement:

(a) **Material Provisions.** In the sole discretion of City, Operator fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 3, 15, 27.1, 27.12.

(b) **Failure to Operate the Cable Car Museum.** Operator fails to open and keep Cable Car Museum open during the hours prescribed in Section 5 of this Agreement, except to the extent that Operator shuts the Cable Car Museum temporarily upon its reasonable belief that such closure is necessary to protect public health and safety. In the event such closure is necessary, if the closure will exceed twenty-four (24) hours, Operator shall notify SFMTA of the closure and obtain SFMTA approval for continued closure.

(c) **Failure to Cure Breach.** Operator fails to comply with any other term, covenant or condition of this Agreement; and such failure continues for a period of thirty (30) days after written notice thereof from the City, except that if such default is of a nature that would reasonably require more than thirty days to remedy, Operator shall have up to sixty (60) days to remedy such default provided that Operator has diligently commenced curative actions within thirty (30) days of the notice of notice of default.

24.2. Notice of Event of Default.

Upon determining the occurrence of an Event of Default, City shall provide notice of such default to Operator, in writing ("**Written Notice of Event of Default**"). The Written Notice of Event of Default shall clearly identify the Event of Default, include a statement explaining what is required to cure the Event of Default and the period of time to cure the Event of Default, as determined in the sole discretion of the Director, which shall in no case be less than thirty (30) days from the Written Notice of Default.

24.3. Remedies.

(a) On and after any Event of Default by Operator, the City shall have the right to exercise all legal and equitable remedies including, but not limited to, the right to terminate this Agreement or seek specific performance of all or parts of this Agreement.

(b) If Operator fails after thirty (30) days notice from City to perform any of its obligations under this Agreement, as determined by the City in its sole discretion, the City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Operator any Event of Default; Operator shall pay to City on demand all costs and expenses incurred by City in effecting such cure from the date of incurrence.

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

(d) Notwithstanding anything in this Agreement to the contrary, it is agreed that under no circumstances shall any claim of breach, violation or default of the terms, obligations, covenants, or conditions of this Agreement be asserted by City as a basis for terminating the Agreement or refusing to extend the Term without Operator first having been provided notice and an opportunity to cure, as follows:

(i) City must give Operator written notice and opportunity to cure pursuant to the terms set forth above.

(ii) If, by the expiration of the cure period provided for above, Operator has not cured, City shall have all rights and remedies allowed to City under this Agreement for Operator's default.

(iii) Any effort by a party to assert a breach or default by the other party shall be consistent with the notice and cure provisions set forth above.

25. Surrender of Possession.

Operator agrees to yield and deliver to City possession of the Museum Areas at the termination of this Agreement by expiration, in good condition and repair and in accordance with the express obligations hereunder, except for ordinary wear and tear, loss, damages, and destruction occasioned by fire, the elements, public enemy or other casualty not the fault of Operator.

26. Termination for Cause.

The City or the Director, with the authorization of the SFMTA Board of Directors, by written notice to Operator, shall have the right to terminate this Agreement upon the occurrence of any Event of Default; provided, Operator shall have the opportunity to cure such default no later than thirty (30) days following notice of said default from City. Termination under this section shall be effective immediately upon such notice of termination being given by the City to Operator and after the expiration of any applicable cure periods. Upon such termination, Operator shall immediately thereupon vacate the Cable Car Museum premises.

27. General Provisions.

27.1. Assignment. Operator shall not assign or transfer any right, privilege or license conferred by this Agreement, either in whole or in part, or in any manner encumber the museum and concession areas, or any part thereof, without obtaining in advance the written consent of City.

27.2. 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.

27.3. Independent Contractor. Operator shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Operator performs the service required of Operator by the terms of this Agreement. Operator shall be liable for the acts and omission of itself, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between the City and Operator.

27.4. MacBride Principles – Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Licensees acknowledge that they

have read and understand the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

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

27.6. Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, virgin redwood wood product.

27.7. Drug-Free Workplace Place. 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.

27.8. 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.

27.9. Food Service Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of One Hundred Dollars (\$100) liquidated damages for the first breach, Two Hundred Dollars (\$200) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500) liquidated damages for subsequent breaches in the same year is a 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.

27.10. 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.

27.11. 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.

27.12. 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.

27.13. 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 27.10.

27.14. 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.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

OPERATOR:

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

Jose Godoy
Chief Executive Officer
Friends of the Cable Car Museum
Date: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By _____
Stephanie J. Stuart
Deputy City Attorney

EXHIBIT A

Comprehensive Property Insurance

Year	FCCM Portion	SFMTA Portion	FCCM Share	SFMTA Share
Year 1	\$660,000.00	\$50,000.00	92.4242%	7.5758%
Year 2	\$610,000.00	\$100,000.00	84.8485%	15.1515%
Year 3	\$560,000.00	\$150,000.00	77.2727%	22.7273%
Year 4	\$510,000.00	\$200,000.00	69.6970%	30.3030%
Year 5	\$460,000.00	\$250,000.00	62.1212%	37.8788%
Year 6	\$410,000.00	\$300,000.00	54.5455%	45.4545%
Year 7	\$360,000.00	\$350,000.00	46.9697%	53.0303%
Year 8	\$310,000.00	\$400,000.00	39.3939%	60.6061%
Year 9	\$260,000.00	\$450,000.00	31.8182%	68.1818%
Year 10	\$210,000.00	\$500,000.00	24.2424%	75.7576%
Remainder Value	\$160,000.00	N/A	N/A	N/A

THIS PRINT COVERS CALENDAR ITEM NO.: 11

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Parking and Traffic

BRIEF DESCRIPTION:

Approving various parking and traffic modifications to accommodate Muni service route changes approved by the SFMTA Board of Directors, as modified by the Board of Supervisors, as part of the FY 2010 budget amendment. These changes will take effect fall 2009.

SUMMARY:

- To address a \$129 million budget deficit, on April 30, 2009, the SFMTA Board of Directors approved a budget amendment for FY 2010 that included transit service reductions on select routes.
- Changes were based on extensive data analysis and input from community stakeholders.
- As part of the budget approval process, the Board of Supervisors requested that the SFMTA make certain transit service enhancements to offset some of the planned service reductions.
- The overall package of transit service changes requires the creation of new terminals, the modification of existing bus zones, and the establishment of other parking prohibitions to facilitate bus movements.
- The proposed parking and traffic modifications were heard at a public hearing on July 31st, 2009.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO _____ Ricardo Olea

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

To approve parking and traffic modifications associated with Muni service changes to be implemented in fall 2009.

The San Francisco Municipal Transportation Agency (SFMTA) will be implementing Muni service changes in fall 2009 to help address a \$129 million budget deficit. These changes include discontinuing routes or route segments with relatively lower ridership; increasing or decreasing frequency of service on routes depending on demand; restructuring routes to make new connections; and adjusting the operation times of some routes. The Muni service adjustments in this calendar item require parking regulation changes for their successful implementation. The routes affected include:

- 1 California
- 2 Clement
- 9 AX Bayshore 'A' Express
- 9L San Bruno Limited
- 10 Townsend
- 12 Folsom/Pacific
- 14X Mission Express
- 21 Hayes
- 38 Geary
- 41 Union
- 48 Quintara
- 88 BART Shuttle

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

Objective 4.2 - Ensure efficient and effective use of resources.

DESCRIPTION AND ALTERNATIVES CONSIDERED

On April 21, 2009, the SFMTA Board of Directors declared a fiscal emergency for 2009-2010 under California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285, caused by the failure of agency revenues to adequately fund agency programs, facilities, and operations.

As part of the SFMTA FY 2010 budget amendment process, the SFMTA submitted a budget amendment to the Board of Supervisors that included approximately \$13.4 million in transit service reductions. While considering the SFMTA budget amendment, the Board of Supervisors requested that the SFMTA add back approximately \$8.7 million in transit service to mitigate the impact of some of the proposed service reductions.

With respect to the transit service reductions proposed by the SFMTA and submitted to the Board of Supervisors, CEQA provides a statutory exemption from environmental review for the reduction or elimination of transit service if implemented as a result of a declared fiscal emergency caused by the failure of agency revenues to adequately fund agency programs, facilities, and operations.

As a result, City Planning determined that the service changes to the following routes are covered by the above statutory exemption:

- 1 California
- 2 Clement
- 10 Townsend (changes north of 17th Street)
- 12 Folsom/Pacific
- 21 Hayes
- 38 Geary
- 41 Union
- 88 BART Shuttle

On August 21, 2009, City Planning also determined that service changes to the following routes are exempt from environmental review under Title 14 of the California Code of Regulations section 15301, or Class 1, of the CEQA implementing guidelines:

- 9 AX Bayshore 'A' Express
- 9L San Bruno Limited
- 10 Townsend (changes south of 17th Street)
- 14X Mission Express
- 48 Quintara

A public hearing was held on July 31, 2009, to discuss parking and traffic regulation modifications for the following affected Muni lines. The public hearing notice was posted in the affected areas and on the SFMTA website per the requirements of Municipal Transportation Code Division II, Section 202. Staff did a supplementary public hearing mailing that did not reach some members of the public until a few days before the July 31, 2009 hearing. Staff has been doing additional outreach after the public hearing, informing the public of the project as well as the September 1, 2009 SFMTA Board of Directors meeting on this matter.

As part of the public hearing process, staff received oral or written comments, with the most concerns expressed for the changes on the 2 Clement, 21 Hayes and 41 Union routes. Below is a summary of changes being proposed:

- 1 California. A longer terminal on Clay Street is proposed because all buses will now terminate north of Market Street. This would result in the loss of one parking space.
- 2 Clement. The 2 Clement is to be shortened to end at Park Presidio Boulevard. This requires establishing a new terminal location for the bus. There was significant opposition expressed with the original proposal to create a terminal bus zone on the east side of 14th Avenue north of Geary Boulevard. Neighbors indicated concerns with loss of parking, idling noise and exhaust, pedestrian safety and right turning conflicts at 14th Avenue and Geary Boulevard. SFMTA staff met with area neighbors on August 11, 2009 and agreed to pursue an alternative terminal located on the west side of Funston Avenue north of Geary Boulevard. This location is mostly located across from a currently abandoned gas station. Two terminal options for the 2 Clement are being brought forward for final decision by the SFMTA Board, the 14th Avenue option and the Funston Avenue option. The Funston Avenue terminal is the recommended staff option. Staff will issue a directive to operators to minimize the idling of buses at the selected terminal.
- 9 AX Bayshore 'A' Express. Proposal is to extend inbound bus zone at San Bruno and Paul avenues which is currently substandard in length, which would result in the loss of one parking space.
- 10 and 12 routes in Downtown and SoMa. The 10 Townsend bus route is proposed to be rerouted to Jackson and Fillmore streets via Pacific Avenue and Broadway and will be extended to San Francisco General Hospital via Potrero Hill. The 12 Folsom/Pacific bus route is proposed to be rerouted off the Embarcadero and instead will serve Sansome and 2nd streets between Broadway and Harrison Street. This proposal includes new bus zones on 2nd Street and Sansome Street to accommodate a more direct route in the northbound direction.
- 10 Townsend in Potrero Hill. New flag stops are proposed in Potrero Hill to accommodate the proposed route extension to San Francisco General Hospital. Residents have expressed concern about bus activity on their street and the location of new bus stops in front of homes in Potrero Hill. Staff has modified the proposal first taken to the July 31, 2009 public hearing to use more existing stops, thereby reducing the total number of new stops from eight to four.
- 12 Folsom/Pacific in the Mission. The 12 Folsom/Pacific is proposed to be extended to the 24th Street BART Station. The existing terminal on the northeast corner of Mission and 24th Streets will be lengthened to accommodate routes 12 Folsom/Pacific and 67 Bernal Heights. This would result in the loss of six parking spaces but will improve the overall safety of this terminal, since 24th Street west of Mission Street is a narrower street.

- 14X Mission Express. There will be a new a.m. terminal layover on San Jose Avenue at Sagamore Street, which results in the loss of one parking space.
- 21 Hayes. The 21 Hayes route is being shortened from its present terminal at 6th Avenue and Fulton Street to a new terminal at Fulton and Shrader streets. The new terminal requires parking removal at this corner to facilitate a new terminal as well as the right turn from Fulton Street to southbound Shrader Street. At the same time, bus zones will be consolidated or removed along Fulton Street between Stanyan Street and Masonic Avenue, resulting in an overall increase of parking for the neighborhood. A peak hour tow-away on the east side of Stanyan Street south of Fulton Street will be rescinded to facilitate the northbound bus right turn. Staff worked closely with medical offices to preserve two passenger loading zones on the southwest corner of Stanyan and Shrader streets. The SFMTA has received correspondence from various residents on Shrader Street opposed to the routing of the bus citing safety and congestion concerns. Staff has tested the new terminal routing and believes it to be safe. Fulton Street offers the flattest area for terminal and there are existing overhead wires on Shrader Street that will minimize costs. New bypass overhead wires will be added by SFMTA staff on Fulton Street at Shrader Street by October 2009.
- 38 Geary. The 38 Geary Ocean Beach will be replaced by a short line that will terminate at 33rd Avenue and Geary Boulevard and will layover on 32nd Avenue between Anza and Balboa streets. This new 38 short line will use the vacated 2 Clement terminal, which needs to be extended by two parking spaces to accommodate a 60-foot bus.
- 41 Union. Eliminating service west of Fillmore Street and operating articulated trolley coaches requires a new terminal at Fillmore and Union Streets, longer part-time bus zones on the Cow Hollow portion of Union Street, and longer full-time bus zones in the Russian Hill portion of Union Street. There was opposition to these proposals at the public hearing and through correspondence, particularly for the commercial portion of Union Street (west of Van Ness Avenue). Staff has met with Union Street merchants who have expressed concern with the operation of larger articulated buses and the parking losses and visual disruption associated with the new terminal and longer bus zones. In response to some of the community concerns, staff has recommended operating the 60-foot articulated buses during the morning rush hour only as a compromise that will preserve parking spaces during early evening business times, but there is still opposition to operation of articulated trolley coaches in the morning rush hour (5 a.m. to 9 a.m., Monday through Friday). Articulated buses would help relieve the peak overcrowding on this route.
- 48 Quintara. The 48 Quintara will be rerouted through Potrero Hill to make a more direct connection between the 24th Street BART, San Francisco General Hospital and Third Street. The proposed route will bring the 48 Quintara to Third Street via 25th Street, Pennsylvania Avenue, and 22nd Street. A new bus zone is proposed at 22nd Street and Pennsylvania Street for a more direct route, resulting in the loss of four spaces.

Residents have expressed concern about the location of the proposed bus stops.

- 88 BART Shuttle. The 88 BART Shuttle will no longer serve Lake Merced or Park Merced. Instead, the 88 BART Shuttle will provide service to Sickles Avenue and Alemany Boulevard during the a.m. peak period, and Mission Street and Flourney Street during the p.m. peak period. This requires a new terminal on Sickles Avenue at Alemany Boulevard, for the loss of two spaces.

ENVIRONMENTAL CLEARANCE

Parking and traffic modifications associated with the transit service reductions and enhancements are subject to the California Environment Quality Act (CEQA).

California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285, provides a statutory exemption from environmental review for parking and traffic changes related to the reduction or elimination of transit service if implemented as a result of a declared fiscal emergency caused by the failure of revenues to adequately fund an agency's programs, facilities, and operations. On April 21, 2009, the Board of Directors declared a fiscal emergency for 2009-2010 under California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285. City Planning made the determination that the parking and traffic changes related to the 1 California, 2 Clement 10 Townsend (changes north of 17th Street), 12 Folsom/Pacific, 21 Hayes, 38 Geary, 41 Union and 88 BART Shuttle, are covered under this fiscal emergency declaration and are statutorily exempt from environmental review.

In August 2009, City Planning determined that the parking and traffic changes associated with service changes to the 9 AX Bayshore 'A' Express, 9L San Bruno Limited, 10 Townsend (changes south of 17th Street), 14X Mission Express and 48 Quintara/24th Street are categorically exempt from environmental review under Title 14 of the California Code of Regulations section 15301, or Class 1, of the CEQA implementing guidelines. Section 15301 provides a categorical exemption from environmental review for the operation, repair, and maintenance of existing public facilities, involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. As a result, the proposed parking and traffic changes associated with the routes listed above are categorically exempt from environmental review under the above-cited classification.

FUNDING IMPACT

The estimated savings for the overall service adjustments approved by the SFMTA Board of Directors on April 30 was \$13.4 million. During a subsequent Board of Supervisors meeting on May 12, 2009, an agreement was made to add back \$8.7 million into the SFMTA budget for transit service enhancements including adjusting headways and service hours on routes parallel to the routes with service reductions. The estimated cost of implementing the parking changes associated

with the service changes is \$20,000. The estimated annual loss in revenue due to parking meter changes associated with the service changes is \$25,000.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the SFMTA Executive Director/CEO to execute the parking and traffic modifications required for fall 2009 Muni service adjustments.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA approved in April 2009 a series of Muni service adjustments to address a \$129 million budget deficit for fiscal year 2010; and,

WHEREAS, The Board of Supervisors requested that the SFMTA make transit service enhancements to offset some of the planned service reductions; and,

WHEREAS, On April 21, 2009, the SFMTA Board of Directors declared that a fiscal emergency exists caused by the failure of agency revenues to adequately fund agency programs, facilities, and operations pursuant to California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285; and,

WHEREAS, The Planning Department has determined that the proposed parking and traffic changes associated with service changes to routes 1 California, 2 Clement, 10 Townsend (changes north of 17th Street), 12 Folsom/Pacific, 21 Hayes, 38 Geary, 41 Union and 88 BART Shuttle are statutorily exempt from environmental review based on the SFMTA's declaration of fiscal emergency pursuant to California Public Resources Code section 21080.32 and California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15285; and,

WHEREAS, The Planning Department has determined that the proposed parking and traffic changes associated with changes to routes 9L San Bruno Limited, 9AX Bayshore 'A' Express, 10 Townsend (changes south of 17th Street), 14X Mission Express and 48 Quintara/24th Street are categorically exempt from environmental review under California Environmental Quality Act implementing guidelines, Title 14 of the California Code of Regulations section 15301; and,

WHEREAS, Said determinations are on file with the Secretary to the SFMTA Board of Directors and are incorporated herein by this reference; and,

WHEREAS, These transit service changes require the creation of new terminals, the modification of existing bus zones, and the establishment of other parking prohibitions to facilitate bus movements as follows:

2 CLEMENT

- A. BUS ZONE – ESTABLISH: Funston Avenue, west side, from Geary Boulevard to 140 feet northerly (140-foot bus zone).

OR

BUS ZONE – ESTABLISH 14th Avenue, east side, from Geary Boulevard to 135 feet northerly (135-foot bus zone); BUS STOP (FLAG) – ESTABLISH 14th Avenue, east side, south of Clement Street (nearside); RED ZONE – ESTABLISH 14th Avenue, east side, from Clement Street to 20 feet southerly (20-foot red zone) and Clement Street, south side, from 14th Avenue to 20 feet easterly (20-foot red zone)

10 TOWNSEND AND 12 FOLSOM/PACIFIC

- B. BUS ZONE – ESTABLISH: 1) Pacific Street, north side, from 0 feet to 110 feet west of Sansome Street; 2) Sansome Street, east side, from 0 feet to 98 feet south of Pine Street; 3) Sansome Street, east side, from 0 feet to 120 feet north of Sutter Street (establishes 120-foot bus zone); 4) 2nd Street, east side, from 113 feet to 222 feet south of Stevenson Street (establishes 109-foot zone); and 5) 2nd Street, east side, from 29 feet to 111 feet south of Howard Street (establishes 82-foot bus zone).
- C. BUS ZONE – EXTEND: 1) 2nd Street, east side, from 80 feet to 102 feet south of Folsom Street (this change establishes a 102-foot bus zone); and 2) 2nd Street, east side, from 74 feet to 96 feet south of Brannan Street.
- D. BUS STOP – RESCIND: Sansome Street, east side, north of California Street (farside).
- E. BUS STOP (FLAG) – ESTABLISH: 1) Connecticut Street, west side, north of 19th Street (nearside); 2) Wisconsin Street, west side, north of 22nd Street (nearside); 3) Wisconsin Street, west side, north of Madera Street (nearside); 4) Wisconsin Street, west side, north of 23rd Street (nearside); and 5) 23rd Street, south side, west of Dakota Street (nearside).
- F. RED ZONE – ESTABLISH: 24th Street, north side, from 15 feet to 33 feet west of South Van Ness Avenue (18-foot red zone).
- G. BUS ZONE – EXTEND: 24th Street, north side, from 125 feet to 240 feet east of Mission (extends existing 125-foot bus zone by 115 feet and establishes a 240-foot bus zone between Mission Street and Capp Street).
- H. METERED LOADING ZONE, MONDAY TO FRIDAY, 8AM TO 6PM – ESTABLISH: 24th Street, north side, from 3 feet to 60 feet east of Capp Street (57-foot zone at parking meters #3222, #3220, and #3218).
- I. TAXI ZONE – ESTABLISH: Mission Street, east side, from 14 feet to 35 feet south of 24th Street (21-foot zone at parking meter #2803).

21 HAYES

- J. TOW-AWAY NO STOPPING 7AM TO 9AM AND 4PM TO 6PM – RESCIND: Stanyan

Street, east side, between Fulton and Hayes Streets.

- K. TOW-AWAY NO STOPPING ANYTIME – ESTABLISH: Shrader Street, east side, from Fulton Street to 130 feet southerly.
- L. PASSENGER LOADING ZONE, MONDAY THROUGH FRIDAY, 8AM TO 6PM – RESCIND: 1) Fulton Street, south side, from 25 feet to 38 feet west of Shrader Street (shortens existing zone by 13 feet and establishes a 25-foot zone); and 2) Shrader Street, west side, from Fulton Street to 22 feet southerly (22-foot zone).
- M. PASSENGER LOADING ZONE, MONDAY THROUGH FRIDAY, 8AM TO 6PM – ESTABLISH: Shrader Street, west side, from 25 feet to 65 feet south of Fulton Street (40-foot zone).
- N. RED ZONE – ESTABLISH: Shrader Street, west side, from Fulton Street to 25 feet southerly (25-foot zone).
- O. BUS ZONE – RESCIND: 1) Hayes Street, south side, from Shrader Street to 90 feet westerly (90-foot zone); 2) Hayes Street, south side, from Cole Street to 80 feet westerly (80-foot zone); 3) Hayes Street, north side, from Cole Street to 80 feet easterly (80-foot zone); 4) Hayes Street, south side, from Ashbury Street to 80 feet easterly (80-foot zone); 5) Hayes Street, north side, from Ashbury Street to 60 feet easterly (60-foot zone); and 6) Hayes Street, south side, from Stanyan Street to 75 feet easterly (75-foot zone).
- P. BUS ZONE – ESTABLISH: 1) Fulton Street, south side, from 25 feet to 175 feet west of Shrader Street (150-foot zone); and 2) Hayes Street, south side, from Shrader Street to 80 feet easterly (80-foot zone).

41 UNION, COLUMBUS AVENUE

- Q. PART-TIME BUS ZONE – 5AM TO 9AM AND 4PM TO 7PM, MONDAY THROUGH FRIDAY – ESTABLISH: Columbus Avenue, west side, from 66 feet to 105 feet south of Stockton Street (39-foot zone at meters #421G and #419G).
- R. BUS ZONE – EXTEND: 1) Columbus Avenue, east side, from 89 feet to 111 feet south of Stockton Street (establishes 111-foot zone); and 2) Columbus Avenue, east side, from 73 to 94 feet north of Kearny Street (establishes 94-foot zone).
- S. 30 MINUTE (GREEN) METER – RESCIND: 1) Columbus Avenue, east side, from 89 feet to 111 feet south of Stockton Street (22-foot zone at meter #424G); and 2) Columbus Avenue, east side, from 94 feet to 116 feet north of Kearny Street (22-foot zone at meter #216G).
- T. 30 MINUTE (GREEN) METER – ESTABLISH: Columbus Avenue, east side, from 116 feet to 138 feet north of Kearny Street (22-foot zone at meter #218).

- U. METERED LOADING ZONE, 7AM TO 6PM, MONDAY THROUGH SATURDAY – RESCIND: Columbus Avenue, east side, from 73 feet to 94 feet north of Kearny Street (21-foot zone at meter #214).
- V. METERED LOADING ZONE, 9AM TO 4PM, MONDAY THROUGH FRIDAY AND 7AM TO 6PM, SATURDAY – ESTABLISH: Columbus Avenue, east side, from 94 feet to 116 feet north of Kearny Street (22-foot zone at meter #216G).

41 UNION, UNION STREET IN COW HOLLOW

- W. PART-TIME BUS ZONE – 5AM TO 9AM, MONDAY THROUGH FRIDAY – ESTABLISH: 1) Union Street, south side, from 17 feet to 291 feet west of Fillmore Street (274-foot zone including meters #2231, 2229, 2219, 2221, 2225, M/C #2227, M/C #2227A, 2203G, 2205, 2209, 2211 and 2213); 2) Union Street, south side, from 80 feet to 99 feet east of Fillmore Street (19-foot zone at meter #2137G); 3) Union Street, south side, from 107 feet to 129 feet west of Laguna Street (22-foot zone at meter #1913G); 4) Union Street, north side, from 100 feet to 118 feet east of Laguna Street (18-foot zone at meter #1836G); 5) Union Street, south side, from 76 feet to 96 feet west of Gough Street (20-foot zone at meter #1709G); 6) Union Street, north side, from 109 feet to 131 feet east of Gough Street (22-foot zone at meter #1636G); and 7) Union Street, south side, from 100 feet to 122 feet west of Van Ness Avenue (22-foot zone at meter #1511).
- X. TOW-AWAY NO STOPPING, 7 AM to 9 AM, MONDAY THROUGH FRIDAY – RESCIND: Union Street, south side, from 17 feet to 125 feet west of Fillmore Street (108-foot zone at meters #2203G, 2205, 2209, 2211, and 2213).
- Y. 30 MINUTE (GREEN) METER – RESCIND: Union Street, south side, from 76 feet to 96 feet west of Gough Street (20-foot zone at meter #1709G).
- Z. 30 MINUTE (GREEN) METER – ESTABLISH: Union Street, south side, from 96 feet to 116 feet west of Gough Street (20-foot zone at meter #1711).

41 UNION, FINANCIAL DISTRICT

- AA. PART-TIME BUS ZONE, 7AM TO 9AM, MONDAY THROUGH FRIDAY – RESCIND: Clay Street, south side, from Montgomery Street to Leidesdorff Street (180-foot zone including meters #537, #535, #533, and #531).
- BB. PART-TIME BUS ZONE, 5AM TO 9AM, MONDAY THROUGH FRIDAY – ESTABLISH: Clay Street, south side, from Montgomery Street to Leidesdorff Street (180-foot zone including meters #537, #535, #533, and #531).
- CC. PART-TIME BUS ZONE, 5AM TO 9AM, MONDAY THROUGH FRIDAY – ESTABLISH: 1) Clay Street, south side, from 76 feet to 100 feet east of Sansome Street

(24-foot zone at meter #419); and 2) Davis Street, west side, from 95 feet to 115 feet north of California Street (20-foot zone at meter #113).

- DD. BUS ZONE – EXTEND: 1) Drumm Street, east side, from 85 feet to 100 feet north of California Street (establishes a 100-foot zone); 2) Sacramento Street, north side, from 100 feet to 120 feet east of Davis Street (establishes a 120-foot zone); 3) Sacramento Street, north side, from 80 feet to 100 feet west of Battery Street (establishes a 100-foot zone); and 4) Washington Street, north side, from 88 feet to 110 feet west of Sansome Street (establishes a 110-foot zone).
- EE. SIX-WHEEL TRUCK (YELLOW) LOADING ZONE, 7 AM TO 6 PM, MONDAY THROUGH FRIDAY – RESCIND: Washington Street, north side, from 88 feet to 110 feet west of Sansome Street (22-foot zone at meter #510).

41 UNION, UNION STREET IN RUSSIAN HILL

- FF. BUS ZONE – EXTEND: 1) Union Street, south side, from 69 feet to 95 feet west of Polk Street (establishes a 95-foot zone); 2) Union Street, north side, from 68 feet to 87 feet west of Polk Street (establishes a 87-foot zone); 3) Union Street, south side, from 71 feet to 98 feet east of Larkin Street (establishes a 98-foot zone); 4) Union Street, south side, from 69 feet to 95 feet west of Hyde Street (establishes a 95-foot zone); 5) Union Street, south side, from 74 feet to 94 feet west of Jones Street (establishes a 94-foot zone); 6) Union Street, north side, from 74 feet to 100 feet east of Jones Street (establishes a 100-foot zone); 7) Union Street, south side, from 77 feet to 90 feet west of Mason Street (establishes a 90-foot zone); and 8) Union Street, north side, from 61 feet to 100 feet east of Mason Street (establishes a 100-foot zone).

48 QUINTARA

- GG. BUS ZONE – ESTABLISH: 22nd Street, south side, from 0 feet to 100 feet east of Pennsylvania Avenue (100-foot bus zone).

1 CALIFORNIA

- HH. METERED LOADING ZONE, 7 AM TO 3 PM, MONDAY THROUGH FRIDAY – RESCIND: Clay Street, south side, from 86 feet to 131 feet east of Davis Street (45-foot zone at meters #115 and #117).
- II. BUS ZONE – EXTEND: Clay Street, south side, from 145 feet to 190 feet west of Drumm Street (extends existing 145-foot bus zone by 45 feet and establishes a 190-foot bus zone).

9 AX BAYSHORE ‘A’ EXPRESS

- JJ. YELLOW ZONE – REVOKE: San Bruno Avenue, east side, from 125 feet to 155 feet north of Paul Avenue (30-foot zone).

KK. BUS ZONE – EXTEND: San Bruno Avenue, east side, from 61 feet to 150 feet north of Paul Avenue (extends existing 61-foot bus zone by 89 feet and establishes a 150-foot bus zone).

9L SAN BRUNO LIMITED

LL. BUS ZONE – ESTABLISH: Bayshore Boulevard, east side, from 67 feet to 244 feet south of Visitacion Avenue (177-foot zone).

14X MISSION EXPRESS

MM. BUS ZONE – ESTABLISH: San Jose Avenue, west side, from 84 feet to 234 feet south of Sagamore Street (150-foot bus zone).

38 GEARY

NN. BUS ZONE – EXTEND: 32nd Avenue, east side, from 226 feet to 256 feet north of Balboa Street (extends existing 120-foot bus zone by 30 feet).

88 BART SHUTTLE

OO. BUS ZONE – ESTABLISH: Sickles Avenue, south side, from 0 feet to 71 feet east of Alemany Boulevard (71-foot bus 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 these parking and traffic regulations to accommodate Muni service changes approved as part of the FY 2010 budget amendment.

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. : 12

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Administration

BRIEF DESCRIPTION:

Presentation of the FY09 Year-End Service Standards Scorecard

SUMMARY:

- Schedule adherence (A1) increased from 70.6 percent in FY08 to 73.3 percent in FY09.
- Scheduled service hours delivered (A2) increased from 95.9 percent in FY08 to 96.6 percent in FY09.
- Late-pull outs (A2) remained unchanged on a year over year basis at 0.5 percent in FY09.
- The unscheduled absence rate for transit operators (A4) increased from 14 percent in FY09 Q3 to 14.4 percent in FY09 Q4. (Quarter over quarter results are provided in lieu of year over year results due to the change in methodology at the beginning of FY09.)
- Traffic and parking control requests (A7) addressed within 90 days decreased from 85 percent in FY08 to 82 percent in FY09.
- Color curb applications (A8) addressed within 30 days increased from 33 percent in FY08 to 78 percent in FY09.
- Bus collisions per 100,000 miles (C4) decreased from 7.01 in FY08 to 5.93 in FY09. Rail collisions per 100,000 miles decreased from 5.05 in FY08 to 3.87 in FY09.

ENCLOSURES:

1. FY09 Year-End Service Standards Scorecard

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION TO BE RETURNED TO _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

In accordance with Charter Section 8A.103, the San Francisco Municipal Transportation Agency (SFMTA) tracks, monitors and reports on over 35 service standards for system reliability and performance, staffing performance and customer service on a quarterly basis.

Results are presented in the *Service Standards Scorecard*, which highlights results in both graphical and data formats.

GOAL

The Service Standards Program supports a number of the Agency's strategic goals, including:

GOAL 2: System Performance - To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy.

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

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

Objective 4.1 Ensure efficient and effective use of resources.

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

Objective 5.1 Increase resources available for employees in performing their jobs.

Objective 5.3 Improve internal communication and employee satisfaction.

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

Objective 6.1 Identify, develop, and deliver the new and enhanced systems and technologies required to support SFMTA's 2012 goals.

DESCRIPTION

Key results for FY09 Q4 (April-June 2009) and the FY09 (July 2008-June 2009) are as follows:

Schedule adherence (A1) decreased slightly during FY09 Q4, dipping from 74.5 to 74.4 percent.

On a year over year basis, schedule adherence increased from 70.6 percent in FY08 to 73.3 percent in FY09. The goal is 85 percent.

Scheduled service hours delivered (A2) increased from 96.5 percent in FY09 Q3 to 96.9 percent in FY09 Q4. On an annual basis, performance improved for the fourth consecutive year, but fell short of the goal of 98.5 percent. Service delivery increased from 95.9 percent in FY08 to 96.6 percent in FY09.

PAGE 3.

Late pull-outs (A2) increased from 0.4 percent in FY09 Q3 to 0.5 percent in FY09 Q4. Year over year performance held steady at 0.5 percent. The goal is 1.5 percent.

With the exception of transit operators and Parking and Traffic (DPT) Shops, all employee groups achieved their unscheduled absence rate (A4) goals for the FY09 Q4 and the full fiscal year. In the case of transit operator absenteeism, it is important to note that data previously provided by the Public Utilities Commission was replaced with reporting from the SFMTA's Trapeze application starting in FY09 Q1. Trapeze reporting captures absenteeism types not in the PUC report, including jury duty, loans to unions, suspensions, and "working miss outs", which are late arrivals to work. The annual absenteeism rate for operators increased from 11.0 percent in FY08 to 13.2 percent in FY09. (Above types are excluded to facilitate year over year comparison.) On a quarterly basis, operator absenteeism increased from 14.0 percent in FY09 Q3 to 14.4 percent in FY09 Q4. (When above types are excluded, the rates drop to 13.5 and 13.9 percent respectively.) The goal is 10.2 percent.

DPT Shops' absenteeism rose from 11.6 percent in FY09 Q3 to 11.9 percent in FY09 Q4 and from 8.8 percent in FY08 to 10.8 percent in FY09. The goal is 10.5 percent.

Traffic and parking control requests addressed within 90 days (A7) increased from 77 percent in FY09 Q3 to 82 percent in FY09 Q4. On an annual basis, performance dipped from 85 percent in FY08 to 82 percent in FY09, but achieved the goal. The goal is 82 percent.

Color curb applications processed within 30 days (A8) dropped from 96 percent in FY09 Q3 to 87 percent in FY09 Q4 but made a significant recovery on a year over year basis. Performance increased from 33 percent in FY08 to 78 percent in FY09. The goal is 90 percent.

Collisions per 100,000 miles (C4) for bus and rail achieved the goals for FY09 Q4 and the full fiscal year. Bus collisions per 100,000 miles decreased from 5.41 in FY09 Q3 to 5.12 in FY09 Q4. Rail collisions per 100,000 miles decreased from 3.88 in FY09 Q3 to 3.55 in FY09 Q4. On an annual basis, bus collisions per 100,000 miles decreased from 7.01 in FY08 to 5.93 in FY09. Rail collisions per 100,000 miles decreased from 5.05 in FY08 to 3.87 in FY09. The respective goals for bus and rail are 6.47 and 4.74 collisions per 100,000 miles.

ALTERNATIVES CONSIDERED

Not applicable. Reporting on the achievement of Service Standards is required by Charter.

FUNDING IMPACT

Not applicable.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The CAC will receive the report during its September meeting.

PAGE 4.

RECOMMENDATION

Receive the report.

THIS PRINT COVERS CALENDAR ITEM NO. : 13

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Muni Operations

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute Contract No. APT 106-01, Motor Coach: Component Lifecycle Rehabilitation Project, with Complete Coach Works, in an amount not to exceed \$12,598,315 and a term not to exceed four years.

SUMMARY:

- On May 1, 2009, the SFMTA issued a Request for Proposals (RFP) to perform component life cycle rehabilitation on approximately 60 Neoplan high floor clean diesel coaches.
- On July 6, 2009, the SFMTA received one proposal from Complete Coach Works (CCW).
- A selection committee reviewed CCW's proposal and conducted contract negotiations.
- The project funds are provided through the American Recovery and Reinvestment Act of 2009 (ARRA).
- The Contract Compliance Office has confirmed the consultant's commitment to meeting the 10% SBE participation goal for this contract.
- Staff requests that the SFMTA Board authorize the award of Contract No. APT 106-01 to Complete Coach Works, for a total amount not to exceed \$12,598,315 and a term not to exceed four years.

ENCLOSURES:

1. Resolution
2. Contract No. APT 106-01

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

Requesting authorization for the Executive Director / CEO to execute Contract No. APT 106-01, Motor Coach: Component Lifecycle Rehabilitation Project, with Complete Coach Works in an amount not to exceed \$12,598,315, and for a term not to exceed four years.

GOAL

This project will meet 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

- 1.1 Improve safety and security across all modes of transportation
- 1.2 Improve cleanliness of SFMTA stations and vehicles by providing a clean, comfortable experience
- 1.3 Reduce emissions as required by the SFMTA Clean Air Plan

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

- 2.1 Transit reliability: Improve on-time performance to 85%
- 2.2 Ensure efficient transit connectivity and span of service
- 2.4 Reduce congestion through major corridors

DESCRIPTION

The American Recovery and Reinvestment Act (ARRA) was signed into law in February 2009 by President Barack Obama to provide various federal funding sources to help stimulate the local economy. This landmark legislation provided \$8.4 billion for public transportation across the nation. Out of approximately \$500 million allocated to the Bay Area, the SFMTA is to receive an initial \$67.2 million, which is being directed to “shovel ready” capita to complete critical fleet, infrastructure and facility rehabilitation projects.

The Motor Coach Component Life Cycle project is one of the SFMTA's largest ARRA projects. This vital project will create and retain jobs and thereby infuse money into the economy while reversing a trend of deferred maintenance caused by inadequate capital reinvestment in Muni.

The scope of this project involves rehabilitating 35 standard (40') and 27 articulated (60') Neoplan high floor diesel coaches. The rehabilitation includes replacing various sub-systems in the buses, including the propulsion system, cooling system, pneumatic system, suspension system, brake system, operator seat, heating and ventilation system, wheelchair system, and electronic equipment. Additionally, the contractor will perform corrective maintenance work such as body and understructure repair/reinforcement.

The proper functioning of these components is critical to service. Bringing the vehicles into a state of good repair will increase vehicle reliability and improve service levels.

PAGE 3.

On March 5, 2009, SFMTA conducted a Vendor Outreach Conference to brief the public and vendors about the SFMTA "ARRA Projects". Over 200 people attended this meeting.

On May 1, 2009, the SFMTA issued a Request for Proposals/Invitation for Bids ("RFP/IFB") for the Motor Coach Component Lifecycle Rehabilitation Project. Under the RFP/IFB process, only proposers who met the minimum qualifications would have their proposals evaluated. Those proposers who scored a minimum of 75 points on their technical proposals would have their price proposals opened, and the proposer with the lowest price proposal would be recommended for award.

On July 6, 2009, the SFMTA received one proposal from Complete Coach Works (CCW). Although staff is still trying to determine why there were not multiple proposals, over the last several years, CCW routinely has been the only bidder for SFMTA's major bus repair and rehabilitation contracts. A selection committee reviewed and evaluated CCW's proposal and determined that it was responsive to the terms and conditions of the RFP/IFB. Since there was only one proposal, SFMTA staff was able to negotiate a contract with CCW.

CCW's price proposal was approximately \$18 million. By eliminating non-essential scope and allowing some work to be performed in-house by SFMTA maintenance personnel, the SFMTA was able to negotiate the rehabilitation of 35 standard and 27 articulated Neoplan high floor diesel coaches for a cost of \$12,598,315.

ALTERNATIVES CONSIDERED

It is not feasible for in-house staff to perform the work on these coaches. The only other alternative is not to perform the rehabilitation work on the coaches, which would severely impact safety, vehicle reliability and revenue service.

FUNDING

This project is fully funded by the American Recovery and Reinvestment Act (ARRA). In order to utilize these funds, the SFMTA needs to have the contract awarded by the end of November 2009.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Civil Service Commission approved this contract on July 20, 2009.

The Contract Compliance Office has confirmed the consultant's commitment to meeting the 10% SBE participation goal for this contract.

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

The Agreement will require the approval of the Board of Supervisors.

PAGE 4.

RECOMMENDATION

SFMTA staff recommends that the SFMTA Board authorize the Executive Director/CEO to execute Contract No. APT 106-01, Motor Coach Component Lifecycle Rehabilitation Project, with Complete Coach Works, for an amount not to exceed \$12,598,315, and for a term not to exceed four years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION NO. _____

WHEREAS, The San Francisco Municipal Transportation Agency wishes to perform component life cycle rehabilitation on 35 standard (40') and 27 articulated (60') Neoplan high floor diesel coaches; and,

WHEREAS, This contract will bring the coaches into a state of good repair, thereby increasing the mean distance between failures and improving reliability and service levels; and,

WHEREAS, The SFMTA issued a Request for Proposals/Invitation for Bids (RFP/IFB) on May 1, 2009, for Contract No. APT 106-01, Motor Coach Component Lifecycle Rehabilitation Project, and received a single proposal from Complete Coach Works, 1863 Service Court, Riverside, CA 92507; and,

WHEREAS, A selection committee reviewed and evaluated the single proposal, and determined that it met the terms and conditions of the RFP/IFB; and

WHEREAS, SFMTA staff negotiated a contract with CCW for an amount not to exceed \$12,598,315 and for a term not to exceed four years; and,

WHEREAS, Funding for this project comes from the American Recovery and Reinvestment Act of 2009; and,

WHEREAS, The Contract Compliance Office has confirmed the contractor's commitment to meeting the 10% SBE participation goal for this contract; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute Contract No. APT 106-01, Motor Coach Component Lifecycle Rehabilitation Project, with Complete Coach Works in an amount not to exceed \$12,598,315 and for a term not to exceed four 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

Municipal Transportation Agency

And

Complete Coach Works

For

Motor Coach: Component Life Cycle Rehabilitation

Contract No. APT 106-01

CCO. No. 09-1074



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

**Agreement between the City and County of San Francisco and
Complete Coach Works**

This Agreement is made this _____ day of _____, 2009, in the City and County of San Francisco, State of California, by and between: Complete Coach Works, a California Corporation, 1863 Service Court, Riverside, CA 92507 ("Contractor") and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its San Francisco Municipal Transportation Agency ("SFMTA").

Recitals

A. SFMTA wishes to obtain the services of a qualified firm to perform component life cycle rehabilitation for up to 35 standard (40') and 27 articulated (60') Neoplan high floor diesel SFMTA coaches.

B. A. Request for Proposals/Invitation for Bids ("RFP/IFB") was issued on May 1, 2009, and City selected Contractor as the highest-qualified scorer pursuant to the RFP/IFB.

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

D. Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number **APT 106-01** on **July 20, 2009**;

Now, THEREFORE, the parties agree as follows:

Definitions

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

Acceptance: The formal written acceptance by the City and County of San Francisco that all work, or a specific portion thereof, under the contract has been satisfactorily completed.

Award: Notification from the City to Contractor of acceptance of Contractor's proposal, subject to the execution and approval of a satisfactory Contract therefore and bond to secure the performance thereof, and to such other conditions as may be specified or otherwise required by law.

Coaches: SFMTA Neoplan diesel motor coaches, also referred to as "buses" and "vehicles."

Certification: Certification by the Controller that funds necessary to make payments as required under the contract are available in accordance with the City's Charter.

City: City and County of San Francisco, a municipal corporation.

Conformed Contract Documents: The Contract documents revised to incorporate information included in the Contractor's Proposal and accepted by the City.

Contract (Agreement): The written Contract executed by the City and Contractor, covering the performance of the work and furnishing of labor, materials, equipment, tools, and services, including work incidental to the procurement, to include the Technical Specifications, all Conformed Contract Documents, Contractor's Proposal, the Contract bonds or other security, and all supplemental agreements.

Contract Modification: A written order, issued by the City to Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

Contractor: The proposer to whom award is made.

Controller: Controller of the City.

Days: Unless otherwise designated, the word "days" refers to working days of the City.

Engineer: The SFMTA Engineer assigned to the Contract or designated agent.

SFMTA: The San Francisco Municipal Transportation Agency, an agency of the City with responsibility for the Municipal Railway Department and Parking and Traffic.

Muni: The San Francisco Municipal Railway, the public transit system of the City under the supervision and control of the San Francisco Municipal Transportation Agency.

Notice To Proceed: A written notice to the Contractor of the date on which it shall begin prosecution of the work to be done under the contract.

Project Manager: The Project Manager assigned to the Contract for the SFMTA of the City, or designated agent.

Proposal: The technical and management information and prices submitted by Contractor in response to the Request for Proposals/Invitation for Bids.

Request for Proposals/Invitation for Bids; RFP/IFB: The Request for Proposals/Invitation for Bids issued by the SFMTA on May 1, 2009, for component life cycle rehabilitation for up to 40 standard (40') and 20 articulated (60') Neoplan high floor diesel SFMTA coaches and Unforeseeable Work.

Subcontractor: Any individual, partnership, firm, or corporation, which undertakes integrally on the Project the partial or total design, manufacture, or performance of one or more items of work under the terms of the contract. As used herein, the terms subcontractor and supplier are synonymous.

Technical Specifications: The portion of the Conformed Contract Documents that contain the specifications, provisions, and requirements that detail the work and the materials, products (including the methods of manufacture, construction, assembly, and testing), and other requirements relative thereto.

Unforeseeable Work: Latent conditions in the Coach that differ materially from the Scope of Work as identified in the Technical Provisions and that are generally recognized as inherent in work of the character provided for under this Contract.

Work: The furnishing of all labor, supervision, services, products, materials, machinery, equipment, tools, supplies, and facilities and the performance of all requirements called for by the Contract and necessary to the completion thereof.

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

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

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

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall not exceed four years from the Effective Date.

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in the "Technical Specifications," and in the Contractor's Proposal (as incorporated into the Conformed Contract Documents), according to the Project Delivery Schedule set forth in Exhibit B.

5. Compensation

In no event shall the amount of this Agreement exceed Twelve Million, Five Hundred Ninety-Eight Thousand, Three Hundred Fifteen Dollars (\$12,598,315. The breakdown of costs associated with this Agreement appears in the Price Schedule (Exhibit C) and Payment Schedule (Exhibit D), incorporated by reference as though fully set forth herein. Compensation for Unforeseeable Work shall be negotiated as a lump sum or, if the parties are unable to agree on an amount, on a force account basis with a maximum not-to-exceed amount. Force account provisions are attached as Exhibit E.

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

In no event shall City be liable for interest or late charges for any late payments. City will not make price adjustments to this Contract to protect Contractor from economic inflation.

6. Guaranteed Maximum Costs

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

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

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

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

7. Payment; Invoice Format

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

Progress payments shall be made by the City to Contractor at the address specified in the section entitled "Notices to the Parties." Progress payments shall be made as set forth in the Payment Schedule (Exhibit D). Payment for Unforeseeable Work shall be made in conjunction with payments for Items 1b, 2b, 3b, or 4b, depending on the Coach(es) for which Contractor is performing Unforeseeable Work.

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Disallowance

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

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

10. Taxes

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

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

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

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

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

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

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 does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

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

14.1. 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.

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

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

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

15. Insurance; Bonds

15.1. Insurance

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

(i) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, illness or injury. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Consultant, its employees, agents and subcontractors; and

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

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

(iv) Garage Liability insurance, including coverage for garage operations arising from premises/operations, product/completed operations, contracts, owned vehicles, non-owned vehicles and damage to vehicles owned by others (bailment): Minimum limit of liability of \$2,000,000 each occurrence combined single limit bodily injury and property damage; and

(v) Garage keepers' legal liability insurance, comprehensive form, with limits not less than \$2,000,000 each occurrence.

(vi) The shipping contractor shall carry, at a minimum, physical damage insurance (including destruction, damage, fire and theft) in the amount of not less than \$1,000,000 and commercial liability insurance in the amount of not less than \$1,000,000.

(b) Commercial General Liability, Business Automobile Liability Insurance, Garagekeepers' Legal Liability and Shippers Coverage policies must provide the following:

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

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

(c) Waiver of Subrogation – Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation.

(d) All policies (and bonds, as described in Section 15.2 below) shall provide 30 days' advance written notice to City of cancellation or reduction in coverage for any reason, mailed to the following address:

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Fl.
San Francisco, CA 94103
Attn: Ms. Trinh Nguyen
Contract No. APT 106-01(CCO 09-1074)

(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 do the following: (a) furnish to City certificates of insurance, and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverage's set forth above, and (b) furnish complete copies of policies promptly upon City request.

(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.

15.2. Bonds

(a) Within 20 days following the receipt of a notice of recommended award of contract and until completion of all Contract obligations and acceptance by City of the final coach, the Contractor shall furnish to City a performance and a labor and materials bond in an amount not less than \$250,000 to guarantee Contractor's faithful performance of all obligations of the Contract, including warranty obligations in existence until the last Coach is accepted, and to guarantee Contractor's payment to all suppliers of labor and materials under this Contract, excluding the period covered by the warranty bond described in Subsection (b) below.

(b) From acceptance by City of the last coach, and throughout the warranty period of the last Coach accepted, Contractor shall supply a maintenance or warranty bond or irrevocable letter of credit in the amount of \$250,000 to guarantee Contractor's warranty of performance of all the Coaches with unexpired warranties at the time of issuance of the warranty bond.

(c) Bonding entities on the performance bond must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities or letter of credit must be satisfactory to SFMTA and to the Controller and Risk Manager of the City and County of San Francisco.

(d) During the period covered by the Agreement, if any of the sureties upon the bond shall become insolvent or, in the opinion of SFMTA, unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within thirty

(30) days after notice given by SFMTA to Contractor, shall by supplemental bond or otherwise, substitute another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such thirty (30) day period to substitute another and sufficient surety, Contractor, if SFMTA so elects, shall be deemed to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due Contractor under the Agreement. The amount for which the surety shall have justified on the bond and the moneys so deducted shall be held by City as collateral for the performance of the conditions of the bond.

16. Indemnification

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

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

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

17. Incidental and Consequential Damages

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

18. Liability of City

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

19. Liquidated Damages

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

Failure to deliver the coaches by the times stated in Exhibit B \$500 per vehicle per day

Failure to deliver all other Project deliverables (spare parts, training, drawings, reports, documents) \$500 per day per deliverable

20. Default; Remedies

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

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

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

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

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

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

this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

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

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

- (a) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (b) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (c) Terminating all existing orders and subcontracts.
- (d) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (e) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (f) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- (g) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

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

- (a) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed 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 (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services

and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

21.4. Non-Recoverable Costs. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection 21.3. Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection 21.3.

21.5. Deductions. In arriving at the amount due to Contractor under this Section, City may deduct: (a) all payments previously made by City for work or other services covered by Contractor's final invoice; (b) any claim which City may have against Contractor in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (21.4); and (d) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

22. Rights and Duties Upon Termination or Expiration

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

22.2. Contractor Duties. Subject to the immediately preceding subsection 22.1, 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 provisions of section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code and sections 87100 et seq. and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify the City.

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

To City: San Francisco Municipal Transportation Agency
1 Van Ness Avenue, 7th Floor
San Francisco, CA 94103
Attn: Trinh Nguyen, Operations, Capital Project Management
Phone: (415) 701-4602
Fax: (415) 701-5328

To Contractor: Complete Coach Works
1863 Service Court
Riverside, CA 92507
Attn: Macy Neshati, Vice President
macy@completecoach.com
Phone: (951) 684-9585
Fax: (951) 684-2023

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. Audits and Inspection of Records

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

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.

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

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

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

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

33. Claims

Contractor shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the Engineer, including failure or refusal to issue a Contract Modification or for the happening of any event, thing, occurrence, or other cause, unless Contractor shall have given the Engineer due written notice of potential claim.

The written notice of potential claim shall set forth the reasons for which Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Engineer prior to the time that Contractor shall have performed the work giving rise to the potential claim for additional compensation, or in all other cases, within 15 days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

It is the intention of this Section that differences between the parties arising under and by virtue of the Contract be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor hereby agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

34. Nondiscrimination; Penalties

34.1. 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.

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

34.3. 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.

34.4. 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.

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

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 Hardwoods and Virgin Redwood Ban

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

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. Notification of Limitations on Contributions

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

43. Requiring Minimum Compensation for Covered Employees

43.1. 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. 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.

43.2. 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.

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

43.4. 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.

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

43.6. 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.

43.7. 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.

43.8. 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.

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

44. Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. Employment Training Program

In furtherance of its existing company policy to promote job training for disadvantaged individuals, Contractor agrees to undertake an employment training program to provide disadvantaged individuals with the skills necessary to work at various trades in the production department of Contractor's firm. At a minimum, Contractor agrees to recruit disadvantaged individuals through various organizations and supply all necessary training at its expense for the following positions:

3 individuals for careers as welders

2 individuals for careers as electronics and electrical technicians

2 individuals for careers as general mechanics

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.

47. Preservative-treated Wood Containing Arsenic

As of July 1, 2003, Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromate copper arsenate preservative, ammonia cal copper zinc arsenate preservative, or ammonia cal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a

pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

48.1. Modification in Writing. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law. Contractor shall cooperate with the SFMTA to submit to the Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

48.2. Extra Work. The City may order changes in the work under this Agreement and may order extra materials and extra work in connection with the performance of the Agreement, and the Contractor shall promptly comply with such orders, except that:

(a) If changes ordered in design, workmanship, services, or materials are of such a nature as to increase or decrease the cost, or the time required to execute the change in scope of work, the City shall make a reasonable and proper adjustment in the contract price, delivery schedule, or both as agreed upon by the Contractor and the City as the reasonable and proper allowance for the increase or decrease required.

(b) No order for any alteration, modification, or extra that will increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Project Manager. No oral statement of any person whatsoever shall in any manner or degree modify or otherwise affect the terms of this contract, which include the requirements of the Technical Specifications.

49. Authority of Engineer

The Engineer shall decide all questions, which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions, which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the Engineer shall at all times act fairly and reasonably. Any appeal of the Engineer's decisions shall be in accordance with the provisions of Section 56 of this Agreement. As with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions of this Contract when the dispute is finally resolved.

Should any questions arise as to the meaning and intent of the Contract, the matter shall be referred to the Engineer, who, with input from SFMTA staff and from the Contractor, shall decide the true meaning and intent of the Contract. The Engineer's decision in this regard shall be administratively final and conclusive.

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws

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

54. Services Provided by Attorneys

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

55. Disputes

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

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

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

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

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

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

56. Severability

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

57. Protection of Private Information

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

58. Graffiti Removal

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

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

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

59. Food Service Waste Reduction Requirements

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco

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

60. Time of Essence

Time is of the essence in this Agreement.

61. Technical Specifications

61.1. Fabrication. The Coaches shall be rehabilitated and guaranteed in accordance with the "Technical Specifications."

61.2. Omission. Notwithstanding the Technical Specifications or other data provided by the Engineer, the Contractor shall have the responsibility of supplying all parts and details required to make these Coaches complete and ready for service even though such details may not be specifically mentioned in the Specifications. Items that are installed by SFMTA shall not be the responsibility of the Contractor unless they are included in this Contract or should have been installed by the Contractor. If additional repairs are needed to make any Coaches complete and ready for service beyond what is in the Specifications, these repairs will be handled by change orders through a Contract Modification, as approved by the SFMTA and the SFMTA Board, as required.

61.3. Priority. In the event of any deviation between the description of these Coaches or the description of the Work in the Technical Specifications and in this document or the Contractor's Proposal, the Technical Specifications shall govern.

61.4. Design Review. Prior to commencement of Coach rehabilitation, the Contractor and the Engineer shall agree to the specific details of the rehabilitation. These details may include, but not be limited to, items such as: engineering and design details, test plans and procedures, appropriate training, sub-suppliers equipment, colors, wording, and placement of numbers and signs. In cases where consensus cannot be reached, the opinion of the Engineer as to design details shall be administratively final unless clearly arbitrary or capricious. Disputes regarding cost and other matters shall be subject to the provisions of Sections 33 and 55. When plans, drawings, requests for information, procedures or other contract deliverables are submitted to SFMTA for approval and/or comments, the Contractor shall delineate any deviations from the Technical Specifications in such deliverables. SFMTA shall approve, disapprove and/or comment on such deliverables within 30 days after receipt. However, no extension of time will be allowed for review of submittals that have been disapproved. Such disapproved submittals shall be resubmitted and will be reviewed and returned within 30 days after subsequent receipt. Neither review nor approval of any plans, drawings, procedures, other contract deliverables or the materials supplied under this contract shall in any way relieve the Contractor of its obligations to perform work under the provision of this Contract.

61.5. Preliminary Drawings. Preliminary drawings shall provide enough detail to conduct preliminary engineering evaluations of structural, electrical, mechanical, and other

subsystems. Drawings shall show the general arrangement of equipment layout and subsystems and such detail as is necessary to give a comprehensive idea of the product contemplated.

61.6. Materials/Accessories Responsibility. The Contractor shall be responsible for all materials and workmanship in the rehabilitation of the Coaches and all components used, whether the same are manufactured by the Contractor or purchased from a Subcontractor. This provision excludes equipment leased or supplied by SFMTA, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the rehabilitation of the vehicle.

62. Project Planning, Scheduling and Control

62.1. Introduction. This Section specifies the requirements for project planning, scheduling and progress reporting to be performed by the Contractor in conjunction with the Contract work. Critical Path Method scheduling (CPM) shall be employed by the Contractor for planning, scheduling and reporting all work required by the Contract Documents.

62.2. Scheduling Terms.

(a) **Baseline Schedule:** The detailed schedule, in bar-chart format, prepared by the Contractor, indicating the Contractor's plan for executing the Contract work. The Baseline Schedule shall be developed using Microsoft Project Software or approved equal. The Baseline Schedule shall be revised as necessary to incorporate approved Contract modifications. The Contractor's performance or other avoidable delays shall not be considered justification for Baseline Schedule revision.

(b) **Current Schedule:** The updated logic network and supporting reports indicating actual progress to date and forecasted logic and progress for the remaining work. The update will be, at a minimum, to the same level of detail as the Baseline Schedule.

(c) **Supplemental Schedule(s):** Detailed schedules prepared by the Contractor, at the request of the Engineer, to substantiate proposed Contractor changes that may have a schedule impact.

(d) **Monthly Plan and Reports:** A detailed plan of the work, in bar-chart format, to be accomplished in the coming weeks. Contractor shall provide SFMTA with daily project and production status and schedule reports by E-mail. Contractor shall also provide monthly and quarterly schedule reports in Microsoft Project and Power Point, or SFMTA-approved equivalents, and per SFMTA Engineer requirements for reporting to funding agencies.

62.3. Descriptions of Submittals

(a) **Baseline Schedule:** The schedule documents, reports, lists, computer software with documentation and computer diskettes and E-mail files are required with each submittal. The Baseline Schedule shall be submitted within 30 days from NTP or by the first design review meeting, whichever comes first.

(b) **Management Work Plan:** Contractor shall submit a Management Work Plan within thirty (30) days after NTP. The Management Work Plan shall include protocols, procedures, and assignments of responsibility for key personnel and correspondence forms for all phases of the contract and all project activities for the duration of the contract. Once the Management Work Plan is approved, key personnel shall not be substituted without approval from the SFMTA. If the Contractor plans to substitute key personnel, a 30-day advance notice, and qualification of new personnel shall be required. At the request of the SFMTA, or when approved changes are made, the Contractor's Management Work Plan shall be updated to include the latest revision to the project scope or other changes in project circumstances.

62.4. Modifications to the Schedule. When requested by the Engineer, the Contractor shall submit Supplemental Schedules to the Engineer to substantiate proposed Contract changes that may have an impact on the schedule. Contractor shall submit such schedules to the Engineer for review and approval within three (3) working days from the request; otherwise, any proposed Contract change will not be considered by the City. On approval of a Contract modification by the City, the approved change will be incorporated in the Baseline Schedule during the monthly update process.

63. Assumption of Risk of Loss

Prior to acceptance of the rehabilitated Coaches, the Contractor shall bear risk of loss of the Coaches, including any damage sustained during transportation to the delivery site or during acceptance testing. The City shall assume risk of loss of the Coaches only after acceptance.

64. FTA Requirements

The provisions contained in “FTA Requirements for Personal Services Contracts,” attached as Exhibit A, are incorporated into this Agreement. If there is any conflict between the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

65. Cooperative Drafting.

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

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

CITY

CONTRACTOR

Municipal Transportation Agency

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

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

By: _____
Robin M. Reitzes
Deputy City Attorney

San Francisco Municipal Transportation Agency

Macy Neshati
Vice President
Complete Coach Works
1863 Service Court
Riverside, CA 92507

Board of Directors
Resolution No. _____
Dated: _____
Attest: _____

Roberta Boomer, Secretary to the
SFMTA Board of Directors

Board of Supervisors
Resolution No. _____
Dated: _____
Attest: _____
Clerk

City vendor number:

Exhibits:

Exhibit A: FTA Requirements For Personal
Services Contracts

Exhibit B: Project Delivery Schedule

Exhibit C: Schedule of Prices

Exhibit D: Payment Schedule

Exhibit E: Force Account Provisions

EXHIBIT A

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

I. DEFINITIONS

A. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

B. Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

C. Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

D. Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

E. FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

F. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

G. Government means the United States of America and any executive department or agency thereof.

H. Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

I. Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

J. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

K. Third Party Contract means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.

L. Third Party Subcontract means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.

M. U.S. DOT is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the City and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

III. ACCESS TO RECORDS

A. The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

IV. DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. CIVIL RIGHTS

A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity

requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. Flow Down. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

VII. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by FTA*)

A. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

B. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

C. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

VIII. RIGHTS IN DATA AND COPYRIGHTS (Applicable to contracts for planning, research, or development financed by FTA)

A. Definition. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine

forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term “subject data” does not include financial reports, cost analyses, and similar information incidental to contract administration.

B. Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of this Agreement.

1. Publication of Data. Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

2. Federal License. In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:

a. Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

b. Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.

3. FTA Intention. When FTA awards Federal assistance for a experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City’s use the costs of which are financed with Federal transportation funds for capital projects.

4. Hold Harmless. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

5. Restrictions on Access to Patent Rights. Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be

construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

6. Application to Data Incorporated into Work. The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

7. Application to Subcontractors. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

C. Provision of Rights to Government. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

D. Flow Down. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

IX. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to non-construction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

D. Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall

be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

X. ENERGY CONSERVATION REQUIREMENTS

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

XI. CLEAN WATER REQUIREMENTS *(applicable to all contracts in excess of \$100,000)*

A. The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XII. CLEAN AIR *(applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.)*

A. Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

B. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XIII. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XIV. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

XV. TERMINATION FOR CONVENIENCE OF CITY *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

XVI. TERMINATION FOR DEFAULT *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

XVII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

XVIII. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XIX. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

XX. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator)

A. The Contractor agrees to comply with applicable transit employee protective requirements as follows:

1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions

determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body sub-recipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

B. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

XXI. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) REQUIREMENTS

A. Registration Requirements. The Contractor shall maintain a current registration in the federal Central Contractor Registration database, located at www.ccr.gov and provide the City with its CCR registration number and legal name as entered into CCR. A valid DUNS number and Tax Identification Number (TIN) are required in order to register.

B. Reporting Requirements. The Contractor shall be required to provide information to the SFMTA on the employment impact of all work being performed with ARRA funds so that SFMTA can report such information as required to agencies of the Federal Government. SFMTA will provide forms to Contractor for this purpose, as well as more detailed information and examples. At a minimum, Contractor shall track and/or report information regarding the following:

1. Number of direct jobs working on the project (including all created, retained, or existing jobs). An example of a direct job is a worker employed to construct a facility or to maintain or repair equipment on-site whose time is charged directly to the project.

2. Number of direct, on-project job hours that were worked. (expressed as "full-time equivalents " or FTEs) - calculated as total hours worked in jobs created, retained or existing divided by the number of hours in a full-time schedule, as defined by the contractor.

3. The amount of payroll for the jobs. (Total dollar amount of wages paid by the contractor or consultant for employees on the specified project. Payroll only includes wages and does not include overhead or indirect costs.)

4. The classification (or broad job category) of each job on the project.

5. A description of what was obtained for payment.

C. Records. Contractor agrees to maintain separate and distinct accounts, records, and documents that adequately identify the source and application of ARRA funds and must track accounting and reporting transactions accordingly.

XXII. WHISTLEBLOWER PROVISIONS (*ARRA-funded contracts*)

Contractor cannot discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, made to the Recovery Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency or their representative, information that the employee reasonably believes is evidence of :

- gross mismanagement of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Contractor agrees to post notice of the rights and remedies as required by ARRA.

EXHIBIT B:

PROJECT DELIVERY SCHEDULE

Completion of items as indicated below shall occur before the time periods listed have elapsed.

Item	Calendar Days after Notice-to-Proceed
First Articles Start	45
First Articles Delivery	120
Delivery of Publications (Manuals, Parts Book, Drawings)	150
Delivery of the last standard Coach	550
Delivery of the last articulated Coach	610

Deliveries:

All deliveries to SFMTA shall be to the SFMTA Woods and Flynn facilities, weekday working hours, **Monday through Friday, 9 a.m. – 3 p.m.**, except SFMTA holidays, or as otherwise specified in writing by SFMTA. Contractor shall provide at least 48 hours notice to SFMTA prior to delivery.

Due to service demands, SFMTA can only allow up to 4 standard 40' Coaches and 3 articulated 60' Coaches at the Contractor's site at any one time.

EXHIBIT C:**SCHEDULE OF PRICES**

Line Item	Descriptions	Unit Price	Sales Tax	Quantity	Extended Price
1	Rehabilitation of NEOPLAN Standard (40') Coaches	\$172,264.34	\$8,356.32	35	\$6,321,722.83
2	Rehabilitation of NEOPLAN Articulated (60') Coaches	\$193,958.28	\$8,878.48	27	\$5,476,592.36
3	Allowance for Unforeseeable Work	Not to Exceed \$800,000.00	-	-	\$800,000.00
Grand Total					\$12,598,315

EXHIBIT D:

PAYMENT SCHEDULE

1. Rehabilitation of One First Article Coach (40ft) Neoplan Coaches (Ref Sect.11.5)

1a.	Completion of all vehicle rehabilitation on one First Article 40 ft. Coach as approved by SFMTA	60% of the amount of the Unit Price for Line Item No. 1, as approved on the Schedule of Prices
1b.	Successful completion of all vehicle acceptance testing on one First Article 40 ft. Coach at SFMTA	35% of the amount of the Unit Price for Line Item No. 1, as approved on the Schedule of Prices

2. Rehabilitation of One First Article Coach (60ft) Neoplan Coaches (Ref Sect.11.5)

2a.	Completion of all vehicle rehabilitation on one first article 60 ft. coach as approved by SFMTA	60% of the amount of the Unit Price for Line Item No. 2, as approved on the Schedule of Prices
2b.	Successful completion of all vehicle acceptance testing on one first article 60 ft. coach at SFMTA	35% of the amount of the Unit Price for Line Item No. 2, as approved on the Schedule of Prices

3. Rehabilitation of approximately 34 (40ft) Neoplan Coaches

3a.	Completion of all vehicle rehabilitation on each 40 ft. coach as approved by SFMTA	60% of the amount of the Unit Price for Line Item No. 1, as approved on the Schedule of Prices
3b.	Successful completion of all vehicle acceptance testing on each 40 ft. coach at SFMTA	35% of the amount of the Unit Price for Line Item No. 1, as approved on the Schedule of Prices

4. Rehabilitation of approximately 26 (60ft) Neoplan Coaches

4a.	Completion of all vehicle rehabilitation on each 60 ft. coach as approved by SFMTA	60% of the amount of the Unit Price for Line Item No. 2, as approved on the Schedule of Prices
4b.	Successful completion of all vehicle acceptance testing on each 60 ft. coach at SFMTA	35% of the amount of the Unit Price for Line Item No. 2, as approved on the Schedule of Prices

5. Final Acceptance

5.	Final acceptance of all contract deliverables by SFMTA	5% of the Grand Total amount of the Schedule of Prices as approved by SFMTA
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NOTE: Payment for the repair of the vehicles will not be made until completion of the listed items on this Payment Schedule, proper receipt of an invoice requesting payment, and acceptable completion of all contract terms.

EXHIBIT E:

FORCE ACCOUNT PROVISIONS

A. General: When Unforeseeable Work is to be paid for on a Force Account basis, compensation will be determined as set forth herein.

1. The City will direct Contractor to proceed with the work on a Force Account basis, and the City will establish a "not to exceed" budget.

2. All requirements regarding direct costs and markup for overhead and profit provided below shall apply to Force Account Work. However, the City will pay only the actual necessary costs substantiated by the Contractor and verified by the City.

3. Contractor shall be responsible for all costs related to the documentation, data preparation, and administration of Force Account Work.

B. Direct Costs:

1. Labor: Labor rates shall be paid at \$85.00 an hour. This is a fully burdened rate (including fringe benefits, Federal Insurance Contributions Act payments, Federal and State Unemployment taxes, and net actual premium paid for public liability, worker's compensation, property damage, and other forms of insurance required by the City); and includes all costs for overhead and profit.

2. Materials: The City will pay Contractor only for those materials furnished by Contractor and directly required for performing the Unforeseeable Work. The cost of such material shall be the direct cost, including sales tax, to the purchaser, and may include the cost of transportation, but delivery charges will not be allowed unless the delivery is specifically required for the Unforeseeable Work. If a trade discount by an actual supplier is available to Contractor, it shall be credited to the City. If the materials are obtained from a supplier or source owned wholly or in part by Contractor, payment for the materials shall not exceed the current wholesale price for the materials as determined by the City. The term "trade discount" includes the concept of cash discounting.

C. Contractor's Markup on Materials: The following limitations shall apply to Contractor's markup on all materials:

1. The total markup shall equal a maximum of 10 percent of Contractor's direct costs, as defined in B.2 above. No extra markup may be taken for the costs of subcontractors or suppliers.

2. Decreases in Work: For Unforeseeable Work that results in a net decrease in direct costs for work performed by Contractor, the City shall receive a credit based on (a) the

actual net decrease in labor costs and materials and (b) 10 percent of the direct cost credit amount attributable to materials.

3. When both additions and credits are involved, Contractor's markup shall be computed on the basis of its direct costs and labor productivity for the net change in the quantity of the Unforeseeable Work.

D. Records: Contractor shall maintain detailed records of all Unforeseeable Work done on a Force Account basis and supply a summary to City of all Force Account Work performed on a weekly basis.

THIS PRINT COVERS CALENDAR ITEM NO. : 14

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Taxis and Accessible Services

BRIEF DESCRIPTION:

Requesting the San Francisco Municipal Transportation Agency Board of Directors to adopt a policy requiring the expedited processing of the waiting list for taxi medallion permits until the time spent on the waiting list is 10 years or less.

SUMMARY:

- There are currently 1500 taxi permits, or “medallions” in San Francisco, each one representing the right to operate a single taxicab. A medallion holder may keep their medallion so long as they meet permit conditions, including the requirement to actively work as a taxi driver (the “driving requirement.”). When a medallion is revoked or the medallion holder passes away, the taxi medallion permit is returned to the City to be re-issued to another taxi driver.
- Proposition K (San Francisco Administrative Code Appendix 6), passed by the voters in June, 1978, required the City to maintain a waiting list of applicants for a taxi medallion permit and to award the medallions that become available to the drivers on the list in the order of their seniority on the list. Currently there are over 3200 names of drivers on the waiting list for a medallion, and drivers receiving medallions today have been on the list for 14 years.
- The Division of Taxis and Accessible Services (TAS) could reduce the waiting time for a medallion through administrative and enforcement measures, such as a project to convert driver and waiting list data to an electronic format; and enforcing permit requirements against violators who do not meet permit conditions so that those medallions can be re-issued to drivers on the waiting list who are following the rules. TAS anticipates implementing such a policy through the use of temporary staff in order to get the job done quickly without having long term consequences on industry permit fees.

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: September 1, 2009

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PURPOSE

To adopt a policy requiring the expedited processing of taxi medallion permit applications and enforcement of taxi medallion permit conditions in order to limit the time spent on the waiting list to 10 years or less.

GOAL

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

Objectives:

- 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups
- 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation

The current wait time for a medallion is 14 years. More efficient processing of taxi medallion permit applications and enforcing permit conditions will maintain professional standards in the industry and would reduce a working driver's waiting time for a taxi medallion permit. Such a policy would allow drivers to get medallions at a younger age and improve public perception of the functionality of the waiting list system.

Goal 4—Financial Capacity:

To ensure financial stability and effective resource utilization

Objectives:

- 4.1 Increase revenue by 20% or more by 2012 by improving collections and identifying new sources
- 4.2 Ensure efficient and effective use of resources

Enforcement of permit conditions could result in new fine revenue to the agency.

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

Objectives:

- 5.1 Increase resources available to employees in performing their jobs
- 5.3 Improve internal communication and employee satisfaction
- 5.4 Increase internship and apprentice opportunities to fill critical positions
- 5.6 Improve the performance management process across all classifications
- 5.8 Improve work/life balance of employees

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The current overload of unfiled disciplinary cases is frustrating to TAS staff. Many potential disciplinary cases have been identified through annual waybill audits, but the Division lacks the personnel to prepare the investigation materials and file complaints. Without the resources to move forward consistently and aggressively against blatant permit violators, a culture of non-compliance is created in the industry and staff loses its credibility as an enforcer of the regulations. While the Division is funded by permit fees and we strive to keep the level of permanent staffing low, with the use of temporary staff to implement this policy we could effectively achieve the mission of enforcing the regulations without overwhelming permanent staff.

Goal 6—Information Technology:

To improve service and efficiency, the SFMTA must leverage technology

Objectives:

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

A fundamental problem with the current taxi medallion waiting list is that it does not exist in an electronic format. The list itself is a scanned document that cannot be sorted or manipulated in any way. TAS has recently entered a first draft of the waiting list into an Excel spreadsheet, but much work remains to be done. In addition to converting the waiting list to an electronic format, TAS is working with the Finance and Information Technology Division (FIT) to create a comprehensive new database to hold driver information. Such a system has never existed before; currently the Treasurer keeps all driver records in a DOS-based system. To efficiently convert all taxi industry data into electronic formats will require short-term assistance of additional temporary staff.

DESCRIPTION

There are currently 1500 taxi permits, or “medallions” in San Francisco, each one representing the right to operate a single taxicab. A medallion holder may keep their medallion and receive the income from renting it to other drivers so long as they meet permit conditions, including the requirement to actively working as a taxi driver (the “driving requirement”). When a medallion is revoked or the medallion holder passes away, the taxi medallion permit is returned to the City to be re-issued to another taxi driver.

Proposition K (San Francisco Administrative Code Appendix 6), passed by the voters in June, 1978, required the City to maintain a waiting list of applicants for a taxi medallion permit and to award the medallions that become available to the drivers on the list in the order of their seniority on the list. Currently there are over 3200 names of drivers on the waiting list for a medallion, and drivers receiving medallions today have been on the list for 14 years. 1700 names have been on the list at least 10 years.

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The public perception of the taxi medallion waiting list is that it is 'broken' because of the long waiting times and the fact that drivers are often quite elderly by the time that they finally receive their medallion. Historically, when the City is ready to issue a medallion to a person on the waiting list, one-third to one-half of the people either do not respond to a notice that they are up for a medallion, or they do not qualify to receive it. Division of Taxis and Accessible Services (TAS) would like to 'clean up' the taxi medallion waiting list through death records, mailings, and increasing the agency's capacity to issue medallions in a timely manner. Currently, a medallion might be idle for weeks or months between the time that it comes back to the City to be re-issued, and the time that it is finally issued to the next applicant on the waiting list.

TAS feels that with an effort to reduce the back log the waiting time could be reduced to 10 years or less by putting more medallions back into circulation through enforcement and revocation. Further, the elimination of names of people who cannot receive a medallion from the list will speed up the processing time for those who are qualified.

Ten years is a good target because at 10 years or less, the qualification of a driver for a medallion would be comparable to a job promotion, and would represent an achievable goal that provides incentive for taxi drivers to stay in the industry.

TAS' mission to enforce medallion permit conditions and keep the medallions circulating to working drivers on the waiting list is seriously restricted by the fact that neither the waiting list nor driver information is accessible to the TAS staff in a form that can be manipulated. To convert the waiting list of 3200 names into an electronic format requires not only data entry but a tremendous amount of proof-reading. TAS has no current access to driver disciplinary history except through a search of paper files, a situation that is being addressed by the design of a new database by FIT. The implementation of that database of roughly 7,000 drivers' permit records and history will also require a large investment of data entry and data checking time. It would be efficient to dedicate temporary staff to this purpose.

The enforcement of permit conditions requires filing complaints and shepherding those complaints through an administrative appeal process. Even when there are the resources to initially bring a complaint, errant medallion holders have continued to draw income for years by prolonging appeals. To keep the administrative process moving and to let bad actors know that SFTMA will enforce the rules, efforts should be initially supplemented by temporary staff to file and process a high volume of administrative complaints.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

TAS could continue to process taxi medallion permit applications and disciplinary complaints at the same rate that it is currently processing them. However, at that rate, the size of the list would not be significantly reduced in the short term, and medallion holders would know that TAS has inadequate resources to enforce their permit requirements. TAS believes that this would have a negative effect on the morale of drivers and on TAS staff's ability to effectively enforce regulations.

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FUNDING IMPACT

The funding for temporary additional staff to implement this policy is already contained in the current fiscal year's budget as professional services contracting funds. That amount, and any amounts included in future years' budget would be funded on a cost-recovery basis by taxi industry permit fees.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

To implement a policy to clean up the waiting list will require hiring temporary staff, which will be subject to all applicable Civil Service rules.

RECOMMENDATION

Staff recommends that the Board of Directors to adopt a policy requiring the expedited processing of the waiting list for taxi medallion permits until the time spent on the waiting list is 10 years or less.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, There are currently 1500 taxi medallion permits that authorize the permit holders to operate a taxicab in San Francisco; and,

WHEREAS, There are approximately 7,000 people holding driving permits to drive taxicabs in San Francisco; and,

WHEREAS, Proposition K (San Francisco Administrative Code Appendix 6), established a waiting list of taxi drivers who apply for taxi medallion permits so that medallions available to be issued are offered to taxi drivers in the order of their seniority on the list.; and,

WHEREAS, There are presently over 3200 names of drivers on the waiting list for a medallion, and drivers receiving medallions today have been on the list for 14 years; and

WHEREAS, The Division of Taxis and Accessible Services (TAS) desires to reduce the waiting time for a medallion through administrative and enforcement measures and the use of temporary staff in order to avoid a long-term impact to industry permit fees; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors adopts a policy requiring the SFMTA to expedite processing of the waiting list for taxi medallion permits through administrative and enforcement actions, in order to reduce the waiting time for a taxi medallion to 10 years or less.

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