

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Parking and Traffic

BRIEF DESCRIPTION:

Approving various routine traffic and parking modifications as consent calendar items per the attached resolution.

SUMMARY:

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

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO _____ Maxine Louie

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

To approve various routine traffic and parking modifications.

Benefit to the SFMTA 2008 – 2012 Strategic Plan:

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

ITEMS:

- A. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "I" (1-HOUR TIME LIMIT, 9 AM - 6 PM, MONDAY THROUGH SATURDAY) - 836 Valencia Street (includes specific address only. Signs will not be installed on the street, but residents will be eligible for permits). **PH 10/3/08 Requested by Residents**
- B. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "R" (2-HOUR TIME LIMIT, 9 AM - 6 PM, MONDAY THROUGH SATURDAY) - Webster Street, west side, between Grove and Hayes Streets (600 block, odd numbers only). **PH 10/3/08 Requested by Residents**
- C. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "T" (2-HOUR TIME LIMIT, 8 AM - 3 PM, MONDAY THROUGH FRIDAY) - Castenada Avenue, both sides, between Alton and Ventura Avenues (2-50 block). **PH 10/3/08 Requested by Residents**
- D. ESTABLISH - BUS ZONE- Folsom Street, east side, from 20th Street to 100 feet southerly; and 3rd Street, east side, from 22nd Street to 80 feet northerly. **PH 10/3/08 Requested by SFMTA**
- E. EXTEND - BUS ZONE - Winston Street, south side, from 76 feet east of 20th Street to 44 feet easterly, establishing a 120-foot Bus Zone. **PH 10/3/08 Requested by SFMTA**
- F. ESTABLISH - 2-HOUR PARKING TIME LIMIT, 7 AM - 6 PM, MONDAY THROUGH SATURDAY - Gough Street, east side, from Geary Boulevard to Eddy Street. **PH 10/3/08 Requested by Residents**
- G. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - Cesar Chavez Street, south side, between I-280 northbound off-ramp and Indiana Street. **PH 10/3/08 Requested by C. Attorney**

- H. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "N" (2-HOUR TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH FRIDAY) - Lake Street, both sides, between 15th and 16th Avenues (1400 block); 16th Avenue, both sides, between California Street and north of Lake Street to the Presidio (1-199 blocks). **PH 10/17/08 Requested by Residents**
- I. RESCIND - 2-HOUR TIME LIMIT PARKING, 7 AM TO 6 PM MONDAY THROUGH SATURDAY AND ESTABLISH - METERED MOTORCYCLE PARKING, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY - Bryant Street, north side, from 6th Street to 48-feet easterly. **PH 10/17/08 Requested by Residents**
- J. RESCIND - 45-MPH SPEED LIMIT AND ESTABLISH - 40-MPH SPEED LIMIT - Lake Merced Boulevard, between City and County Line and Winston Drive. **PH 10/17/08 Requested by Supervisor Elsbernd**
- K. RESCIND - 1-HOUR PARKING TIME LIMIT, 7 AM to 6 PM, MONDAY THROUGH SATURDAY AND ESTABLISH - PARKING METERS, AREA 3, 2-HOUR TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY - Laguna Street, west side, between Post and Sutter Streets. **PH 10/17/08 Requested by SFMTA**
- L. ESTABLISH - PERPENDICULAR (90-DEGREE ANGLE) PARKING - 22nd Street, north side, just east of the driveway for 2318 22nd Street. **PH 10/17/08 Requested by Residents**
- M. RESCIND - CROSSWALK CLOSURE - Parker Avenue and McAllister Street, north crosswalk crossing Parker Avenue; and Cole and Fulton Streets, east crosswalk, crossing Fulton Street. **PH 10/17/08 Requested by SFMTA**
- N. ESTABLISH - 4-HOUR PARKING TIME LIMIT, 8 AM TO 6 PM, MONDAY THROUGH FRIDAY - San Bruno Avenue, west side, south of 25th Street to terminus; and Utah Street, east side, south of 25th Street along the Buena Vista Elementary School frontage. **PH 10/17/08 Requested by SFMTA**
- O. ESTABLISH - NO PARKING ANYTIME AND 5-FOOT WIDE SIDEWALK BULBOUT - Persia Avenue, south side, from Vienna Street to 26-feet westerly. **PH 10/17/08 Requested by SFMTA**
- P. ESTABLISH - NO PARKING ANYTIME AND 6-FOOT WIDE SIDEWALK BULBOUT - Moscow Street, west side, from Excelsior Avenue to 6-feet southerly. **PH 10/17/08 Requested by SFMTA**
- Q. ESTABLISH - SIDEWALK WIDENING - Charles J. Brenham Place, 8 feet on east side, from Market Street to 200-feet northerly. **PH 10/17/08 Requested by SFMTA**
- R. ESTABLISH - SIDEWALK EXTENSIONS - Leavenworth Street, east side, from McAllister Street to 20-feet northerly; McAllister Street, north side, from Jones Street to 125-feet westerly; Jones Street, east side, from Eddy Street to 30-feet northerly; and Jones Street, east side, from Turk Street to 20-feet northerly. **PH 10/17/08 Requested by SFMTA**
- S. RESCIND - ONE-WAY WESTBOUND AND ESTABLISH - TWO-WAY STREET - McAllister Street, between Hyde and Jones Streets. **PH 10/17/08 Requested by SFMTA**
- T. REVOKE - RIGHT TURN ONLY - McAllister Street, eastbound, at Hyde Street. **PH 10/17/08 Requested by SFMTA**
- U. REVOKE - LEFT LANE MUST TURN LEFT - McAllister Street, westbound, at Hyde Street. **PH 10/17/08 Requested by SFMTA**

- V. REVOKE - TOW-AWAY NO STOPPING ANY TIME - McAllister Street, south side, from Hyde Street to 111-feet easterly. **PH 10/17/08 Requested by SFMTA**
- W. ESTABLISH - NO LEFT TURN - McAllister Street, eastbound, at Leavenworth Street. **PH 10/17/08 Requested by SFMTA**
- X. ESTABLISH - RIGHT TURN ONLY, EXCEPT BUSES, TAXIS AND BICYCLES - McAllister Street, eastbound, at Charles J. Brenham Place (7th Street North). **PH 10/17/08 Requested by SFMTA**
- Y. RESCIND - ONE-WAY NORTHBOUND AND ESTABLISH - TWO-WAY STREET - Charles J. Brenham Place (7th Street North), between McAllister Street and Market Street. **PH 10/17/08 Requested by SFMTA**
- Z. REVOKE - NO RIGHT TURN - Charles J. Brenham Place, northbound, at McAllister Street. **PH 10/17/08 Requested by SFMTA**
- AA. ESTABLISH - RIGHT TURN ONLY - Charles J. Brenham Place, southbound, to Market Street. **PH 10/17/08 Requested by SFMTA**
- BB. ESTABLISH - RIGHT TURN ONLY TO MARKET STREET, EXCEPT BUSES, TAXIS AND BICYCLES - McAllister Street, eastbound, at Jones Street/Market Street. **PH 10/17/08 Requested by SFMTA**
- CC. REVOKE - DOUBLE RIGHT TURN LANE AND ESTABLISH - RIGHT LANE MUST TURN RIGHT - Jones Street, southbound, at McAllister Street. **PH 10/17/08 Requested by SFMTA**
- DD. ESTABLISH - LEFT LANE MUST TURN LEFT - 7th Street, northbound left lane (curb lane), south of Market Street. **PH 10/17/08 Requested by SFMTA**
- EE. REVOKE - MOTORCYCLE PARKING - McAllister Street, south side, from 4-feet to 35.5-feet west of Leavenworth Street. (Eliminates 9 motorcycle parking spaces). **PH 10/17/08 Requested by SFMTA**
- FF. ESTABLISH - MOTORCYCLE PARKING - McAllister Street, south side, from Hyde Street to approximately 35-feet easterly. (Establishes 9 motorcycle parking spaces). **PH 10/17/08 Requested by SFMTA**
- GG. ESTABLISH - BUS ZONE - McAllister Street, south side, west of Leavenworth Street. (100-foot long zone). **PH 10/17/08 Requested by SFMTA**
- HH. REVOKE – WHITE ZONE – 1359 Pine Street, from 19-feet to 39-feet west of east property line (20-foot zone). **PH 10/10/08 Requested by Residents**
- II. REVOKE – BLUE ZONE – 1359 Pine Street, from 39-feet to 61-feet west of the east property line (22-foot zone). **PH 10/10/08 Requested by Residents**
- JJ. ESTABLISH – PASSENGER LOADING ZONE (DURING BUSINESS HOURS) – 1359 Pine Street, from 19-feet to 61-feet west of east property line (42-foot zone). **PH 10/10/08 Requested by Residents**
- KK. ESTABLISH – TEMPORARY (6 MONTH-TRIAL) BLUE ZONE – “400” Main Street, from 0-feet to 22-feet south of Harrison Street (22-foot zone). **PH 10/10/08 Requested by Residents**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

- A. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "I" (1-HOUR TIME LIMIT, 9 AM - 6 PM, MONDAY THROUGH SATURDAY) - 836 Valencia Street (includes specific address only. Signs will not be installed on the street, but residents will be eligible for permits).
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- D. ESTABLISH - BUS ZONE- Folsom Street, east side, from 20th Street to 100 feet southerly; and 3rd Street, east side, from 22nd Street to 80 feet northerly.
- E. EXTEND - BUS ZONE - Winston Street, south side, from 76 feet east of 20th Street to 44 feet easterly, establishing a 120-foot Bus Zone.
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- J. RESCIND - 45-MPH SPEED LIMIT AND ESTABLISH - 40-MPH SPEED LIMIT - Lake Merced Boulevard, between City and County Line and Winston Drive.
- K. RESCIND - 1-HOUR PARKING TIME LIMIT, 7 AM to 6 PM, MONDAY THROUGH SATURDAY AND ESTABLISH - PARKING METERS, AREA 3, 2-HOUR TIME LIMIT, 9 AM TO 6 PM, MONDAY THROUGH SATURDAY - Laguna Street, west side, between Post and Sutter Streets.
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- P. ESTABLISH - NO PARKING ANYTIME AND 6-FOOT WIDE SIDEWALK BULBOUT - Moscow Street, west side, from Excelsior Avenue to 6-feet southerly.
- Q. ESTABLISH - SIDEWALK WIDENING - Charles J. Brenham Place, 8 feet on east side, from Market Street to 200-feet northerly.
- R. ESTABLISH - SIDEWALK EXTENSIONS - Leavenworth Street, east side, from McAllister Street to 20-feet northerly; McAllister Street, north side, from Jones Street to 125-feet westerly; Jones Street, east side, from Eddy Street to 30-feet northerly; and Jones Street, east side, from Turk Street to 20-feet northerly.
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- II. REVOKE - BLUE ZONE - 1359 Pine Street, from 39-feet to 61-feet west of the east property line.
- JJ. ESTABLISH - PASSENGER LOADING ZONE (DURING BUSINESS HOURS) - 1359 Pine Street, from 19-feet to 61-feet west of east property line.
- KK. ESTABLISH - TEMPORARY (6 MONTH-TRIAL) BLUE ZONE - "400" Main Street, from 0-feet to 22-feet south of Harrison Street.

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

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

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO (or his designee), to accept and expend \$750,000 of the Metropolitan Transportation Commission Station Area Planning Grant funds for the Eastern Neighborhoods Transportation Implementation Planning Study (EN TRIPS).

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) requests authority to accept and expend \$750,000 of the Metropolitan Transportation Commission (MTC) Station Area Planning Grant funds with a 40% local match.
- The SFMTA was awarded funds for the Eastern Neighborhoods Transportation Planning Study (EN TRIPS) on June 25, 2008 as part of the Station Area Planning Grant Program.
- EN TRIPS will allow for the further planning, design and select environmental review work to help advance plan-identified transportation improvements towards on-street implementation. This work will assist in the delivery of key infrastructure projects needed to serve new housing (affordable and market rate) and mixed-use development in the Eastern Neighborhoods.
- This proposal supports Objectives 1.1, 1.5, 2.2, 2.3, 2.5 and 4.2 of the SFMTA **2008-2012 Strategic Plan**.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR /CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

Eileen Ross, MTA Finance, 1 South Van Ness Avenue, 7th Floor

DATE

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

The San Francisco Municipal Transportation Agency requests SFMTA Board action to accept and expend \$750,000 of MTC Station Area Planning Grant funds, provided that the City obtain a 40% local match, for the Eastern Neighborhoods Transportation Implementation Planning Study.

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 1.1 - Improve safety and security across all modes of transportation.
Objective 1.5 - Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare).
- Goal 2 – System Performance: To get customers where they want to go, when they want to be there.
Objective 2.2 - Ensure efficient transit connectivity and span of service.
Objective 2.3 - Fulfill bicycle and pedestrian network connectivity.
Objective 2.5 - Manage parking supply to align with SFMTA and community goals.
- Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization.
Objective 4.2 - Ensure efficient and effective use of resources.

DESCRIPTION

San Francisco's Eastern Neighborhoods comprise the mixed-use and mixed-income communities of the Mission, Eastern SoMa, Central Waterfront and Showplace Square/Potrero Hill. These communities have historically been the location of much of the City's industrial land supply and lower-cost housing. Strong development interest and community planning efforts call for a significant amount of new residential and commercial growth in the Eastern Neighborhoods. Additionally, many of the key regional and local transit systems, including BART, Caltrain, and Muni bus and light rail serve the area. The area's combined development potential and rich transit access present a tremendous opportunity to create integrated, mixed-use, transit-oriented neighborhoods.

The City has already conducted a multi-year planning process for the Eastern Neighborhoods. Scheduled for adoption in late 2008, the Eastern Neighborhoods Community Plans (the Plans) call for up to an additional 10,000 units of transit-oriented housing (25-40 percent affordable) and public amenities like parks, transportation and community facilities. The Plans' multi-modal transportation policies recommend linking new housing and jobs to local and regional transit, redesigning industrial streets to enhance livability for pedestrians and bicyclists, and providing new traffic signals, street improvements and loading areas to ensure industrial businesses continue to thrive. Implementing this Smart Growth vision for the Eastern Neighborhoods will

require securing resources for infrastructure improvements that enable development intensity and make walking, bicycling and transit attractive transportation options. While the Plans provide a roadmap for improvements recommended for the Eastern Neighborhoods, further analysis, identification and design of specific transportation projects is required. Implementation of the transportation objectives, policies and concepts consistent with the Eastern Neighborhoods Community Plans will require sustained multi-agency coordination.

The preparation of the Eastern Neighborhoods Transportation Implementation Planning Study (EN TRIPS) will be a coordinated multi-agency program that includes the following partner agencies: the SFMTA, the San Francisco Planning Department, and the San Francisco County Transportation Authority. EN TRIPS will allow these agencies to conduct the necessary further planning, design and select environmental review work to help advance plan-identified transportation improvements towards on-street implementation. This work will assist in the delivery of key infrastructure projects needed to serve housing (affordable and market rate) and mixed-use development in the Eastern Neighborhoods.

EN TRIPS will be consistent with the objectives, policies and implementation actions described in the Plans. EN TRIPS will help to minimize transportation impacts and support a transit-oriented, pedestrian-friendly development infrastructure timed to precede or coincide with the major phases of development over the next 20 years. The Study will also help build and retain community and political support for the Plans' adoption and implementation.

The total cost for EN TRIPS is \$1,250,000, including a local match of \$500,000, secured through a separate grant from the San Francisco Foundation.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

The 40% local match will be from a \$500,000 grant distributed by the San Francisco Foundation.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

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

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 \$750,000 of MTC Station Area Planning Grant funds for EN TRIPS.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, In 2005, the Metropolitan Transportation Commission (MTC) approved the Station Area Planning Program, which provides funding for planning near transit stations adjacent to Resolution 3434 transit corridors to advance MTC's Transit Oriented Development Policy; the program was expanded to include FOCUS Priority Development Areas in 2007; and

WHEREAS, The goals of the Station Area Planning Program are to increase transit ridership by creating complete communities and encouraging an intensification of land use near transit stations and high quality bus service; and

WHEREAS, MTC makes funds available to local governmental agencies, based on the results of a region-wide competition that requires the submission of proposals for funding, and rates those proposals on potential impact, current city policies, quality of proposed planning process; local commitment, and commitment to implementation; and

WHEREAS, SFMTA, as the lead City agency, along with its San Francisco partner agencies, the Planning Department, and the San Francisco County Transportation Authority, submitted a proposal to MTC for planning grant funds; and

WHEREAS, MTC approved a grant to the City and County of San Francisco in the amount of \$750,000 for the Eastern Neighborhoods Transportation Implementation Planning Study (EN TRIPS), provided that the City obtain a local match of 40 %; and

WHEREAS, EN TRIPS will help minimize transportation impacts and support a transit-oriented, pedestrian-friendly development infrastructure timed to precede or coincide with the major phases of development over the next 20 years; and

WHEREAS, EN TRIPS will allow for further planning, design and select environmental clearance work to help advance plan-identified transportation improvements towards on-street implementation; and

WHEREAS, EN TRIPS will assist in the delivery of key infrastructure projects needed to serve housing and mixed-use development in the Eastern Neighborhoods; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through the Executive Director/CEO (or his designee), to accept and expend \$750,000, in Station Area Planning funds for the Eastern Neighborhoods Transportation Implementation Planning Study; and be it

FURTHER RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO (or his designee) to execute agreements and other documents required for receipt of these funds.

I certify that the foregoing resolution was adopted by 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. 10.4

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

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

- Authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO (or his designee) to execute an Agreement with PBS&J to conduct the Draft Glen Park Community Plan EIR/EA and Transportation Feasibility Report (Contract CS-148) for a term of 24 months and for an amount not to exceed \$750,000.

SUMMARY:

- On April 17, 2007, the SFMTA Board of Directors adopted Resolution No. 07-049 authorizing the Executive Director /CEO to release a Request for Proposals (RFP) to obtain professional services to conduct the Glen Park Community Plan EIR/EIS and Transportation Feasibility Report.
- On August 2, 2007, the SFMTA issued the RFP and on September 5, 2007, received two proposals.
- A selection committee comprised of SFMTA staff and key stakeholders (San Francisco City Planning, Department of Public Works, Caltrans, and BART) evaluated the two proposals received and ranked PBS&J as the highest ranked proposer.
- Negotiations have been completed with PBS&J and the SFMTA Board of Directors is requested to approve the Agreement.

ENCLOSURES:

1. SFMTA Board Resolution
2. Agreement between the SFMTA and PBS&J

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

TO BE RETURNED TO: Kim Walton, 1 South Van Ness Avenue, 7th Floor

ASSIGNED MTAB CALENDAR DATE: _____

PURPOSE:

To conduct the Draft Glen Park Community Plan Environmental Impact Analysis and Transportation Feasibility Report which will provide for the development of transportation improvement concepts to help make access to the Glen Park station safer for pedestrians and Muni and BART riders; and to provide environmental clearance for the Draft Glen Park Community Plan, which will result in the adoption of the plan by the San Francisco Planning Commission.

GOAL:

The SFMTA will further the following goals of the Strategic Plan through adoption of the Draft Glen Park Community Plan Environmental Impact Analysis and Transportation Feasibility Report contract:

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

- 1.5 - Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

Goal 2 - To get customers where they want to go, when they want to be there

- 2.2 - Ensure efficient transit connectivity and span of service
- 2.3 - Fulfill bicycle and pedestrian network connectivity
- 2.4 - Reduce congestion through major corridors

DESCRIPTION:

The Glen Park Intermodal Facility Renovation Project (the "Project") is a priority of the Draft **Glen Park Community Plan**, published in 2003 by the San Francisco Planning Department. The Draft **Glen Park Community Plan** establishes a vision for land use, transit connections, pedestrian improvements, and open space in the Glen Park neighborhood and has received extensive community review. The San Francisco Planning Commission endorsed this plan in April 2004. A grant from the City's general fund to conduct the environmental review was made available in 2005, but was not sufficient to conduct a thorough environmental review.

The consultant will be charged with conducting both an environmental impact review under the California Environmental Quality Act (CEQA) and an Environmental Assessment under the National Environmental Policy Act (NEPA). In addition, the consultant will conduct a feasibility analysis of key transportation aspects within the Glen Park community. Some of the items to be covered in the transportation feasibility analysis include:

- Assessment of the intersections of Bosworth and Lyle and Bosworth/Arlington/I-280
- Analysis of traffic calming project at Joost and Monterey Streets
- Feasibility of developing a bus loop around the BART station from Bosworth Street to the upper plaza and out to Diamond Street.
- Creation of an accessible connection between the J-Church Metro stop and the Glen Park BART station.
- Pedestrian safety improvements in the station area, which are all identified in the Draft **Glen Park Community Plan**.

Consultant Selection

On April 17, 2007, the SFMTA Board of Directors adopted Resolution No. 07-049 authorizing the Executive Director/CEO to release a Request for Proposals (RFP) for the environmental and transportation feasibility study, evaluate the proposals, and negotiate an agreement with the highest-ranked proposer.

On August 2, 2007, SFMTA issued the RFP and on September 5, 2007 received proposals from PBS&J and Fehr & Peers.

On September 24, 2007 the Technical Evaluation Team (TET), consisting of representative from the SFMTA, Caltrans, Department of City Planning, DPW, and BART, met to discuss the proposals. On October 16, 2007 the TET conducted oral interviews with the two teams and scored the two proposals.

Based on the evaluation of the two proposals received, oral interviews, and discussion of relative strengths and weaknesses of the proposals and firms, the Evaluation Team ranked PBS&J as the highest-ranked proposer. PBS&J, along with its subconsultants, is highly suited and experienced in conducting such studies and in developing a variety of solutions which can be implemented in various stages. Results of their efforts will enable the SFMTA to seek future funding for the implementation of proposed concepts developed by the consultants.

Contract

The following are the key provisions of the contract negotiated with PBS&J:

- The term of this Agreement for 24 months.
- The study is divided into seven tasks, for an amount not to exceed \$750,000:
 - Task 1: Project Kick Off
 - Task 2: Public Scoping Meeting and Notice of Intent
 - Task 3. Environmental Impact Review/Environmental Assessment Review and Documentation
 - Task 4. Transportation Engineering Feasibility Analysis and Report
 - Task 5. Draft EIR/EA
 - Task 6: Response to Comments
 - Task 7: Final EIR/Screencheck/Planning Commission Hearing

The Contract compliance officer has determined that PBS&J has submitted documentation indicating its commitment to achieve the 25 percent Small Business Enterprise (SBE) participation goal set for this contract as well as the Non-discrimination Requirements. The subcontractors for this contract are:

- Adavant Consulting –SBE
- Carey and Company –SBE
- CHS Consulting –DBE/SBE/LBE
- Merrill Morris Partners - DBE/SBE/LBE
- Wiltec -DBE
- Techno Reprographics –SBE
- DMJM Harris

ALTERNATIVES CONSIDERED

Without the completion of this study, the Glen Park Community Plan would not be adopted and subsequently would not be included as part of the City's General Plan. The necessary analysis needed to develop and implement transportation (pedestrian, bicycle, transit) improvements will not be done. If this study were not to be completed, \$416,000 received by San Francisco Planning from the City's general fund and a \$3.4 million dollars FTA earmark, which was made possible by the efforts of Supervisor Bevan Dufty and Senator Tom Lantos, would have to be returned. The failure to complete the project could also jeopardize the SFMTA's ability to secure future Federal grants.

FUNDING IMPACT

Funding for this effort comes from two sources: a \$3.4 million multi-year SAFETEA-LU grant (FTA Section 5309 Bus and Bus Facilities), which would cover multiple phases of the Project's implementation over several years; and a \$416,000 grant received from the City' general fund to conduct an environmental review of the Glen Park Community Plan.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Civil Service Commission approved these services on May 21, 2007, PSC No. 4157-06/07. This approval was later extended to April 2010 and will need to be extended further to cover the full term of the contract.

RECOMMENDATION

SFMTA requests that the SFMTA Board authorize the Executive Director/CEO to execute the Agreement with PBS&J to conduct the Glen Park Community Plan EIR/EA and Transportation Feasibility Report.

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

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

RESOLUTION No. _____

WHEREAS, the San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco Planning Department have entered into a Memorandum of Understanding to collaborate in the creation of, and jointly fund, the Glen Park Community Plan Environmental Impact Analysis and Transportation Feasibility Report; and,

WHEREAS, On April 17, 2007, the SFMTA Board of Directors adopted Resolution No. 07-049 authorizing the Executive Director/CEO to release a Request for Proposals (RFP) for a consultant to prepare (a) an environmental document that meets the requirements for both an Environmental Assessment (EA), in accordance with the provisions of the National Environmental Policy Act (NEPA), and an Environmental Impact Report (EIR), in accordance with the provisions of the California Environmental Quality Act (CEQA), and (b) a Transportation Feasibility report; and,

WHEREAS, On August 2, 2007, the SFMTA issued the RFP and on September 5, 2007, the SFMTA received two proposals in response to the RFP; and,

WHEREAS, A Technical Evaluation Team (TET) comprised of SFMTA staff and key stakeholders (San Francisco City Planning, Department of Public Works, Caltrans, and BART), evaluated and scored the two proposals; and,

WHEREAS, The TET ranked PBS&J as the highest-ranked proposer; and,

WHEREAS, Staff has negotiated an agreement with PBS&J for a term not to exceed 24 months and an amount not to exceed \$750,000; now therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO or his designee to execute San Francisco Municipal Transportation Agency Contract CS-148, to PBS&J, to conduct the Glen Park Community Plan Environmental Impact Analysis and Transportation Feasibility Study for a term of 24 months and an amount not to exceed \$750,000.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Agreement between the City and County of San Francisco and
PBS&J
for
Glen Park Community Plan Environmental Impact Analysis and
Transportation Feasibility Report**

This Agreement is made this _____ day of _____, 2008, in the City and County of San Francisco, State of California, by and between: PBS&J, 353 Sacramento Street, Suite 1000, San Francisco, CA 94111, ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

- A. The SFMTA wishes to obtain the services of a qualified firm to conduct an environmental impact analysis and transportation feasibility report of the Glen Park Community Plan.
- B. A Request for Proposals ("RFP") was issued on August 2, 2007 and City selected Contractor as the highest qualified scorer pursuant to the RFP.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract.
- D. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4157-06/07 on May 21, 2007.

Now, THEREFORE, the parties agree as follows:

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

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

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

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board

of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be two (2) years from the Effective Date of the Agreement.

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

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

4.1 Extra Work

If the Contractor considers any work to be outside the defined scope of work, or not reasonably anticipated to be part of the defined scope of work, the Contractor shall notify the SFMTA Project Manager in writing within two (2) business days of discovering such work. Neither Contractor nor any subcontractor shall be reimbursed for out-of-scope work performed without first obtaining approval of SFMTA's Project Manager in accordance with the following procedures:

If the City desires the Contractor to perform work additional to the defined scope of work or if the Contractor discovers any work to be out-of-scope and necessary to the project, the following shall apply:

- (1) Within three (3) business days of notification by the SFMTA, the Contractor shall prepare and submit a proposal for the task to the SFMTA Project Manager showing:
 - (a) A detailed description by subtask of the work to be performed and the means and methods that will be used to perform it;
 - (b) Milestones for completion for each subtask and deliverables at each milestone;
 - (c) Personnel and the subconsultants assigned to each part of the work along with a justification as to why such personnel are qualified to perform the work;
 - (d) A detailed cost estimate for each subtask showing:
 - (i) Estimated hours and Direct Salaries by employee;
 - (ii) Overhead of prime contractor and subcontractors;
 - (iii) Proposed profit;
 - (iv) Reasonable out-of-pocket expenses.
 - (e) Any time extensions required to complete the extra work, as demonstrated by a CPM schedule analysis.
- (2) The City will review the proposal and promptly negotiate with the Contractor the cost

and time to perform the additional work. City and Contractor shall make every effort to complete such negotiations within three (3) business days.

- (3) Upon completion of negotiations, the City will direct the Contractor in writing to proceed with the additional work after obtaining appropriate City approvals. If warranted, Contractor shall update its project schedule/timeline to incorporate the additional work.
- (4) In the event that City and Contractor cannot reach agreement on the terms of any additional task order, City may either cancel the task order and have the work accomplished through other available sources, or City may direct the Contractor to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Contractor refuse to undertake a City-ordered task that the Contractor is qualified to perform. The City and the Contractor shall continue to negotiate any outstanding terms under provisions of Section 61 of this Agreement while the additional task order is being performed. The City shall not deny the Contractor reasonable compensation for the approved additional task order performed.
- (5) If the Contractor proceeds to do work that it perceives to be out-of-scope without first obtaining City's written approval in accordance with the above procedures, regardless of the amount or value of the work, the City shall have no obligation to consider reimbursement at a later date for the work thus performed. Eagerness to respond to the City's comments or concerns, expediency, schedule constraints, will not be acceptable reasons to proceed with out-of scope work without City's prior written approval.

The following shall not be considered out-of-scope work, but shall be considered incidental to the "Scope of Services" outlined in Appendix A. Contractor shall receive no additional compensation for performing the following work:

- (1) All work required to comply with local, state and federal codes, regulations and standards in effect at the time of contract execution, as interpreted by local, state, or federal agencies having approval or sign-off authority for this Project. .
- (2) Work related to addressing review comments and/or incorporating appropriate review comments into the deliverable documents specified in the scope of work in Appendix A.
- (3) All reasonably implied work required to complete the technical portion of the scope of work, which is consistent with the scope of work in Appendix A and the intent of the requirements of this Agreement and which is absolutely essential in order to achieve the purposes of the scope of services as stated in the RFP..
- (4) All work required to correct deficiencies and errors, including work related to resubmittals of work products that are evaluated reasonably by the City to be incomplete or inadequate.

5. Compensation

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 4 of this Agreement, that the Senior Director, Transportation Planning & Development (or designee), in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed seven

hundred and fifty thousand dollars (\$750,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

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

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of the SFMTA Progress Payment Form. If the Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA and Contractor of the omission. If Contractor's failure to provide the SFMTA Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until the SFMTA Progress Payment Form is provided.

Following City's payment of an invoice, Contractor has ten days to file an affidavit using SFMTA's Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

6. Guaranteed Maximum Costs

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

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

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

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

7. Payment; Invoice Format

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

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

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages

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

9. Disallowance

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

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

10. Taxes

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

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

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

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

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as

amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

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

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that 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

a. Independent Contractor

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

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by

which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses.

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

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

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

15. Insurance

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

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

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

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

(4) Professional liability insurance with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

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

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

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

San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103
Attn: Shahn timer Farhangi
Fax (415) 701-4300

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

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

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

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

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

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

16. Indemnification

a. General Indemnity

To the fullest extent permitted by law, Contractor shall assume the defense of, indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants) and liabilities of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, reasonable attorney's fees and costs of investigation), that arise directly or indirectly, in whole or in part, from (1) the services under this Agreement, or any part of such services, and (2) any negligent, reckless, or willful act or omission of the Contractor and subconsultant to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"), subject to the provisions set forth herein.

b. Limitations

(1) No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's liability under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such liability.

(2) The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

(3) The Contractor's indemnification obligations of claims involving "Professional Liability" (claims involving acts, errors or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the extent of the Contractor's negligence or other breach of duty.

c. Copyright Infringement

Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in then performance of Contractor's services under 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 milestones and timelines as provided in Appendix A, and such delays are not due to Unavoidable Delays, as defined in Section 55, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of Two Hundred Dollars (\$200.00) per day, for each day of delay beyond scheduled milestones and timelines for the tasks described in Appendix A and indicated by asterisks on the Compensation Schedule attached as Appendix B, is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by the SFMTA.

20. Default; Remedies

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

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, 58, or 60.

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

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

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

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

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

21. Termination for Convenience

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

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

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

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

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

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

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

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, 57, 60 and 61.

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

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government

Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

To City: Kim Walton, Transportation Planner
San Francisco Municipal Transportation Agency
One South Van Ness Ave. 7th floor
San Francisco, CA 94103
kim.walton@sfmta.com
Fax: (415) 701-4372

To Contractor: PBS&J
353 Sacramento Street, Suite 1000,
San Francisco, CA 94111
TSVitar@pbsj.com
(415) 362-1954

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

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

any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

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

29. Subcontracting

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

30. Assignment

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

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

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

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach

cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

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

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

33. Small Business Enterprise Program

Contractor agrees to comply with the requirements of the Small Business Enterprise Program described in Appendix D and incorporated into this Agreement.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

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

b. Subcontracts

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

35. MacBride Principles—Northern Ireland

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

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

violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

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

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter

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

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

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

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

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

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

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

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

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

44. Requiring Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

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

(1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish

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

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

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

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

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

(6) Set the term of the requirements.

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

Contractor agrees:

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

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

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

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

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

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

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

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

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

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

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

f. Subcontracts

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

46. Prohibition on Political Activity with City Funds

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

47. Preservative-treated Wood Containing Arsenic

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

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the SFMTA, who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws

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

54. Services Provided by Attorneys

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

55. Unavoidable Delays

A delay in Contractor's performance of its duties under the Agreement that Contractor demonstrates could not have been avoided by Contractor's exercise of due care, prudence, foresight, or diligence and that arises directly from: an act of God; fire; flood; windstorm; tornado; earthquake; war; riot; insurrection; epidemic; quarantine restrictions; acts of terrorism; inability of Contractor to procure labor to the extent that such inability is not caused by disputes related to collective bargaining; inability of Contractor to procure material; fuel shortage; freight embargo; accident; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; the prevention by the City of Contractor from commencing or prosecuting any of its duties under the Agreement; inability of Contractor to obtain applicable and timely input, reviews, approvals, permits and licenses from relevant governmental authorities; or failure of public utility service or internet service outside the control of Contractor..

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. FTA Requirements

The provisions contained in the FTA Requirements for Personal Services Contracts attached as Appendix C 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.

61. Dispute Resolution Procedure

a. 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 within fourteen (14) days of delivery of the notice. The notice and response shall contain

the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

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

Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under the Contract in accordance with the written directions of the SFMTA Project Manager.

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

b. 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 Contractor or its subconsultants stop work due to an unresolved dispute.

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

CITY	CONTRACTOR
San Francisco Municipal Transportation Agency	PBS& J
_____ Nathaniel P. Ford, Sr. Executive Director/CEO	By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
Approved as to Form:	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.
Dennis J. Herrera City Attorney	_____ Authorized Signature
By: _____ Robin M. Reitzes Deputy City Attorney	Susan Chang _____ Printed Name
San Francisco Municipal Transportation Agency Board of Directors	Vice President _____ Title
Resolution No. _____	PBS&J _____ Company Name
Date: _____	353 Sacramento Street, Suite 1000 _____ Address
Attest:	San Francisco, CA 94111 _____ City, State, ZIP
_____ Secretary, SFMTA Board	415-362-1500 _____ Phone Number
	City vendor number:

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: FTA Requirements For Personal Services Contracts
- D. Small Business Enterprise Program

Appendix A

1. Description of Services Glen Park Community Plan Environmental Impact Analysis and Transportation Feasibility Study

The Contractor shall complete the Scoping and Project Description, all technical studies, and document preparation under the direction of the San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco Planning Department (Planning) based on the following Scope of Work. This Scope of Work provides detailed information regarding all deliverables.

Task 1: Project Kick-off – Upon receipt of the Notice to Proceed (NTP) from the SFMTA, Contractor shall meet with MTA and Planning to develop a detailed Scope of Work and project description scenarios for the Environmental Impact Report/Environmental Assessment (EIR/EA) and the transportation engineering feasibility reports. As part of this task, Contractor shall collect from the City all available documentation for use in the environmental document and transportation engineering reports, including the Glen Park Community Plan background studies, other EIRs in the study area, technical studies/plans and other reports related to the study to ensure consistency with previous work conducted. Contractor shall contact the responsible agencies such as Caltrans, BART, SFCTA, DPW and other City agencies as directed by SFMTA and Planning to inform them of the project and to solicit their opinions in advance of preparing the Notice of Preparation (NOP) and to help refine the detailed scope of work. The SFMTA will provide the Contractor with any relevant information that the SFMTA obtains from various agencies. Contractor shall prepare an agency matrix that shows what agencies would be contacted, when, and for what subject/reason. Contractor shall provide a detailed CPM project schedule (both in an editable electronic format and in hard copy) within two weeks of NTP, showing all tasks, subtasks and deliverables.

Deliverables:

- Electronic submittal of the draft Scope of Work, including a project schedule, for EIR/EA
- Electronic submittal of the final Scope of Work, including a project schedule, for EIR/EA
- Electronic submittal of the draft Transportation Engineering Feasibility Analysis and Report Scope of Work, including a project schedule
- Electronic submittal of the final Transportation Engineering Feasibility Analysis and Report Scope of Work, including a project schedule,
- One electronic submittal of the agency matrix

Task 2: Public Scoping Meeting and Notice of Preparation. Contractor shall prepare the NOP and attend one public scoping meeting to solicit comments from public agencies and interested members of the public. Contractor shall prepare a Notice of Completion and Affidavit of Mailing and distribute the NOP. Contractor shall also prepare a PDF version of the NOP for posting on Planning's website. If an EIS is necessary, Contractor shall prepare a separate scope of work and cost estimate to prepare a Notice of Intent and to prepare the more extensive documentation necessary to fulfill National Environmental Policy Act (NEPA) requirements. Contractor and SFMTA will arrive at a mutually acceptable scope and cost adjustment prior to undertaking any work related to an EIS.

Contractor shall be available to support the City at the scoping meeting in describing the purpose of scoping, the environmental review process, and the key features of the scope of work, including the timeline. Contractor shall meet with the City to discuss the meeting logistics, agenda, handling of questions, and other details regarding the announcement, conduct, and follow-up to the meeting. Contractor shall prepare the scoping meeting agenda, sign-in sheet, comment form and other materials for

the scoping meeting. Contractor shall document the proceedings through the scheduling of a court reporter who will record all comments received. Planning and/or SFMTA will prepare the newspaper notices announcing the meeting and find a location for the scoping meeting. At the close of the NOP comment period, Contractor shall prepare a bullet-point summary of the comments received, organized by topic.

Deliverables:

- 10 copies of the Draft NOP I
- 10 copies of Draft NOP II
- Screencheck NOP
- Distribution of up to 500 copies of the final NOP
- PDF of the NOP for posting on the City's website
- NOC and Affidavit of Mailing
- One scoping Meeting
- One official transcript
- A summary of the NOP and scoping meeting comments

Task 3: Initial Study –Contractor shall prepare an administrative draft and final Initial Study (IS) in conformance with CEQA regulations and the current, standard Planning checklist format. The project definition will be finalized and agreed upon by all parties by completion of the first Administrative Draft of the IS. While the scope of the EIR/EA will be confirmed during start-up (Task 1), it is anticipated that the IS will focus on screening the following topics from further consideration in the Draft EIR: wind impacts; public services and utilities; geotechnical issues; hazards and public health impacts; shadows; Section 4(f) recreation and public space; biological resources; hydrology and water quality; mineral and energy resources; and agricultural resources.

For the biological resources section, Contractor 's biologist (s) shall conduct queries of the California Department of Fish and Games Natural Diversity Database, the U.S. Fish and Wildlife Service's Online Threatened and Endangered Species Database, and the California Native Plant Society's Online Inventory of Rare and Endangered Plants. Information derived from the results of these queries will be used to generate a list of special-status species that could potentially occur in the vicinity of the project area. The database queries will be followed by a reconnaissance-level site visit to determine if habitat for any of the special-status species occurs within, or adjacent to the project area. Based upon a review of the site description in the RFP for this project it is assumed that few, if any, biological resources are present in this urbanized area. An IS section will be prepared to describe the site in relation to biological resources and discuss any special-status species that could occur in the project area. Additionally, the IS section will either describe any potential effects the project may have on those resources and propose appropriate mitigation (if necessary), or will clearly identify that no such resources exist in the project area, and that no further effort is required to address this issue. The City does not foresee biological resource effects in the areas proposed for transportation improvements. As a result, Contractor will not conduct a Section 7 Consultation with the U.S. Fish and Wildlife Service on the need to prepare a Biological Assessment unless directed to by the City.

For Section 4(f) consideration of parks and open space, the proposed project improvements do not require acquisition of public open space or parks, therefore, this portion of the Section 4(f) evaluation can be screened out in the IS.

For topics that will be included in the EIR, the IS shall note that there is a potentially significant effect that will be analyzed further in the EIR. The administrative draft shall be reviewed and commented on by both the SFMTA and Planning. Planning shall consolidate written comments on the administrative draft

of the Initial Study. Contractor shall respond to the consolidated comments on the administrative draft and prepare the Screencheck and the final Initial Study for public distribution. Comments on the Administrative Draft IS II and the Screencheck IS will focus on inclusion and consideration of comments from previous drafts.

Contractor shall be responsible for distribution of the Initial Study to interested parties and responsible agencies as well as to the State Clearinghouse along with the NOC. Contractor shall also prepare and submit the Affidavit of Mailing. Finally, Contractor shall prepare and distribute the Notice of Availability.

Deliverables:

- 10 copies of Administrative Draft IS I
- 10 copies of Administrative Draft IS II
- Five copies of the Screencheck IS
- Distribution of up to 150 copies of the IS
- Distribution of up to 350 copies of the Notice of Availability
- NOC and an Affidavit of Mailing
- PDF of the Initial Study for posting on the City's website

Task 4: Transportation Engineering Feasibility Study

The Contractor shall evaluate the transportation concepts identified in the Glen Park Community Plan to determine their viability and conceptual performance from an engineering perspective. The ideas will be developed to an appropriate level (15-percent design maximum) and analyzed to make a feasibility determination. The Glen Park Community Plan concepts to be analyzed are as follows:

1. A clockwise bus-only (perhaps taxi also) loop around the Glen Park BART station.
2. ADA-compliant access from J-Church line to BART station.
3. Concourse level BART entry and conceptual pedestrian bridge.
4. Extension of Muni's 35 Eureka bus line to the Glen Park BART.
5. Intersection improvements at Diamond/Bosworth, Bosworth/Arlington/San Jose Ave On-Ramp, Bosworth/Lylle, Joost/Diamond/Monterey, and immediately adjacent intersections to enhance bus intermodal transfers and pedestrian connectivity.
6. Traffic calming within the Glen Park village.

The Transportation Feasibility Study is composed of five subtasks. The subtasks are defined as follows:

Task 4.1 – Data Collection. Initial data collection is necessary before the engineering analysis is performed. Data collection activities shall include, but are not limited to, future traffic volumes, AM and PM peak hour traffic counts at the intersections noted above, minor location surveying, right-of-way and property boundary information, available as-built plans from Caltrans and DPW, a utility design ticket and readily available city utility maps, a list of proposed and programmed transportation projects, Transit Effectiveness Plan (TEP) recommendations, Muni and BART ridership and schedule information, and aerial photographs. Contractor shall summarize the collected data in a brief "Summary of Collected Data" technical memorandum.

Task 4.2 – Feasibility Analysis. After sufficient data is available to support an engineering analysis, transportation concepts 1-5 above will be refined to determine their initial feasibility. For concept 5, only the feasibility of roundabouts on Bosworth will be determined. A Synchro traffic model shall be developed to determine performance of the roundabouts and to support the next subtask. Contractor shall document the results of the feasibility analysis for each concept below in a technical memoranda:

1. Glen Park BART Station Bus-Loop Feasibility
2. J-Church line / BART Station ADA Access Feasibility
3. Pedestrian Bridge / Concourse Level BART Entry Feasibility
4. 35 Eureka Line Extension (or other TEP recommendation) Feasibility
5. Bosworth Roundabouts Feasibility

Task 4.3 – Alternative Screening. The alternatives included in the screening process will be those from Task 4.2 that are found to be feasible by the SFMTA, as well as any concepts identified in the project scoping process. For those projects in Task 4.2 that are found to not be feasible, the Contractor shall identify other options that address the intent of the Community Plan. Approximately ten alternatives shall be evaluated in the alternative screening process. Contractor shall implement a four-step screening process to reduce the multiple alternatives and combinations to a handful that will be evaluated in the DEIR/EA. This process consists of the following:

1. Pre-Screening – Contractor shall conduct pre-screening to evaluate and eliminate those alternatives that do not have a realistic chance of being implemented or have fatal flaws. A series of yes/no questions shall be used at this stage.
2. Comparative Screening – Contractor shall use comparative screening to evaluate and compare alternatives to determine if some are clearly better than others with those that are inferior being screened out.
3. Detailed Screening – Contractor shall perform detailed screening by using a qualitative analysis to evaluate remaining alternatives for each concept. Those that are clearly inferior shall be screened out and a preferred alternative identified. An evaluation matrix will be used to highlight the differences among alternatives.
4. Package Compatibility – Once similar alternatives have been screened relative to one another, they shall be combined to develop a series of packages. See subtask 4.4.

Recognizing that there may be conflicting interests among stakeholders, a neutrally facilitated process shall be implemented to help reach consensus among alternatives. Contractor shall provide a neutral facilitator for a total of five meetings. The facilitator shall develop an overall meeting work plan and detailed meeting agendas and meeting minutes for each meeting. Four of the five meetings shall cover alternative screening, and the fifth shall cover package compatibility (see subtask 4.4).

The deliverables associated with Task 4.3 shall consist of a series of technical memoranda documenting the screening process described above. Up to 10 technical memoranda shall be prepared, and shall include:

- Glen Park BART Station Bus-Loop Alternative Screening Memo
- J-Church line / BART Station ADA Access Alternative Screening Memo
- Pedestrian Bridge / Concourse Level BART Entry Alternative Screening Memo
- 35 Eureka Line Extension Alternative Screening Memo
- Intersection Improvements Alternative Screening Memo
- Traffic Calming Alternative Screening Memo

Task 4.4 – Package Compatibility. Task 4.4 shall identify the interaction and corresponding effects the alternatives may have on one another. A feasible “package” of projects shall be identified for appropriate evaluation in the DEIR/EA. The package compatibility analysis shall consist of a qualitative assessment of the interoperations of each package with a comparative analysis of each package. The results of this subtask shall be documented in a “Package Compatibility Technical Memorandum.”

Task 4.5 – Alternative Screening Report. The background data, alternative screening process and package compatibility analysis shall be summarized in the Alternative Screening Report. This Report shall provide an overview, summary and results of the process implemented during Task 4. All deliverables developed shall be attached to the Alternative Screening Report for reference.

Deliverables:

- Data Collection Technical Memorandum
- Feasibility Analysis Technical Memoranda
 - Bus-Loop Technical Memorandum
 - J-Church to BART Access Technical Memorandum
 - Pedestrian Bridge / Concourse Level BART Entry Technical Memorandum
 - 35 Eureka Line (or other TEP recommendation) Extension Technical Memorandum
 - Bosworth Roundabouts Technical Memorandum
- Up to 10 Alternative Analysis Technical Memoranda, which may include:
 - Bus-Loop Technical Memorandum
 - J-Church to BART Access Technical Memorandum
 - Pedestrian Bridge / Concourse Level BART Entry Technical Memorandum
 - 35 Eureka Line (or other TEP recommendation) Extension Technical Memorandum
 - Intersection Improvements Technical Memorandum
 - Traffic Calming Technical Memorandum
- Package Compatibility Technical Memorandum
- Alternative Screening Report

Task 5: Draft EIR/EA. Contractor shall prepare a Draft EIR/EA. This task shall include attending at least one public hearing on the Draft EIR and retention of court reporter services for this public hearing before the Planning Commission. Contractor, in coordination with the SFMTA and Planning, shall prepare a complete Project Description for review by SFMTA and Planning. Contractor shall prepare and submit the resource setting sections for each of the resource areas (Aesthetics, Cultural, Biological Resources, Land Use and Planning, and Archeological) followed by submittal of two rounds of the Administrative Draft EIR/EA and a Screencheck. Contractor shall prepare the Notice of Completion for the State Clearinghouse and shall produce and distribute hard copies and CDs of the Draft EIR/EA. Contractor shall also prepare and distribute the Notice of Availability.

The EIR shall provide a program-level analysis of the Community Plan and more detailed analyses of project-specific proposals, including the proposed site redevelopment of approximately 100 new housing units and whichever feasible transportation improvement projects that result from the Transportation Engineering Feasibility Study. It shall also address the potential greenway connection from Diamond Street west at a program level analysis. The EIR/EA shall include the areas of analysis described below, including cumulative impact analysis to the year 2030.

The Federal Transit Administration's (FTA) requirements to comply with NEPA shall be addressed in the EIR/EA. This shall include the following items: environmental justice, air conformity, and compliance with federal environmental regulations, such as Section 106 of the National Historic Preservation Act, Section 4(f) (49 USC § 303), and various executive orders. Contractor shall also address all topics on Planning's CEQA checklist. The following descriptions of work tasks are not a comprehensive description of all of the topics to be addressed in the EIR/EA, but rather a description of the key areas of discussion.

Land Use and Land Use Planning

Major land use changes are expected to occur primarily near the Diamond/Bosworth intersection and the current BART parking lot. Land use recommendations in the Community Plan are designed to maintain the area's distinct community identity and traditional pattern of land use, and foster compatible mixed-use development opportunities. Other issues include land use changes linked to improved transit access, enhanced neighborhood environment, re-configured streets, proposed streetscape programs, and traffic-calming improvements. The effects of increased densities in the two key sites and changes in land use character shall be described. The environmental document shall discuss the key strategies of the Community Plan for consistency with the applicable San Francisco General Plan policies, including those affecting land use and physical design. The environmental document shall focus on how the Community Plan builds on existing objectives of the General Plan and citywide planning and policy initiatives. This section of the environmental document shall also include a program-level analysis of enhancing the greenway connection from Glen Park to the BART station.

Aesthetics

The environmental document shall describe potential impacts of the proposed Community Plan's urban design guidelines. The potential impacts from development of the key sites shall also be addressed. Key effects of the project on overall neighborhood character, potential changes in long-range views and streetscape character, and urban design features considered as part of the BART station and Muni Metro changes shall be identified.

Contractor shall utilize visual simulations or other renderings provided by SFMTA or other project members to facilitate understanding of the project improvements and their visual compatibility, in terms of scale, massing, and view obstruction.

Population and Housing

The environmental document shall discuss population and housing effects of the Community Plan, in the context of the Glen Park neighborhood and overall growth in San Francisco, in compliance with NEPA guidelines. This section shall examine the employment and other socioeconomic effects of the proposed project, as well as potential residential displacement, job growth, growth-inducing impacts, and potential loss of business during construction at key sites. Anticipated population growth shall be analyzed in the context of the 1990 and 2004 housing elements of the San Francisco General Plan.

Cultural Resources

The project shall comply with Section 106 of the National Historic Preservation Act of 1966. Under the Programmatic Agreement (effective January 1, 2004) among Caltrans, the FHWA, the Advisory Council on Historic Preservation (ACHP), and the California State Historic Preservation Officer (SHPO), Caltrans is delegated Section 106 review authority for projects that include FTA funding. Accordingly, the cultural resource investigation for the proposed project shall be conducted in accordance with the procedures identified in the Caltrans Environmental Handbook, Volume 2: Cultural Resources. Documentation prepared by the Contractor shall be consistent with the Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties. The investigations shall be conducted by cultural resources staff who meet the Secretary of the Interior's Professional Qualifications Standards for Archaeology and History.

In accordance with Stipulation XVI of the Section 106 Programmatic Agreement, a Finding of Effect (FOE) must be prepared if the cultural resource investigations determine that the proposed project would have an effect on an historical resource.

Archeological Resources

Prior to undertaking any activities authorized under the SOW, Contractor's archaeologist shall meet with the Planning archaeologist to more precisely determine the survey, research, and documentary approach required to identify potential archaeological resources.

Contractor shall prepare an Archaeological Survey Plan (ASP) in accord with ASP guidelines provided by Planning, including requirements for the Information Center records search, literature review, definition of area of potential effect and study area, contacts with Native American organizations, and survey strategies.

If required by Caltrans, archaeological investigations shall be documented in a technical report prepared in accordance with the Caltrans Archaeological Survey Report (ASR) Format and Content Guide.

Determination of APE. The Area of Potential Effect (APE) is the area within which the undertaking may directly or indirectly cause changes in the character or use of architectural/structural and archaeological properties, should any be present. The APE(s) shall be developed in consultation with Planning and Caltrans. A separate APE may be required for architectural/structural and other archaeological resources.

Records Search. Contractor's cultural resources staff shall request a records search from the North West Information Center (NWIC). The NWIC report shall identify any previously recorded archaeological sites, other cultural resources, and cultural resource investigations within one-half mile of the project APE(s) and plot known cultural resources and National Register of Historic Places (NRHP) properties on USGS 7.5' topographic maps. Sources will be consulted as specified in the ASP, including the National Register of Historic Places, the California Register of Historical Resources, California Historical Landmarks, Points of Historical Interest, and state and local inventories of historical resources. Contractor shall contact local historical societies and other consulting parties identified regarding the identification of historic properties. Historical maps of the project area shall be consulted for indications of historical settlement or activity, depending on availability.

Native American Consultation

Contractor shall conduct a search of the sacred lands database of the Native American Heritage Commission to determine if any Native American areas of concern are present on or in the vicinity of the project APE. Contractor's archaeologists shall contact the appropriate Native American individuals, tribes, or communities by written correspondence to solicit any concerns they may have regarding the project.

Field Survey. Contractor's archaeologists shall conduct a reconnaissance survey of the Archeological APE in accordance with the approved ASP to determine, within the limitations of ground visibility, if any cultural resources are present that require evaluation.

Prepare Draft Historic Context and Archaeological Survey Report. The archaeological investigation shall be documented in a technical report, the Historic Context and Archaeological Survey Report (HCASR). A primary objective of the HCASR is to identify potential archaeological resources that will be potentially affected by the project on the partial and limited information available in the absence of field investigation -- through a reconnaissance survey, Information Center records search and historical documentation research. The Contractor shall prepare an HCASR in accordance with guidelines provided by Planning, including, but not limited to, the following elements: title page, table of contents, summary of findings, introduction, project location and description, sources consulted, summary of methods and results, summary of other participants who were consulted, summary of Native American consultation, background, environment, ethnography, prehistory, history, field methods, study findings and conclusions, other resources, references cited, maps, other figures, and site records. Additional studies, such as remote sensing, or an Extended Phase I testing program, are not within the range of the current

scope of work. Contractor shall provide a draft of each Draft ASR for City review. Contractor shall address City comments on the draft document and provide second/final draft copies to the City. The final HCASP shall serve as the basis for Planning determination of significant effect and appropriate mitigation to archeological resources.

Architectural/Structural Resources

Prepare Draft HRE. The Glen Park Community Plan area may contain both individual properties and districts of historic significance. The scope of work for identifying potential historic resources focuses on two major activities. First, a property is evaluated for its eligibility for listing in the National Register of Historic Places, California Register of Historical Resources, and as a local historic resource. If the property is found eligible for listing in one or more of the registers above, then its physical integrity is evaluated. Considerable background materials are expected to have been completed as part of the Community Plan preparation that will expedite this documentation of historic resources.

Contractor shall prepare a draft and final Historic Resources Evaluation historic resources survey for the Glen Park neighborhood, including:

- A neighborhood context statement outlining the history of the survey area's development within the Glen Park neighborhood; identification of property types; and recommendations for further phases of survey/documentation (including preliminary identification of potential historic districts).
- The draft and final Department of Parks and Recreation (DPR) forms for properties 45 years old and older. There are approximately 111 properties within the identified survey area. Contractor will prepare DPR 523a and 523b forms (Primary Record and Building Structure, respectively). As part of the SOW, Contractor shall prepare the following: for the five parcels on the northeast corner of Diamond Street/Bosworth Street subject to project-level review, Contractor shall prepare both DPR A and B forms. DPR B forms shall be prepared for the BART station and Glen Park Elementary School. In addition, 523B forms shall be prepared for the BART station (2901 Diamond Street) and the Glen Park Elementary School (151 Lippard Avenue). The DPR forms will be submitted in a format consistent with the State of California's Cultural Resources Database, CalCRD.

Based on the findings of the technical reports, Contractor shall prepare a Cultural Resources section for the EIR/EA. The section will assess the project's potential effects on historical and archaeological resources in accordance with the requirements of CEQA, NEPA, and Section 106 of the National Historic Preservation Act of 1966. The Cultural Resources section shall include a prehistoric, ethnographic, and historic setting for the project area; descriptions and evaluations of any known cultural resources on the project site; a regulatory setting that identifies applicable state, federal, and local regulations that pertain to cultural resources; and an impact analysis of potential project-specific and cumulative effects. Where possible, mitigation measures to reduce or eliminate adverse impacts on cultural resources to less-than-significant levels shall be identified.

Transportation/Circulation

The transportation/circulation section of the EIR/EA shall include an evaluation of the potentially significant impacts to traffic, transit, bicycle, and pedestrian circulation, plus effects to area-wide and site-specific parking conditions. This information shall be summarized from a detailed stand-alone transportation study, conducted under the guidance of Planning.

Contractor shall determine existing conditions based on data collection conducted in the Feasibility Study and documentation of transit, pedestrian, bicycle, and parking conditions. Peak-hour observations shall

also be conducted at locations where improvements are proposed, such as key intersections and on the pedestrian walkways to the BART station.

The transportation study shall assess the Community Plan under Existing plus Project (for project-level review) and Future plus Project (for all programmatic components) scenarios. The future conditions shall be developed from the San Francisco County Transportation Authority's newest travel demand model. For this effort, Contractor shall coordinate with SFMTA to ensure that all elements of the Community Plan are accurately incorporated into the model, and substantial post-processing of the model output shall be needed. The City estimates that it will take six weeks from Contractor's request to obtain analysis-ready model data. At this time, it is expected that project-level review will be conducted for the Diamond/Bosworth site development and other Community Plan elements defined at a stage sufficient for project analysis and anticipated to have a measurable effect on traffic and/or circulation; and programmatic analyses will be conducted for most of the other recommendations that have not been sufficiently developed and/or will have a negligible effect on traffic and/or circulation, including BART station and J-Church line access changes, and BART parking lot development.

Cumulative conditions shall be based on growth rates for the 2030 model run for the Transit Center District Plan and Treasure Island environmental documents. Fire and emergency vehicle access shall also be addressed.

The results of these reviews shall identify significant project-related impacts, or cumulatively considerable contributions to future unacceptable conditions. For all locations where significant impacts are determined, Contractor shall identify mitigation measures to reduce the effect of the impacts to less-than-significant levels, if feasible. These mitigation measures could include modification to the various Community Plan elements, or additional modifications to the surrounding transportation network. Improvement measures for less-than-significant impacts shall also be identified. However, since the majority of the Community Plan elements are designed to improve transit and pedestrian circulation, and may result in worsening of conditions for vehicular traffic, Contractor shall work closely with Planning to place this impact in a citywide context.

Noise

Community Plan implementation would have the potential to increase noise conflicts between new residential uses and existing noise sources, including the I-280 freeway and local streets, BART operations, and Muni operations. Up to ten short-term ambient noise measurements shall be taken within the Plan Area to characterize existing noise levels and assess potential noise conflicts. The EIR/EA will address noise increases associated with Community Plan-related traffic increases on up to four roadway segments. Ambient noise measurements shall be made to document the existing sound environment in the project area. The land uses will be mapped according to their land use categories specified by FTA guidance for noise and vibration impacts. Acceptable noise environments and land use compatibility for the sensitive locations shall be summarized from the Noise Element of the City's general plan. Ground-borne vibration sensitivity shall be summarized from FTA's guidance documents. The regulatory framework shall also be presented, identifying applicable noise standards, regulations, and guidelines.

Air Quality/Climate

The environmental analysis shall evaluate the potential for ozone and carbon monoxide (CO) impacts by the proposed project in accordance with the basic methodology presented in the Bay Area Air Quality Management District (BAAQMD) CEQA Guidelines (December 1999). However, Contractor shall augment that document's recommended treatment of toxic air contaminants (TACs) and greenhouse gases (GHG) because of the advances in understanding and assessment of TACs and GHG since the Guidelines were last revised. Health issues associated with the location of sensitive receptors in proximity to emission sources shall be discussed; however, a quantitative Health Risk Assessment will not be performed unless otherwise required. The EIR/EA shall also review consistency of the Community Plan

with the California Clean Air Plan and shall include the City's latest methodology for analyzing cumulative climate change impacts.

Reducing the health impacts from TACs has become one of the California Air Resources Board's (CARB's) highest priorities. CARB has made recommendations regarding the location of sensitive land uses near major sources of TACs (i.e., Air Quality and Land Use Handbook: A Community Health Perspective; April 2005), and CARB and many local Air Districts have developed methodologies for evaluating TAC exposures of such land uses (e.g., Recommended Protocol for Evaluating the Location of Sensitive Land Uses Adjacent to Major Roadways; Sacramento Metropolitan Air Quality Management District, September 2007). Diesel particulate matter (DPM) has been identified as a TAC of major concern because of its potency and widespread emissions from diesel-powered vehicles using or located at freeways, major roadways, goods distribution centers, rail yards, etc. Accordingly, the project TAC analysis shall focus on estimating the potential for health impacts from motor vehicles using I-280 and, possibly, other major local streets. TAC dispersion will be modeled using CAL3QHCR, an EPA- and CARB-approved line-source model of the CALINE type, initialized with appropriate local roadway geometry, TAC emission rates and meteorological data. The significance of the estimated TAC exposures will be interpreted in light of monitoring data on background TAC exposure of the project site population and the criteria recommended by CARB and/or BAAQMD.

The California Global Warming Solutions Act (AB 32) and the provisions of Senate Bill (SB 97) (i.e., CEQA guidelines for greenhouse gases) are motivating efforts toward identifying and quantifying project-induced GHG emissions, assessing the significance of such emissions, and developing approaches for avoiding or mitigating them. Accordingly, the project air quality analysis shall identify and estimate the important direct (i.e., from motor vehicles, fuel combustion for heating, land use changes, etc.) and indirect (i.e., from electricity generation, landfill emissions, etc.) project GHG emissions. The accepted San Francisco methodologies shall be used for calculating GHG emissions (i.e., the CARB's URBEMIS 2007 for motor vehicles, California Climate Action Registry methods for electric generating sources, etc.). Project-specific GHG mitigation measures shall be developed with reference to the recommendations of the California Air Pollution Control Officers Association White Paper, "CEQA and Climate Change," "California Environmental Quality Act Mitigation for Global Warming Impacts," published by the California Attorney General's Office, the GHG control policies and programs of the City of San Francisco, and other relevant sources.

The methodology and results of the air quality analysis shall be summarized in a Technical Memorandum that will be cited in the EIR/EA.

Mitigation Measures

Contractor shall identify measures that would reduce or eliminate potential environmental impacts of implementing the proposed Community Plan. The EIR/EA shall also identify Improvement Measures that would reduce adverse environmental effects that are not significant environmental impacts. The mitigation measures shall be drafted so they can be readily incorporated as part of specific development proposals and included in the Mitigation Monitoring and Reporting Program.

Growth Inducement

The analysis shall address potential growth-inducement effects of the Community Plan, in terms of land use controls or infrastructure changes that could foster growth in the community in addition to anticipated projects.

Environmental Justice

Contractor shall prepare a profile of the Glen Park neighborhood to help identify effects to population groups that are covered by Executive Order 12898 on Environmental Justice. These population groups include ethnic minorities and low-income households. Data shall be developed from a variety of sources,

including Planning staff, U.S. Census data at the tract level, and ABAG Projections 2007. Environmental Justice communities shall be identified based on the guidance provided by EPA.

If Environmental Justice communities are identified within or near the Plan Area, Contractor shall determine whether these population groups are being disproportionately impacted, compared to other population groups in the area. The determination of whether a project disproportionately affects these communities shall follow the samples contained in FTA's Impact Assessment Handbook.

Alternatives

Contractor shall work with Planning and SFMTA to define at least three alternatives (in addition to the No-Project Alternative) that could avoid or reduce the magnitude of significant and/or significant and unavoidable impacts. At this time, it is assumed that maximum and minimum program build-out scenarios will be analyzed in addition to the No-Project Alternative. Contractor shall analyze the alternatives to provide an adequate comparison of the impacts with the proposed Plan. The environmentally superior alternative will be based on the analysis prepared for the various alternatives. Contractor shall prepare a summary of Alternatives for Planning to review after the Project Description is finalized and before submittal of the Draft EIR.

Deliverables:

- 2 hard copies of draft Area of Potential Effects; additional copies as required by Caltrans
- 2 hard copies of final Area of Potential Effects; additional copies as required by Caltrans
- 2 hard copies of draft Archaeological Survey Plan
- 3 hard copies of final Archaeological Survey Plan
- 2 hard copies of draft Caltrans Archaeological Survey Report (if required); additional copies as required by Caltrans
- 1 hard copy of final Caltrans Archaeological Survey Report (if required); additional copies as required by Caltrans
- 2 hard copies of draft Historic Context and Archaeological Survey Report
- 4 hard copies of final Historic Context and Archaeological Survey Report
- 5 hard copies of Draft Transportation Study
- 5 hard copies of Final Transportation Study
- 1 hard copy of Air Quality Technical Memorandum
- Electronic submittal of draft and final Project Description
- One electronic submittal of Summary of Alternatives
- One electronic submittal of the settings sections for all environmental topics in the EIR
- 10 hard copies of Administrative Draft EIR/EA I
- 10 hard copies of Administrative Draft EIR/EA II
- 5 hard copies of the Screencheck EIR/EA
- Distribution of up to 150 copies of the Final Draft EIR/EA and an Affidavit of Mailing
- Distribution of up to 350 copies of the Notice of Availability
- Notice of Completion to the State Clearinghouse
- Electronic submittal of the draft and final Mitigation Monitoring and Reporting Program
- 25 copies of the Draft EIR on CD

Task 6: Response to Comments . During the 45-day Draft EIR/EA public review period of the draft environmental document, Contractor shall attend one public hearing and arrange for a court reporter. After the close of the review period, Contractor shall organize a public hearing and written comments by topic, and review comments with staff. Contractor shall prepare the draft, screencheck, and final Comments and Responses document.

Deliverables:

- One official Draft EIR hearing transcript
- 10 hard copies of Administrative draft C&R I
- 10 hard copies of Administrative draft C&R II
- Five hard copies of the Screencheck C&R
- Distribution of 50 copies of the final Comments and Responses document and an Affidavit of Mailing

Task 7: Final EIR/EA Preparation and Planning Commission Review. Contractor shall prepare a single Final EIR/EA document that contains the Draft EIR/EA, any amendments to the Draft EIR/EA, and responses to comments. Contractor shall attend a public hearing of the environmental document before the Planning Commission and help deliver a presentation to the SFMTA Board of Directors. Contractor shall also assist the Planning in preparing CEQA findings for various City approval actions.

Deliverables:

- 3 hard copies of the Administrative Final EIR/EA
- 3 hard copies of the Screencheck Final EIR/EA
- Distribute up to 50 copies of the Final EIR/EA and submit an Affidavit of Mailing
- 25 CDs of Final EIR/EA
- CD(s) containing electronic unlocked, searchable PDF copies of all final project deliverables for all tasks

Project Management. Contractor's project manager, Gretchen Parker, and the Deputy Project Manager, Bryan Gant, shall:

- Prepare a project guide (to be updated as needed throughout the project) with all background information, contacts, protocols, and an outline of the documents to be produced.
- Schedule and hold bi-weekly, approximately one-hour, project meetings via conference call to discuss project milestones, activities, and potential issues.
- Conduct monthly program management meetings involving the key technical disciplines to coordinate work efforts, check on task completion, and review budget conformance.
- Prepare monthly progress reports to SFMTA and Planning that include estimates of percentage completion for tasks that are in progress.
- Update and distribute CPM project schedule once a month.
- Issue minutes identifying action items by responsible party after each meeting.

2. Reports

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

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the San Francisco Municipal Transportation Agency will be Project Manager Kim Walton.

4. Special Provisions

a. Contractor shall respond to all emails and telephone calls within 24 hours.

b. Contractor shall provide the SFMTA at least 48 hours notice if it is unable to meet any milestone contained in Appendix B, along with the reasons for such failure. Along with such notice, Contractor shall submit a proposed timeline to meet the milestone without affecting the timeline for other milestones or the completion date of the project, if feasible. The Contractor's submission of a new milestone date(s) and the SFMTA's acceptance of such date(s) shall not affect Contractor's liability for payment of liquidated damages under Section 19 of this Agreement.

c. All documents must be in compliance with the San Francisco Planning Department's "Consultant Guidelines for the Preparation of Environmental Review Documents."

d. Contractor shall comply with the existing SFMTA Quality Assurance Program and the Federal Transit Administration's Quality Assurance / Quality Control (QA/QC) Guidelines, and develop and submit for SFMTA acceptance Contractor's QA/QC procedures, within 45 days of receipt of the NTP, covering all Contractor's activities and deliverables under this Agreement. The QA/QC procedures must describe the controls to be implemented by the Contractor to assure compliance with SFMTA Quality Program requirements. SFMTA reserves the right to undertake QA/QC audits and surveillances to confirm compliance with the above requirements. The preparation of QA/QC procedures shall be incidental to all tasks and shall not be billed separately to the SFMTA.

	Task and Deliverable	Milestone	Compensation	Amount	Due Date
Note: This Compensation Proposal provides detailed information regarding compensation by task for some, but not all of the tasks outlined in the Description of Services. The Description of Services provides detailed information regarding all deliverables and this plan must be viewed in tandem with the Description of Services.					
1 b	Task 1: Project Kick Off				
1 d	Draft EIR/EA Scope of Work	Delivered	30%	\$7,488	
1 e		Reviewed and Approved by MEA and SFMTA	10%	\$2,496	
1f	Final EIR/EA Scope of Work	Delivered	20%	\$4,992	
1 g		Reviewed and approved by MEA & SFMTA	10%	\$2,496	
1 h	Draft Transportation Engineering Feasibility Scope of Work	Delivered	10%	\$2,496	
1i		Reviewed and approved by MEA & SFMTA	5%	\$1,248	
1j	Final Transportation Engineering Feasibility Scope of Work	Delivered	5%	\$1,248	
1 k		Reviewed and approved by MEA & SFMTA	5%	\$1,248	
1l	Agency matrix	Delivered	5%	\$1,248	
				Total	\$24,959
2 a	Task 2: Public Scoping Meeting and Notice of Intent/Notice of Preparation				
2 b	Draft NOP	Delivered- Reviewed and approved by SFMTA & MEA	20%	\$2,649	
2 c	Final NOP	Delivered	20%	\$2,649	
2 d	One Scoping Meeting	Submittal of materials and attendance	15%	\$1,987	
2 e	Scoping Meeting summary and Transcript	Completed	45%	\$5,960	
				Total	\$13,244
3 a	Task 3: Initial Study (IS)				
3 b	Draft IS I	Delivered	30%	\$8,725	
3 c		Reviewed and approved by MEA & SFMTA	20%	\$5,816	
3 d	Draft IS II	Delivered	15%	\$4,362	

	Task and Deliverable	Milestone	Compensation	Amount	Due Date
Note: This Compensation Proposal provides detailed information regarding compensation by task for some, but not all of the tasks outlined in the Description of Services. The Description of Services provides detailed information regarding all deliverables and this plan must be viewed in tandem with the Description of Services.					
3e		Reviewed and approved by MEA & SFMTA	10%	\$2,908	
3f	Screencheck IS	Delivered	10%	\$2,908	
3g		Reviewed and approved by MEA & SFMTA	5%	\$1,454	
3h	Distribution of Final IS and Affidavit of Mailing	Completed	10%	\$2,908	
Total				\$29,082	120 days from NTP*
4a	Task 4: Transportation Engineering Feasibility Analysis and Report				
4b	Data Collection Tech Memo	Delivered	15%	\$46,190	
4c		Reviewed and approved by MEA & SFMTA	7%	\$19,796	
4d	Feasibility Analysis Tech Memos				
4e	Bus-Loop Tech Memo	Reviewed and approved by MEA & SFMTA	3%	\$9,610	
4f	J-Church to BART Access Tech Memo	Reviewed and approved by MEA & SFMTA	5%	\$14,130	
4g	Ped Bridge/Concourse Level BART Entry Tech Memo	Reviewed and approved by MEA & SFMTA	5%	\$16,010	
4h	35 Eureka Line Extension Tech Memo	Reviewed and approved by MEA & SFMTA	4%	\$11,450	
4i	Bosworth Roundabouts Tech Memo	Reviewed and approved by MEA & SFMTA	5%	\$13,610	
4j	Alternative Analysis Tech Memos				
4l	Bus-Loop Tech Memo	Reviewed and approved by MEA & SFMTA	7%	\$19,870	
4m	J-Church to BART Access Tech Memo	Reviewed and approved by MEA & SFMTA	7%	\$20,740	
4n	Ped Bridge/Concourse Level BART Entry Tech Memo	Reviewed and approved by MEA & SFMTA	6%	\$18,165	
4o	35 Eureka Line Extension Tech Memo	Reviewed and approved by MEA & SFMTA	7%	\$21,220	
4p	Intersection Improvements Tech Memo	Reviewed and approved by MEA & SFMTA	6%	\$16,560	

	Task and Deliverable	Milestone	Compensation	Amount	Due Date
Note: This Compensation Proposal provides detailed information regarding compensation by task for some, but not all of the tasks outlined in the Description of Services. The Description of Services provides detailed information regarding all deliverables and this plan must be viewed in tandem with the Description of Services.					
4q	Traffic Calming Tech Memo	Reviewed and approved by MEA & SFMTA	6%	\$16,560	
4r	Package Compatability Tech Memo	Delivered	7%	\$19,744	
4s		Reviewed and approved by MEA & SFMTA	3%	\$8,462	
4t	Alternative Screening Report	Delivered	6%	\$18,724	
4u		Reviewed and approved by MEA & SFMTA	3%	\$8,024	
4v			Total	\$298,865	
5c	Task 5: Draft EIR/EA		Monthly billing up to the following percentages:		
5f	Project Description	Delivered	5%	\$11,880	
5g		Reviewed and approved by MEA & SFMTA	10%	\$23,760	
5h	Administrative Draft EIR/EA I	Delivered	15%	\$35,640	
5i		Reviewed and approved by MEA & SFMTA	5%	\$11,880	
5j	Administrative Draft EIR/EA II	Delivered	10%	\$23,760	
5k		Reviewed and approved by MEA & SFMTA	5%	\$11,880	
5l	Screen check	Delivered	5%	\$11,880	
5m		Reviewed and approved by MEA & SFMTA	5%	\$11,880	
5n	Publish and Distribute Final Draft EIR/EA	Delivered	10%	\$23,760	
5o	Draft Mitigation Monitoring and Reporting Program	Delivered	5%	\$11,880	
5p	Final Mitigation Monitoring and Reporting Program	Delivered	5%	\$11,880	
5q			Total	\$237,597	485 days from NTP*
6a	Task 6: Response to Comments		Cost reimbursement plus fixed fee, billed monthly.		
6b	Administrative draft C&R I				
6d	Administrative draft C&R II				
6f	Screencheck C&R				

	Task and Deliverable	Milestone	Compensation	Amount	Due Date
Note: This Compensation Proposal provides detailed information regarding compensation by task for some, but not all of the tasks outlined in the Description of Services. The Description of Services provides detailed information regarding all deliverables and this plan must be viewed in tandem with the Description of Services.					
6h	Publish and distribute final Comments and Responses document		Total	\$41,000	
7a	Task 7: Final EIR and Planning Commission Hearing		Cost reimbursement plus fixed fee, billed monthly.		
7b	Admin Draft FEIR/EA				
7d	Screencheck FEIR/EA				
7f	50 copies of the FEIR				
7h	Attend Planning Commission Hearing and SFMTA Board Meeting				
Total				\$23,707	550 days from NTP*
8b	Project Management		Cost reimbursement billed monthly.		
8c	Schedule and hold 1-hour, bi-weekly project team meetings via conference call (for up to 18 months/36 calls)				
8d	Conduct monthly program management meetings (for up to 18 months)				
8e	Prepare monthly progress reports to SFMTA (for up to 18 months)				
8f	Update and distribute project schedule once a month (for up to 18 months)				
8g	Manage and coordinate Transportation Feasibility (Task 4) Process				
Total				\$54,668	
PROJECT TOTAL				\$723,122	Up to 18 months

Appendix C

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

1. 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. **Consultant** 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** is the current designation for the former Urban Mass Transportation Administration. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administration shall be deemed a reference to the Federal Transit Administration.
- E. **Federal Transit Administrator** is the current designation for the former Urban Mass Transportation Administrator. Any reference in any law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator shall be deemed a reference to the Federal Transit Administrator.
- F. **FTA** is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. DOT. FTA replaces the acronym UMTA.
- G. **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.
- H. **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.
- I. **Government** means the United States of America and any executive department or agency thereof.
- J. **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.
- K. **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.
- L. **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.

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

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

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

2. **FEDERAL CHANGES**

Consultant 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 Agreement (Form FTA MA(3) dated October, 1996) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Consultant's failure to so comply shall constitute a material breach of this contract.

3. **AUDIT AND INSPECTION**

A. The Consultant 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 Consultant which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

B. The Consultant 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 Consultant 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 Consultant 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).

4. **DEBARMENT AND SUSPENSION**

The Consultant agrees as follows:

A. The Consultant shall supply certifications on debarment and suspension and otherwise comply with the requirements of Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101; and U.S. DOT regulations on Debarment and Suspension at 49 CFR Part 29.

B. (Applicable to contracts in excess of \$100,000) Consultant agrees to refrain from awarding any third party subcontract of any amount (at any tier) to a debarred or suspended subconsultant.

C. Before entering into any third party subcontract in excess of \$100,000, Consultant agrees to obtain a debarment and suspension certification from each prospective third party subconsultant (at any tier). The certificate shall contain information about the debarment and suspension status and other specific information about the subconsultant and its "principals," as defined at 49 CFR § 29.105(p). An example of the appropriate certification is contained in 49 CFR Part 29, Appendix B.

D. Consultant shall provide City with a copy of each conditioned debarment or suspension certification provided by a prospective third party subconsultant (at any tier).

5. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONSULTANT

A. The City and Consultant 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, Consultant, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

B. The Consultant 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 subconsultant who will be subject to its provisions.

6. 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant 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 Consultant agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Consultant 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 Consultant 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 Consultant agrees to comply with any implementing requirements FTA may issue.

C. The Consultant 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.

7. PATENT RIGHTS

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 Consultant 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 Consultant's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Consultant 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 Consultant 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.

8. RIGHTS IN DATA AND COPYRIGHTS

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, Consultant may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Consultant 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 Consultant 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 Consultant

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 Consultant 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 Consultant 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 Consultant 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 Consultant and incorporated into the work carried out under this Agreement, provided that the City or Consultant identifies the data in writing at the time of delivery of the work.

(7) **Application to Subconsultants.** Unless FTA determines otherwise, the Consultant 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 Consultant's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Consultant 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 Consultant 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.

9. EMPLOYEE PROTECTIONS

A. **Overtime requirements** - No Consultant or subconsultant 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 Consultant and any subconsultant responsible therefore shall be liable for the unpaid wages. In addition, Consultant and subconsultants 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 Consultant or subconsultant under any such contract or any other Federal contract with the same prime Consultant, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Consultant, such sums as may be determined to be necessary to satisfy any liabilities of such Consultant or subconsultant for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (B) of this section.

D. **Subcontracts** - The Consultant or subconsultant shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subconsultants to include these clauses in any lower tier subcontracts. The prime Consultant shall be responsible for compliance by any subconsultant or lower tier subconsultant with the clauses set forth in this section.

E. **Payrolls and basic records** - Payrolls and basic records relating thereto shall be maintained by the Consultant during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the Project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Consultant shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Consultants employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

10. ENERGY CONSERVATION REQUIREMENTS

The Consultant agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

11. CLEAN WATER REQUIREMENTS (The Clean Water requirements apply to all contracts in excess of \$100,000.)

A. The Consultant 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. Consultant 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 Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

12. CLEAN AIR (The Clean Air requirements apply to all contracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.)

A. Consultant 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 Consultant 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 Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

13. METRIC SYSTEM

To the extent practicable and feasible, the City will accept products and services with dimensions expressed in the metric system of measurement.

14. PRIVACY

If Consultant or its employees administer any system of records on behalf of the Federal Government, Consultant 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, Consultant agrees to obtain the express consent of the Federal Government before it or its employees operate a system of records on behalf of the Government. Consultant acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals administering a system of records for the Federal Government under the Project, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Consultant 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.

15. DRUG AND ALCOHOL TESTING

To the extent Consultant, its subconsultants or their employees perform a safety-sensitive function under the Agreement, Consultant agrees to comply with, and assure compliance of its subconsultants, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Prohibited Drug Use in Transit Operations," 49 CFR Parts 653 and "Prevention of Alcohol Misuse in Transit Operations," 49 CFR Part 654.

16. TERMINATION FOR CONVENIENCE OF CITY

See Agreement Terms and Conditions.

17. TERMINATION FOR DEFAULT (required by FTA for all contracts in excess of \$10,000)

See Agreement Terms and Conditions.

18. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

A. The Consultant 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 Consultant 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 Consultant 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 Consultant to the extent the Federal Government deems appropriate.

B. The Consultant 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 Consultant, to the extent the Federal Government deems appropriate.

C. The Consultant 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 subconsultant who will be subject to the provisions.

19. **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 4220.1D, dated April 15, 1996, 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 Consultant shall not perform any act, fail to perform any act, or refuse to comply with any City request that would cause the City to be in violation of the FTA terms and conditions.

20. **FLY AMERICA REQUIREMENTS** - The Consultant 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 Consultants 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 Consultant 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 Consultant agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

THIS PRINT COVERS CALENDAR ITEM NO. : 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Safety, Security, and Enforcement/Substance Abuse Program

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute an agreement with City Services, 2425 Church Lane #20, San Pablo, California, 94806 to provide urine and breath collections services for an amount not to exceed \$600,000 and a term not to exceed three years, with an option to extend the contract for up to two additional years at the sole discretion of the Executive Director/CEO.

SUMMARY:

- Collection of urine and breath samples must be executed by qualified persons who meet the requirements for such collections as defined in 49 CFR Parts 40 and 655.
- The current contract with Howger Services for on-site mobile collection is due to expire on November 30, 2008.
- On August 5, 2008, the SFMTA Board passed Resolution No. 08-136, authorizing the Executive Director/CEO to issue a Request for Proposals (RFP) for on-site and off-site urine and breath collection services.
- Following administrative review and oral interviews, the RFP review panel ranked City Services as the highest-rated proposer for on-site collection services.
- Approval of the resolution will authorize the Executive Director/CEO to execute a professional services agreement with City Services.

ENCLOSURES:

1. SFMTAB Resolution
2. Professional Services Agreement
3. Compilation of Scores for On-Site Collection

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO: Reggie Smith

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The purpose of this calendar item is to seek approval to enter into a contract with a new company to conduct on-site urine and breath collections for the SFMTA's safety-sensitive workers.

GOAL

Benefit to the SFMTA 2008-2012 Strategic Plan:

The SFMTA will further the following goals of the Strategic Plan through continuation of the on-site collections contract:

Goal 1-Customer Focus

1.1-Improve safety and security across all modes of transportation.

Goal 3 –External Affairs-Community Relations

3.3-Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life.

Goal 5-MTA Workforce

5.5-Improve SFMTA's ability to grow and retain strong leadership.

5.8-Improve work/life balance of employees

DESCRIPTION

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

The SFMTA has been contracting with Howger Services to perform mobile UDC and BAT services for random, reasonable suspicion and post-accident testing. The contract with Howger Services is due to expire on November 30, 2008.

On August 5, 2008, this Board passed Resolution No.08-136, which authorized the Executive Director/CEO to request proposals, evaluate proposers and negotiate a contract with a qualified firm or firms that have certified personnel and necessary equipment to conduct urine and breath collection as described in the Federal Rules. The SFMTA released an RFP for collection services on August 11, 2008 and received submissions from Accurate C&S Services, Kendra Tomcik, D.C. and City Services for on-site collection services. City Services submitted a proposal for mobile on-site collections services using a recreational vehicle.

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The Substance Abuse Program Manager convened an impartial review panel under the direction of the Contract Compliance Office to evaluate the RFPs. The panel ranked City Services as the highest-rated proposer to provide on-site collection. A compilation of the scores of the RFP and the oral interview is attached.

The owner of City Services, Kenneth Porter, is a current employee of Howger Services. Mr. Porter has six years experience in collecting urine and breath specimens from SFMTA employees. He is forming his own company, City Services, following the retirement of Ralph Gerken, the President of Howger Services.

The SFMTA requests that the SFMTA Board authorize the Executive Director/CEO to execute a personal services agreement with City Services to provide on-site mobile collection services for an amount not to exceed \$600,000 and term not to exceed three years, with an option to extend the agreement up to an additional two years at the sole discretion of the Executive Director/CEO.

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

ALTERNATIVES CONSIDERED

Staff considered purchasing the necessary equipment and hiring of personnel to provide collection services as opposed to contracting the services to a vendor.

Staff decided that contracting these services would be the most productive and cost effective means in providing collection services.

FUNDING IMPACT

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

The LBE sub-consulting participation goals have been waived for this project.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

This agreement received authorization from the Civil Services Commission on September 15, 2008.

RECOMMENDATION

Authorize the Executive Director/CEO to execute a personal services agreement with City Services to provide on-site mobile collection services.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

WHEREAS, On August 5, 2008, the San Francisco Municipal Transportation Agency Board of Directors approved Resolution No. 08-136, which authorized the Executive Director/CEO to request proposals and negotiate a contract or contracts with a qualified urine drug collector and breath alcohol technicians to perform either on-site or off-site collection services or both on-site and off-site collection services for the SFMTA's drug and alcohol testing program; and

WHEREAS, In response to a Request for Proposals issued on August 11, 2008, three firms submitted proposals for on-site collection services; and,

WHEREAS, After a thorough review of the proposals by the review panel, the review panel selected City Services as the highest-rated proposer to provide on-site drug and alcohol collection services for the SFMTA; and

WHEREAS, The Executive Director/Chief Executive Officer recommends that a contract be awarded to the highest-rated proposer, City Services, to provide the required professional services now therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute an agreement with City Services, 2425 Church Lane #20, San Pablo, California, 94806 to provide on-site mobile urine and breath collection services for an amount not to exceed \$600,000 and a term not to exceed three years with an option to extend the agreement for up to two additional years at the sole discretion of the Executive Director/CEO.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Agreement between the City and County of San Francisco and
City Services**

This Agreement is made this 1st day of December 2008, in the City and County of San Francisco, State of California, by and between City Services, 2425 Church Lane #20, San Pablo, California, 94806 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

- A. The SFMTA wishes to engage the services of a mobile breath and urine specimen collector for on-site collections.
- B. A Request for Proposals ("RFP") was issued on August 11, 2008 and City selected Contractor as the highest-qualified scorer pursuant to the RFP.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract.
- D. Approval for this Agreement was obtained when the Civil Service Commission approved PSC Number 4023-08/09 on September 15, 2008.

Now, THEREFORE, the parties agree as follows:

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

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

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

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from December 1, 2008 through November 30, 2011, with an option to extend this agreement for an additional two (2) years at the sole discretion of the Executive Director/CEO of the SFMTA.

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

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

5. Compensation

Compensation shall be made in monthly payments on or before the thirtieth (30th) day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director/Chief Executive Officer, in his or her sole discretion, concludes has been performed as of the thirtieth (30th) day of the immediately preceding month. In no event shall the amount of this Agreement exceed Six Hundred Thousand Dollars (\$600,000.00). The breakdown of costs associated with this Agreement appears in Attachment B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

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

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

6. Guaranteed Maximum Costs

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

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

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

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

7. Payment; Invoice Format

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

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

8. Submitting False Claims; Monetary Penalties

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

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

10. Taxes

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

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

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

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

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

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

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

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

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

13. Responsibility for Equipment

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

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

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

b. Payment of Taxes and Other Expenses.

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

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from

future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

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

15. Insurance

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

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

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

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

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

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

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

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

Municipal Transportation Agency
Substance Abuse Program
949 Presidio Avenue, Room 224

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

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

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

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

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

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

16. Indemnification

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

either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

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

17. Incidental and Consequential Damages

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

18. Liability of City

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

19. Liquidated Damages

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

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

20. Default; Remedies

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

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

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

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

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

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

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

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

21. Termination for Convenience

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

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

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

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

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

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

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

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

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

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

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

22. Rights and Duties upon Termination or Expiration

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

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

23. Conflict of Interest

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

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

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

To Contractor: Kenneth Porter, President
City Services
2425 Church Lane #20
San Pablo, California 94806
(415) 237-4255
rayporterjr@gmail.com

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

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

28. Audit and Inspection of Records

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

29. Subcontracting

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

30. Assignment

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

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

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

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

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

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

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

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

b. Compliance and Enforcement

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

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

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or

expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

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

b. Subcontracts

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

35. MacBride Principles—Northern Ireland

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all

other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

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

Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

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

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

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

44. Requiring Health Benefits for Covered Employees

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

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

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

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days

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

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

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

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

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

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall

be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

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

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

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

(6) Set the term of the requirements.

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

Contractor agrees:

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

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

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

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

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

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

f. Subcontracts

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

46. Prohibition on Political Activity with City Funds

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

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

47. Preservative-treated Wood Containing Arsenic

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

48. Modification of Agreement

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

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the SFMTA, who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws

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

54. Services Provided by Attorneys

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

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

56. Severability

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

57. Protection of Private Information

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

58. Graffiti Removal

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

quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

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

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

59. Food Service Waste Reduction Requirements

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

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

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

CITY	CONTRACTOR
<p>Municipal Transportation Agency</p> <hr/> <p>Nathaniel P. Ford, Sr. Executive Director/CEO</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p> <p>Municipal Transportation Agency Board of Directors Resolution No. _____ Dated: _____</p> <p>Attest:</p> <hr/> <p>Secretary, MTAB</p>	<p>City Services</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <hr/> <p>Kenneth Porter President 2425 Church Lane #20 San Pablo, California 94806</p> <p>City vendor number-77716</p>

Attachments

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

ATTACHMENT A

OUTLINE OF SERVICES

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

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

CONTRACTOR REQUIREMENTS

A. Project Manager

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

B. Collection Site Personnel

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

C. Collection Sites

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

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

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

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

D. Collection Site Procedures for Urine Drug Testing

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

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

E. Shipment of Specimens to Lab

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

F. Collection Under Direct Observation

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

G. Collection for Breath Alcohol

Collection procedures should be designed to comply with 49 CFR Part 40, Subparts J, K, L, M, and N, including, but not limited to: a) Breath alcohol collection shall be administered by a certified Breath Alcohol Technician (BAT) or Screening Test Technician (STT); b) BAT shall only use an Evidential Breath Testing Device (EBT) and STT shall only use an Alcohol Screening Device (ASD) that is approved by the National Highway Traffic Safety Administration (NHTSA); c) All EBT's used must be externally calibrated in accordance with the plan developed by the manufacturer of the device for quality assurance; d) BAT and STT shall only use U.S. DOT Breath Alcohol Testing Forms; e) SFMTA consent to test forms must be completed; f) BAT and STT shall follow all rules in 49 CFR Part 40, Subparts L, M and N for operation of the EBT or ASD; g) If initial test is .02 or greater, BAT or STT shall perform a confirmation test at least 15 minutes and no later than 30 minutes after the completion of the screening test.

H. Calibration Checks

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

I. Documentation of Employee Refusal to Cooperate

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

J. Chain of Custody

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

K. Integrity and Identity of Specimen

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

1. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks so the reservoir of water in the toilet bowl always remains blue. There shall be no source of water (e.g., no shower or sink) in the enclosure where urination occurs.

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

The employee shall remain at the collection site and will be provided with no more than 40 oz of water to drink until a new specimen can be obtained. Another sample must be taken

within three (3) hours. The three (3) hours do not start until the donor has made his/her first attempt.

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

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

The program manager or designee shall then contact the MRO. The MRO may refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen (in pre-employment testing, if the employer does not wish to hire the individual, the MRO is not required to make such a referral).

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

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

21. If a test is cancelled due to collector error, Contractor shall perform a new test collection at no charge.

L. Collection Control

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

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

M. Equipment

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

N. Records Management

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

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

O. Qualifications

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

**ATTACHMENT B
CALCULATION OF CHARGES**

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

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

<u>Description</u>	<u>Cost</u>
Drug Screen	\$45.00
Alcohol Test	\$45.00
After Hours Testing (5:00 pm -8:00 am)	\$150.00
Alcohol Test Confirmation Fee	0.00
Waiting Time Charge	0.00
On-Site Standby Time per Minute*	\$1.25
Other, describe:	
Testing of other than Random or Follow Up done while doing scheduled testing.	\$15.00
Observer of opposite sex of the collector if required to be provided by contractor. Rate per hour during all scheduled testing.	\$25.00

* Standby time for on-site collection is calculated by taking the total minutes on the job (minimum four (4) hours per scheduled shift) and subtracting 30 minutes for each Random or Follow Up (both drug and alcohol) and subtracting 10 minutes for each test other than random or follow up (both drug and alcohol).

- Combined Technical & Oral Review Panel Scores –
 (08-1002) RFP: On-Site Without and With Mobile Breath and Urine Collection Services

Technical Review 80 Points Maximum
 Interview 20 Points Maximum

Technical Review Panel September 23, 2008
 Interview Panel October 6, 2008

On-Site Without Mobile Breath and Urine Collection Services

FIRM NAME		REVIEW TYPE	1	2	3	FINAL TOTAL RAW SCORE	AVG. SCORE	RANKING
1a	City Services	Technical	70	76	72	218	72.7	1
1b		Oral	18	19	19	56	18.7	
1c		Combined	88	95	91	274	91.3	
2a	Accurate C&S Services	Technical	65	66	67	198	66.0	2
2b		Oral	17	17	12	46	15.3	
2c		Combined	82	83	79	244	81.3	

On-Site With Mobile Breath and Urine Collection Services

FIRM NAME		REVIEW TYPE	1	2	3	FINAL TOTAL RAW SCORE	AVG. SCORE	RANKING
3a	City Services	Technical	70	78	72	220	73.3	Sole proposer
3b		Oral	17	19	19	55	18.3	
3c		Combined	87	97	91	275	91.7	

ALL THE FIRMS HAVE INDICATED A COMMITMENT TO COMPLY WITH THE LBE/NONDISCRIMINATION REQUIREMENTS

ALL EVALUATORS' NAMES CONFIDENTIAL

1 = Atalay, Tulay 2 = Avalos, Esther 3 = Cabrera, Rafael

- Combined Technical & Oral Review Panel Scores –
 (08-1002) RFP: On-Site Without and With Mobile Breath and Urine Collection Services

Technical Review 80 Points Maximum
 Interview 20 Points Maximum

Technical Review Panel September 23, 2008
 Interview Panel October 6, 2008

On-Site Without Mobile Breath and Urine Collection Services

FIRM NAME		REVIEW TYPE	1	2	3	FINAL TOTAL RAW SCORE	AVG. SCORE	RANKING
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On-Site With Mobile Breath and Urine Collection Services

FIRM NAME		REVIEW TYPE	1	2	3	FINAL TOTAL RAW SCORE	AVG. SCORE	RANKING
3a	City Services	Technical	70	78	72	220	73.3	Sole proposer
3b		Oral	17	19	19	55	18.3	
3c		Combined	87	97	91	275	91.7	

ALL THE FIRMS HAVE INDICATED A COMMITMENT TO COMPLY WITH THE LBE/NONDISCRIMINATION REQUIREMENTS

ALL EVALUATORS' NAMES CONFIDENTIAL

THIS PRINT COVERS CALENDAR ITEM NO. : 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Safety, Security, and Enforcement/Substance Abuse Program

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute an agreement with Accurate C&S Services, 675 Hegenberger Road, Suite 227, Oakland, California 94621 to provide off-site urine and breath collections services for an amount not to exceed \$300,000 and a term not to exceed three years, with an option to extend the contract for up to an additional two years at the sole discretion of the Executive Director/CEO.

SUMMARY:

- Collection of urine and breath samples must be executed by qualified persons who meet the requirements for such collections as defined in 49 CFR Parts 40 and 655.
- The current contract with Concentra Medical Center for off-site collections is due to expire on December 30, 2008.
- On August 5, 2008, the SFMTA Board passed Resolution No. 08-136, authorizing the Executive Director/CEO to issue a Request for Proposals (RFP) for on-site and off-site urine and breath collection services.
- Following administrative review and oral interviews, the RFP review panel ranked Accurate C&S Services as the highest-rated proposer for off-site collection services.
- Approval of the resolution will authorize the Executive Director/CEO to execute a professional services agreement with Accurate C&S Services.

ENCLOSURES:

1. SFMTAB Resolution
2. Professional Services Agreement
3. Compilation of Scores for Off-Site Collection

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO: Reggie Smith

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The purpose of this calendar item is to seek approval to enter into a contract with a new company to conduct off-site urine and breath collections for the SFMTA's safety-sensitive workers.

GOAL

Benefit to the SFMTA 2008-2012 Strategic Plan:

The SFMTA will further the following goals of the Strategic Plan through continuation of the off-site collections contract:

Goal 1-Customer Focus

1.1-Improve safety and security across all modes of transportation.

Goal 3 –External Affairs-Community Relations

3.3-Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life.

Goal 5-MTA Workforce

5.5-Improve SFMTA's ability to grow and retain strong leadership.

5.8-Improve work/life balance of employees

DESCRIPTION

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

The SFMTA has been contracting with Concentra Medical Services to perform stationary UDC and BAT services for pre-employment, 90-day pre-employment, reasonable suspicion and after-hours post-accident testing, which contract is due to expire on December 30, 2008. In addition, Howger Services has been under contract to perform mobile UDC and BAT services for random, reasonable suspicion and post-accident testing. The contract with Howger Services is due to expire on November 30, 2008.

On August 5, 2008, this Board passed Resolution No.08-136, which authorized the Executive Director/CEO to request proposals, evaluate proposers and negotiate a contract with a qualified firm or firms that have certified personnel and necessary equipment to conduct urine and breath collection as described in the Federal Rules. The SFMTA released an RFP for collection services on August 11, 2008 and received submissions from Accurate C&S Services, Concentra Medical Centers, and Kendra Tomcik, D.C for off-site collection services.

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The Substance Abuse Program Manager convened an impartial review panel under the direction of the Contract Compliance Office to evaluate the RFPs. The panel ranked Accurate C&S Services as the highest-rated proposer to provide off-site collection. A compilation of the scores of the RFP and the oral interview is attached.

Accurate C&S Services is managed and owned by Regina Jones BSN, RN and has been providing collection services for over six years. Ms Jones and her staff of certified collectors provide collection services to the California Athletic Commission, Super Shuttle of San Francisco, JM&R Trucking, Quest Diagnostics, and AC Transit. Recently, Accurate was awarded the collection contract with the San Francisco Police Department and is presently in negotiation to finalize the agreement.

Accurate C&S Services has a satellite office at the Renaissance Entrepreneurship Center, 275 5th Street Suite 419, San Francisco, CA 94103, where the firm will provide services to the SFMTA.

The SFMTA requests that the SFMTA Board authorize the Executive Director/CEO to execute a personal services agreement with Accurate C&S Services to provide off-site collection services for an amount not to exceed \$300,000 and term not to exceed three years, with an option to extend the agreement for up to an additional two years at the sole discretion of the Executive Director /CEO.

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

ALTERNATIVES CONSIDERED

Staff considered purchasing the necessary equipment and hiring of personnel to provide collection services as opposed to contracting the services to a vendor.

Staff decided that contracting these services would be the most productive and cost effective means in providing collection services.

FUNDING IMPACT

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

The LBE sub-consulting participation goals have been waived for this project.

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OTHER APPROVALS RECEIVED OR STILL REQUIRED

This agreement received authorization from the Civil Service Commission on September 15, 2008.

RECOMMENDATION

Authorize the Executive Director/Chief Executive Officer to execute a personal services agreement with Accurate C&S Services to provide off-site collection services.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

WHEREAS, On August 5, 2008, the San Francisco Municipal Transportation Agency Board of Directors approved Resolution No. 08-136, which authorized the Executive Director/CEO to request proposals and negotiate a contract or contracts with a qualified urine drug collector and breath alcohol technicians to perform either on-site or off-site collection services or both on-site and off-site collection services for the SFMTA's drug and alcohol testing program; and

WHEREAS, In response to a Request for Proposals issued on August 11, 2008, three firms submitted proposals for off-site collection services; and,

WHEREAS, After a thorough review of the proposals, the review panel selected Accurate C&S Services as the highest-rated proposer to provide off-site drug and alcohol collection services for the SFMTA; and

WHEREAS, The Executive Director/CEO recommends that a contract be awarded to the highest-rated proposer, Accurate C&S Services, to provide the required professional services; now, therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute an agreement with Accurate C&S Services, 675 Hegenberger Road, Suite 227, Oakland, California 94621, to provide off-site urine and breath collections services for an amount not to exceed \$300,000 and a term not to exceed three years, with an option to extend the contract for up to two additional years at the sole discretion of the Executive Director/CEO.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Agreement between the City and County of San Francisco and
Accurate C&S Services**

This Agreement is made this 1st day of December 2008, in the City and County of San Francisco, State of California, by and between Accurate C&S Services, 675 Hegenberger Road, Suite 227, Oakland, California, 94115 (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (“SFMTA”).

Recitals

- A. The SFMTA wishes to engage the services of a breath and urine specimen collector for off-site collections.
- B. A Request for Proposals (“RFP”) was issued on August 11, 2008 and City selected Contractor as the highest-qualified scorer pursuant to the RFP.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract.
- D. Approval for this Agreement was obtained when the Civil Service Commission approved PSC No. 4023-08/09 on September 15, 2008.

Now, THEREFORE, the parties agree as follows:

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

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

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

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from December 1, 2008 through November 30, 2011, with an option to extend this agreement for up to an additional two (2) years at the sole discretion of the Executive Director/CEO of the SFMTA.

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

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

5. Compensation

Compensation shall be made in monthly payments on or before the thirtieth (30th) day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director/Chief Executive Officer, in his or her sole discretion, concludes has been performed as of the thirtieth (30th) day of the immediately preceding month. In no event shall the amount of this Agreement exceed Three Hundred Thousand Dollars (\$300,000.00). The breakdown of costs associated with this Agreement appears in Attachment B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

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

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

6. Guaranteed Maximum Costs

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

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

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

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

7. Payment; Invoice Format

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

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

8. Submitting False Claims; Monetary Penalties

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

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

10. Taxes

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

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

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

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

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

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

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

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

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

13. Responsibility for Equipment

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

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

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

b. Payment of Taxes and Other Expenses.

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

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from

future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

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

15. Insurance

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

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

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

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

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

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

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

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

Municipal Transportation Agency
Substance Abuse Program
949 Presidio Avenue, Room 224

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

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

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

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

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

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

16. Indemnification

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

either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

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

17. Incidental and Consequential Damages

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

18. Liability of City

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

19. Liquidated Damages

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

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

20. Default; Remedies

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

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

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

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

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

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

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

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

21. Termination for Convenience

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

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

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

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

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

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

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

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

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

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

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

22. Rights and Duties upon Termination or Expiration

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

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

23. Conflict of Interest

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

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

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

To Contractor: Regina Jones, General Manager
Accurate C&S Services
675 Hegenberger Road, Suite 227
Oakland, California 94621
(510) 777-0905
rjones@accuratemgmt.com

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

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

28. Audit and Inspection of Records

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

29. Subcontracting

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

30. Assignment

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

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

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

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

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

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

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

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

b. Compliance and Enforcement

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

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

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this

Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

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

b. Subcontracts

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

35. MacBride Principles—Northern Ireland

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all

other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

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

Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

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

the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

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

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

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

44. Requiring Health Benefits for Covered Employees

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

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

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

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days

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

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

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

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

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

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

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

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

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

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

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

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

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

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

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall

be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

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

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

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

(6) Set the term of the requirements.

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

Contractor agrees:

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

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

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

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

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

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

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

f. Subcontracts

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

46. Prohibition on Political Activity with City Funds

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

rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

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

48. Modification of Agreement

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

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the SFMTA, who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws

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

54. Services Provided by Attorneys

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

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

56. Severability

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

57. Protection of Private Information

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

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's

property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

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

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

59. Food Service Waste Reduction Requirements

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

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

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

CITY	CONTRACTOR
Municipal Transportation Agency _____	Accurate C&S Services
Nathaniel P. Ford, Sr. Executive Director/CEO	By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
Approved as to Form:	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.
Dennis J. Herrera City Attorney	_____ Regina Jones General Manager 675 Hegenberger Road, Suite 227 Oakland, California 94621 City vendor number-76924
By: _____ Robin M. Reitzes Deputy City Attorney	
Municipal Transportation Agency Board of Directors Resolution No. _____ Dated: _____	
Attest: _____	
Secretary, MTAB	

Attachments

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

ATTACHMENT A

OUTLINE OF SERVICES

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

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

CONTRACTOR REQUIREMENTS

A. Project Manager

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

B. Collection Site Personnel

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

C. Collection Sites

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

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

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

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

D. Collection Site Procedures for Urine Drug Testing

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

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

E. Shipment of Specimens to Lab

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

F. Collection Under Direct Observation

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

G. Collection for Breath Alcohol

Collection procedures should be designed to comply with 49 CFR Part 40, Subparts J, K, L, M, and N, including, but not limited to: a) Breath alcohol collection shall be administered by a certified Breath Alcohol Technician (BAT) or Screening Test Technician (STT); b) BAT shall only use an Evidential Breath Testing Device (EBT) and STT shall only use an Alcohol Screening Device (ASD) that is approved by the National Highway Traffic Safety Administration (NHTSA); c) All EBT's used must be externally calibrated in accordance with the plan developed by the manufacturer of the device for quality assurance; d) BAT and STT shall only use U.S. DOT Breath Alcohol Testing Forms; e) SFMTA consent to test forms must be completed; f) BAT and STT shall follow all rules in 49 CFR Part 40, Subparts L, M and N for operation of the EBT or ASD; g) If initial test is .02 or greater, BAT or STT shall perform a confirmation test at least 15 minutes and no later than 30 minutes after the completion of the screening test.

H. Calibration Checks

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

I. Documentation of Employee Refusal to Cooperate

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

J. Chain of Custody

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

K. Integrity and Identity of Specimen

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

1. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks so the reservoir of water in the toilet bowl always remains blue. There shall be no source of water (e.g., no shower or sink) in the enclosure where urination occurs.

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

The employee shall remain at the collection site and will be provided with no more than 40 oz of water to drink until a new specimen can be obtained. Another sample must be taken

within three (3) hours. The three (3) hours do not start until the donor has made his/her first attempt.

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

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

The program manager or designee shall then contact the MRO. The MRO may refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen (in pre-employment testing, if the employer does not wish to hire the individual, the MRO is not required to make such a referral).

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

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

21. If a test is cancelled due to collector error, Contractor shall perform a new test collection at no charge.

L. Collection Control

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

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

M. Equipment

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

N. Records Management

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

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

O. Qualifications

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

**ATTACHMENT B
CALCULATION OF CHARGES**

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

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

<u>Description</u>	<u>Cost</u>
Drug Screen	\$29.00
Alcohol Test	\$38.00
After Hours Testing (5:00 pm -8:00 am)	\$150.00
Alcohol Test Confirmation Fee	0.00
Off Site Waiting Time Charge - after first 15 minutes	\$1.00 per minute
On-Site Standby Time per Minute*	\$1.00
Other, describe:	
Observer of opposite sex of the collector if required to be provided by Contractor. Rate per hour during all scheduled testing.	\$25.00

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

<u>Description</u>	<u>Cost</u>
Fee for shy bladder/lung evaluation	\$75.00
Staff witness testimony	\$50.00 per hour
Expert witness testimony (physician)	\$200.00 per hour

- Combined Technical & Oral Review Panel Scores -

-
(08-1003) RFP: Off-Site Breath and Urine Collection Services

**Technical Review 80 Points Maximum
 Interview 20 Points Maximum**

**Technical Review Panel September 23, 2008
 Interview Panel October 6, 2008**

FIRM NAME		REVIEW TYPE	1	2	3	FINAL TOTAL RAW SCORE	AVERAGE SCORE	RANKING
1a	Accurate C&S Services	Technical	70	65	70	205	68.3	1
1b		Oral	18	15	12	45	15	
1c		Combined	88	80	82	250	83.3	
2a	Concentra Medical Centers (Occupational Health Centers of California, dba)	Technical	65	65	60	190	63.3	2
2b		Oral	19	19	20	58	19.3	
2c		Combined	84	84	80	248	82.7	

ALL THE FIRMS HAVE INDICATED A COMMITMENT TO COMPLY WITH THE LBE/NONDISCRIMINATION REQUIREMENTS

ALL EVALUATORS' NAMES CONFIDENTIAL

- Combined Technical & Oral Review Panel Scores -

1 = Atalay, Tulay
 2 = Avalos, Esther
 3 = Cabrera, Rafael

- Combined Technical & Oral Review Panel Scores -

(08-1003) RFP: Off-Site Breath and Urine Collection Services

Technical Review 80 Points Maximum
Interview 20 Points Maximum

Technical Review Panel September 23, 2008
Interview Panel October 6, 2008

FIRM NAME		REVIEW TYPE	1	2	3	FINAL TOTAL RAW SCORE	AVERAGE SCORE	RANKING
1a	Accurate C&S Services	Technical	70	65	70	205	68.3	1
1b		Oral	18	15	12	45	15	
1c		Combined	88	80	82	250	83.3	
2a	Concentra Medical Centers (Occupational Health Centers of California, dba)	Technical	65	65	60	190	63.3	2
2b		Oral	19	19	20	58	19.3	
2c		Combined	84	84	80	248	82.7	

ALL THE FIRMS HAVE INDICATED A COMMITMENT TO COMPLY WITH THE LBE/NONDISCRIMINATION REQUIREMENTS

ALL EVALUATORS' NAMES CONFIDENTIAL

- Combined Technical & Oral Review Panel Scores -

THIS PRINT COVERS CALENDAR ITEM NO. : 10.7

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning & Development

BRIEF DESCRIPTION:

Approving the plans and specifications, and authorizing bid call for San Francisco Municipal Transportation Agency Contract No.1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment Project.

SUMMARY:

- On July 19, 2005, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 05-121, authorizing the award of Contract No. 1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project, for a contract amount of \$120,000,000.
- Due to budgetary constraints, the award amount for Contract No. 1182R1 was limited and could not include certain shop equipment that were part of the intended project scope: wheel truing machine, blowdown equipment, rail car mover and miscellaneous equipment.
- SFMTA recently received Proposition 1B Infrastructure Bond funds (I Bond funds) from the State, dedicated for adding back these equipment to the Metro East Facility. California I Bond funds will fund the entire contract. No Federal funding will be used for this contract.
- The scope of work under Contract No. 1232 consists of procuring and installing a new wheel truing machine at Metro East Facility, along with blowdown equipment. The scope of work also includes procuring a rail car mover and other miscellaneous shop equipment.
- The Engineer's estimated cost for Contract No. 1232 is \$4,000,000, with substantial completion within 540 calendar days from the written notice to proceed with the work.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Finance Plan

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 seek authorization from San Francisco Municipal Transportation Agency Board of Directors for a bid call for San Francisco Municipal Transportation Agency (SFMTA) Contract No.1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment Project.

This new contract is needed to add shop equipment to the new Metro East Facility, including a wheel truing machine, so as to enable the facility to further relieve the overcrowded conditions at Metro Green.

GOAL

SFMTA Contract No. 1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment, 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.
- 1.5 Increase percentage of trips using more sustainable modes.

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

DESCRIPTION

On July 19, 2005, the SFMTA Board of Directors adopted Resolution No. 05-121, which awarded Municipal Railway Contract No. MR-1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project, to Stacy and Witbeck, Inc., for a contract amount of \$120,000,000. The contract work included building a brand new 180,000 square feet light rail vehicle maintenance shop/administration building and an 80-light rail vehicle capacity storage yard, all within a 13-acre site at 25th and Illinois Streets. The work under Contract No. MR-1182R1 is now substantially completed. Light rail vehicles have been operating out of the Metro East Facility since September 20, 2008. Contract No. MR-1182R1 is now in the closeout phase.

Prior to the award of Contract No. MR-1182R1, SFMTA recognized that not all of the intended project scope could be provided within the established budget. Absent any additional funding that could be made available immediately to increase the contract award amount, the construction and operation divisions, with concurrence from senior management, recommended that certain functions such as wheel truing be centralized at Metro Green until a new funding source is identified to procure/install these shop equipment at Metro East.

PAGE 3.

After the passage of State Proposition 1B, the Highway Safety, Traffic Reduction Air Quality and Port Security Bond Act in 2006, SFMTA applied to the State for the Proposition 1B funds for various project needs within the Agency. The Metro East Project was one of the projects identified with critical needs. Recently, SFMTA received the Proposition 1B funding sufficient to allow for work to proceed with the work. The State has stipulated that this allocated bond fund received by SFMTA be used exclusively for the procurement and installation of wheel truing machine, blowdown equipment, portable shop equipment for Metro East.

Staff proceeded to complete the plans and specifications to add back the above deferred scope elements under Contract No. 1232. Specifically, the majority of the scope of work under Contract No. 1232 will involve procurement and installation of a new lathe-type of wheel truing machine at Metro East. The scope of work will also include the procurement and installation of equipment for the blowdown pit: a hot water pressure washer and breathable compressed air system. Additionally, the scope of work will include the procurement of a rail car mover and other miscellaneous shop equipment such as repair benches/stands that will require custom fabrication.

While the miscellaneous equipment could be procured as the first order of work within the contract, the procurement of the wheel truing machine will involve a long lead time. The time allotted to substantially complete the work under Contract No. 1232 is 540 calendar days. The liquidated damages are \$2,500 per day for failure to complete the work on time.

The Contract Compliance Office has reviewed this calendar item and established a 5% Local Business Enterprise (LBE) participation goal for this contract.

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

The plans and specifications are available for review at 1 South Van Ness Avenue, 3rd Floor, SFMTA Transportation Planning and Development Division.

ALTERNATIVES CONSIDERED

Had funding not been available, the alternative to adding the above functions at Metro East, such as the wheel truing function, is to have these functions be continued to be centralized at Metro Green. This would mean having LRVs shuttle back and forth between the two facilities, which staff analyzed to be inefficient.

Another alternative was to outsource the wheel truing and other functions. This, too, proved to be too costly given the limited outsourcing opportunities for such a function as wheel truing.

FUNDING IMPACT

The Engineer's estimated cost for Contract No. 1232 is \$4,000,000. Funding will be provided entirely by the State Infrastructure Bond program.

PAGE 4.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approval is required.

RECOMMENDATION

Staff recommends that the SFMTA Board approve the plans and specifications, and authorize a bid call for San Francisco Municipal Transportation Agency Contract No.1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment Project.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On July 19, 2005, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 05-121, authorizing the award of Municipal Railway Contract No. MR-1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project, to Stacy and Witbeck, Inc., for a contract amount of \$120,000,000; and,

WHEREAS, Due to budgetary constraint, Municipal Railway Contract No. MR-1182R1 could not include all of the intended scope elements of the project, thus deferring the procurement/installation of the wheel truing machine, blowdown pit equipment, rail car mover and miscellaneous shop equipment until a new source of funding is identified; and,

WHEREAS, SFMTA has recently received funding from the State Proposition 1B funding source, dedicated for the procurement and installation of the wheel truing machine, blowdown equipment, and miscellaneous equipment at Metro East; and,

WHEREAS, SFMTA Contract MR-1182R1 is now substantially completed and the follow up contract, SFMTA Contract No. 1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment, will add back the above deferred scope elements to the newly built Metro East Facility; and,

WHEREAS, The time allotted to substantially complete the work under Contract No. 1232 is 540 calendar days; and,

WHEREAS, The Engineer's estimate for this construction contract is \$4,000,000; and,

WHEREAS, Contract No. 1232 will assist SFMTA in meeting the objectives of Strategic Plan Goal No. 1 – to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; and Goal No. 2 – to improve transit reliability; and,

WHEREAS, The Contract Compliance Office has established a 5% Local Business Enterprise (LBE) participation goal for this contract; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors approves the plans and specifications, and authorizes a bid call for San Francisco Municipal Transportation Agency Contract No. 1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment 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
Third Street Light Rail Transit Project
Initial Operating Segment
San Francisco Municipal Transportation Agency Contract No. 1232

Project Budget and Financial Plan

Cost Center	(\$ Thousands)
Grantee Support Services	
Phase 1	\$13,267
Phase 2	\$28,842
Phase 3	\$87,483
Total Grantee Support	\$129,592
Consultant Services	
Phase 1	\$10,821
Phase 2	\$10,259
Phase 3	\$24,675
Total Consultant Services	\$45,755
Construction Contract Line Segments	\$249,894
Contract No. 1232, Metro East Wheel Truing Machine, Blowdown Equip, Rail Car Mover and Miscellaneous Equipment	\$4,000
Other Construction Contracts for MME (incl. Soils Contract, CM/GC, 12KV)	\$149,463
Total Construction	\$403,357
Right of Way Acquisition	\$27,079
Subtotal	\$605,783
15 Light Rail Vehicles	\$42,682
Total Initial Operating Segment Expense	\$648,465

Funding	(\$ Thousands)
Other Agency	\$19,439
Federal	\$123,383
State	\$160,700
Local	\$344,943
Total Initial Operating Segment Funding	\$648,465

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency, through its Executive Director/CEO (or his designee), to execute a future multi-agency Infrastructure Prioritization Agreement to coordinate planning for the Muni Route 22-Fillmore extension to Mission Bay as a priority early start transportation infrastructure project in the Eastern Neighborhoods.

SUMMARY:

- The Planning Department seeks Board of Supervisors approval of the Eastern Neighborhoods Area Plans and Rezoning.
- The Eastern Neighborhoods Plans include a Public Benefits Program that provides a mechanism for funding infrastructure improvements that enable development intensity and make walking, bicycling and transit attractive transportation options.
- The San Francisco Municipal Transportation Agency (SFMTA) is an implementing agency for transportation infrastructure improvements in the Eastern Neighborhoods.
- The trolley extension of Muni Route 22-Fillmore on 16th Street to Mission Bay has been identified in the Planning Department’s Eastern Neighborhoods Early Start Capital Projects list as a priority early start Eastern Neighborhood transportation infrastructure project and was developed and environmentally cleared initially through the Mission Bay Plan and EIR.
- SFMTA requests authority to execute a future multi-agency Infrastructure Prioritization Agreement to endeavor to coordinate planning for the Muni Route 22-Fillmore extension to Mission Bay as a priority early start transportation infrastructure project in the Eastern Neighborhoods as well as other Eastern Neighborhood-related transportation projects. Prior to a decision to implement any transportation projects specified above, the SFMTA acknowledges that appropriate environmental review would be undertaken and completed.
- This proposal supports Objectives 1.1, 1.5, 2.2 and 4.2 of the SFMTA 2008-2012 Strategic Plan.

ENCLOSURES:

1. SFMTAB Resolution
2. Memo from San Francisco Planning Department

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

Suzanne Chen-Harding, SFMTA Planning, 1 South Van Ness Avenue, 7th Floor

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The San Francisco Municipal Transportation Agency requests SFMTA Board action to execute a future multi-agency Infrastructure Prioritization Agreement to coordinate planning for the Muni Route 22-Fillmore extension to Mission Bay as a priority early start transportation infrastructure project in the Eastern Neighborhoods.

GOAL

The SFMTA will further the following goals of the Strategic Plan through the execution of this MOU:

- Goal 1: Customer Focus – To provide safe, accessible, reliable, clean and environmentally sustainable service.
Objective 1.1 – Improve safety and security across all modes of transportation.
Objective 1.5 – Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare).
- Goal 2: System Performance – To get customers where they want to go, when they want to be there.
Objective 2.2 – Ensure efficient transit connectivity and span of service.
- Goal 4: Financial Capacity – To ensure financial stability and effective resource utilization.
Objective 4.2 – Ensure efficient and effective use of resources.

DESCRIPTION

San Francisco's Eastern Neighborhoods comprise the mixed-use and mixed-income communities of the Mission, Eastern SoMa, Central Waterfront and Showplace Square/Potrero Hill. These communities have historically been the location of much of the City's industrial land supply and lower-cost housing. Strong development interest and community planning efforts call for a significant amount of new residential and commercial growth in the Eastern Neighborhoods. Additionally, many of the key regional and local transit systems, including BART, Caltrain, and Muni bus and light rail serve the area. The area's combined development potential and rich transit access present a tremendous opportunity to create integrated, mixed-use, transit-oriented neighborhoods.

The Planning Department is concluding a multi-year planning process for the Eastern Neighborhoods. Scheduled for adoption in late 2008, the Eastern Neighborhoods Community Plans (the Plans) call for up to an additional 10,000 units of transit-oriented housing (25-40 percent affordable) and public amenities like parks, transportation and community facilities. The Plans' multi-modal transportation policies recommend linking new housing and jobs to local and regional transit, redesigning industrial streets to enhance livability for pedestrians and bicyclists, and providing new traffic signals, street improvements and loading areas to ensure industrial businesses continue to thrive.

The Eastern Neighborhoods Plans include a Public Benefits Program that will provide a mechanism for funding infrastructure improvements that enable development intensity and make walking, bicycling and transit attractive transportation options. Depending on the amount of future development and the specific funding tools employed in the Eastern Neighborhoods, approximately \$250-300M is anticipated to help fund needed public infrastructure such as transportation, parks and open space.

PAGE 3.

SFMTA is the identified implementation agency for future transportation infrastructure in the Eastern Neighborhoods. As 16th Street is a significant east-west corridor through the Eastern Neighborhoods, the Planning Department's Eastern Neighborhoods Early Start Capital Projects list includes the extension of Muni Route 22-Fillmore on 16th Street to Mission Bay as a priority early start transportation project. This project was developed and environmentally cleared initially as part of the Mission Bay Plan. The proposed extension project would include the installation of trolley coach infrastructure into Mission Bay along 16th Street and Third Street for a length of less than one mile to accommodate the rerouted 22-Fillmore along 16th Street east of Kansas Street to a terminal on Third Street in Mission Bay.

This extension project has long been identified as a SFMTA priority for the Eastern Neighborhoods. The project was developed and environmentally cleared initially through the Mission Bay Plan and EIR. Within Mission Bay, the master developer, Catellus, has provided the support structures needed for over-head wiring along 16th Street in Mission Bay. SFMTA has made progress towards completion by incorporating the construction of the overhead wires on the blocks of 16th Street from Kansas to Connecticut as part of the 16th Street Overhead Replacement project (from S. Van Ness to Connecticut). The project requires additional design and engineering work; in particular, the 16th Street Caltrain crossing still needs to be resolved before the project can fully proceed to construction. At this time, SFMTA has secured \$4.5M in Prop K funds towards the total estimated project cost of \$12M (based on today's cost estimates) and has continued to apply for multiple sources to bridge the remaining \$7.5M funding gap. Prior to implementation of this project or any final decision to commit funds toward its construction, SFMTA shall undertake appropriate environmental review.

Costs for infrastructure projects in the Eastern Neighborhoods will likely exceed the anticipated revenue that will be collected through the Public Benefits Program; therefore, implementing agencies will need to continue aggressive pursuit of additional funding sources for key projects. A future multi-agency Infrastructure Prioritization Agreement will specify the procedural steps for planning, design, and possible future implementation of the Muni Route 22 extension to Mission Bay as a priority early start transportation infrastructure project in the Eastern Neighborhoods and would be eligible for priority funding through the Planning Department's Public Benefit Program for the Eastern Neighborhoods. The attached resolution authorizes the San Francisco Municipal Transportation Agency, through its Executive Director/CEO (or his designee), to execute a future multi-agency Infrastructure Prioritization Agreement to coordinate planning for the Muni Route 22-Fillmore extension to Mission Bay as a priority early start transportation infrastructure project in the Eastern Neighborhoods.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

Not applicable.

PAGE 4.

FUNDING IMPACT

The adoption of the Eastern Neighborhoods Plan and a future multi-agency Infrastructure Prioritization Agreement cannot legally bind the future budgetary decisions of the SFMTA. Instead, the intent of the future multi-agency Infrastructure Prioritization Agreement is to establish prioritization steps for the planning, design, funding, and potential implementation of the Eastern Neighborhoods Early Start Projects by providing the equivalent of budgeting incentives through the Eastern Neighborhoods Public Benefits Program to each participatory agency.

At this time, there is approximately a \$7.5M funding shortfall towards the total estimated project cost of \$12M (based on today's cost estimates) for the Muni Route 22-Fillmore extension to Mission Bay project. The full implementation of the project is contingent on development occurring in the Eastern Neighborhoods, and will proceed according to an increased level of transit service demand from this new development. Full implementation of the project is also contingent upon the availability of revenue generated from transit-related impact fees from projects in the Eastern Neighborhoods, as well as other Plan-supported funding sources to bridge the project's funding gap. It should be noted that the City will complete appropriate environmental review prior to any decision to implement this project or other Eastern Neighborhoods Early Start Projects or to expend funds toward construction of such projects.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

A future multi-agency Infrastructure Prioritization Agreement will be executed with the Planning Department, Department of Public Works, Mayor's Office, Recreation and Park Department, and the Public Utilities Commission.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve the attached resolution authorizing the SFMTA, through its Executive Director/CEO or his designee, to execute a future multi-agency Infrastructure Prioritization Agreement to coordinate planning for the Muni Route 22-Fillmore extension to Mission Bay as a priority early start transportation infrastructure project in the Eastern Neighborhoods.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Planning Department seeks Board of Supervisors approval of the Eastern Neighborhoods Area Plans and Rezoning; and,

WHEREAS, The Eastern Neighborhoods Plans include a Public Benefits Program that provides a mechanism for funding infrastructure improvements that enable development intensity and make walking, bicycling and transit attractive transportation options; and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is an implementing agency for transportation infrastructure improvements in the Eastern Neighborhoods; and,

WHEREAS, The trolley extension of Muni Route 22-Fillmore on 16th Street to Mission Bay will enable the delivery of needed, reliable transit service to the existing and future housing and mixed-use development in the Eastern Neighborhoods; and,

WHEREAS, The 22-Fillmore trolley extension project has been identified in the Planning Department's Eastern Neighborhoods Early Start Capital Projects list as a priority early start transportation project in the Eastern Neighborhoods; and,

WHEREAS, The 22-Fillmore trolley extension project has been developed and environmentally cleared initially through the Mission Bay Plan and EIR; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the SFMTA, through the Executive Director/CEO (or his designee), to execute a future multi-agency Infrastructure Prioritization Agreement to coordinate planning for the Muni Route 22- Fillmore extension to Mission Bay as a priority early start transportation infrastructure project in the Eastern Neighborhoods; and, be it further

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO (or his designee) to execute agreements and other documents required for receipt of future revenue generated from the Planning Department's Eastern Neighborhoods Public Benefits Program to plan for the Muni Route 22-Fillmore extension to Mission Bay as a priority early start transportation infrastructure project in the Eastern Neighborhoods; and, be it further

RESOLVED, That the SFMTA Board acknowledges that appropriate environmental review shall be complete prior to any decision to implement this or other Eastern Neighborhoods Early Start Projects or to expend funds toward construction of such projects and urges staff to diligently pursue the necessary environmental clearances.

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

Secretary to the Board of Directors

San Francisco Municipal Transportation Agency



SAN FRANCISCO PLANNING DEPARTMENT

MEMO

DATE: October 29, 2008

TO: SFMTA Board of Directors

FROM: John Rahaim

RE: **Establishing an Infrastructure Prioritization Agreement with the SFMTA for the Eastern Neighborhood Plan Early Start Capital Projects**

1650 Mission St.
Suite 400
San Francisco,
CA 94103-2479

Reception:
415.558.6378

Fax:
415.558.6409

Planning
Information:
415.558.6377

The City and County of San Francisco is seeking to implement the Eastern Neighborhoods Area Plans, comprised of the East South of Market, the Mission, the Central Waterfront and the Showplace Square/Potrero Hill Area Plan. These Area Plans seek to reduce land use conflicts between light industry and other competing uses, to retain existing jobs in the area, and most importantly to encourage diverse and affordable housing and other mixed-uses throughout the Plan Area.

The Planning Department anticipates an increase of up to 10,000 new housing units and over 13,000 new jobs in the Eastern Neighborhoods (EN) within the next 20 years. This future development will impact the Plan Area's already deficient neighborhood infrastructure by generating needs for new investments in recreation and open space facilities, transit and transportation improvements, and community facilities, as described in the Eastern Neighborhoods Public Benefits Program.

To ensure that this neighborhood infrastructure is provided concurrently with new growth, the City is looking to implement a new funding strategy called an Infrastructure Prioritization Agreement that requests each participating agency to prioritize financial commitments for a specific set of "EN Early Start Capital Projects" to support anticipated housing and job growth in the Plan Area. Establishing such an agreement now to fund neighborhood improvements in a timely manner is intended to demonstrate to the Board of Supervisors that that operating agencies and commissions are committed to such an effort. The EN Infrastructure Prioritization Agreement concept was developed in partnership with the city agencies expected to implement the EN Early Start capital projects selected, including SFMTA.

The EN Infrastructure Prioritization Agreement requests commitments from participating agencies with the understanding that such commitments cannot bind future budgetary actions of the participating agencies. However, the EN Infrastructure Prioritization Agreement does request that participating agencies, including SFMTA, agree to prioritize the planning and design for a specified set of EN Early Start Capital Projects and seek the endorsement of their governing body, in this case the SFMTA Board.

The proposed Muni Route 22-Fillmore improvements have been selected as one of the priority Eastern Neighborhoods Early Start Capital Projects. This proposed project involves capital improvements along 16th Street to Third Street in Mission Bay. The proposed extension will provide a transit link between the 16th Street BART station, Mission District, Showplace Square, Mission Bay and the Third Street Light Rail. Capital costs include the installation of new overhead trolley wires along 16th Street from Kansas Street to Third Street.

At this time, there is approximately a \$7.5M funding shortfall towards the total estimated project cost of \$12M (based on today's cost estimates). The EN Infrastructure Prioritization Agreement links SFMTA's agreement to fund this gap to collecting a certain threshold of new impact fees dedicated to transportation from new development in the Eastern Neighborhoods Plan Area. This approach would allow the project to proceed once increased levels of transit demand are generated from new development and appropriate environmental clearance is obtained.

The general principles of the approach are as follows:

1. SFMTA agrees to prioritize staff efforts and future capital spending for planning the extension of the Muni Route 22-Fillmore along the full length of 16th Street to Third Street in Mission Bay.
2. This commitment to prioritize funding for EN Early Start capital projects is contingent on the collection of a minimum threshold sum of impact fees, whether or not these fees are ultimately used to fund the specific list of EN Early Start capital projects.
3. The Planning Department will ensure that all impact fees collected from projects in the Eastern Neighborhoods are accounted for, along with a separate accounting of how much revenue has been generated from the TIDF from Eastern Neighborhoods projects by SFMTA.
4. Once a reasonable amount or certain percentage of the total funding gap needed to finance the 22-Fillmore extension project has been collected from new development in the Eastern Neighborhoods Plan Area and project design and appropriate environmental review has been completed, the Planning Department may request that the 22-Fillmore extension project be initiated subject to, and possibly modified by, the findings and conclusions of the environmental analysis.
5. If SFMTA does not have adequate funding ready to proceed, both agencies will prioritize the identification of additional revenue sources to fund the need (such as outside grant monies).
6. Full implementation of the 22-Fillmore extension project is contingent upon the availability of revenue generated from transit-related impact fees generated from projects in the Eastern Neighborhoods, as well as other Plan-supported funding sources to bridge the project's funding gap.
7. As the collection of these impact fees is required for the proposed capital projects, there is no fixed timeline for project delivery as the pace of new development will dictate delivery of the proposed capital projects.

Your support of this approach is requested by supporting the attached resolution, which would grant your Staff the authority to execute a future multi-agency Infrastructure Prioritization Agreement to endeavor to coordinate planning for the Muni Route 22-Fillmore extension to Mission Bay as a priority early start transportation infrastructure project in the Eastern Neighborhoods.

THIS PRINT COVERS CALENDAR ITEM NO.: 10.9

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development Division

BRIEF DESCRIPTION:

Requesting authorization to execute Amendment No. 5 for Contract CS-138, Professional Engineering and Other Support Services for Muni Metro Third Street Light Rail Project - Central Subway Segment to PB/Wong, to extend the term by 173 days to May 23, 2009.

SUMMARY:

- Contract CS-138 provides for professional engineering and other support services for the Muni Metro Third Street Light Rail Project: Central Subway Segment.
- The Amendment does not increase the contact amount.
- The Amendment extends the term of Agreement by 173 days to May 23, 2009 to facilitate the FTA Risk Assessment Process, to continue scope work extended by the environmental process, and provide continued support for the utility design.
- Funding for consultant services under this Contract is to be furnished from local, state and federal sources.

ENCLOSURES:

1. Resolution
2. Project Budget & Financial Plan
3. Amendment No. 5

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

Attention: Gigi Pabros
1 South Van Ness, 3rd Floor, SF, CA 94102

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

The following is provided to the San Francisco Municipal Transportation Agency Board of Directors for consideration to authorize the Executive Director/CEO to execute Amendment No. 5 for Contract CS-138, Professional Engineering and Other Support Services for Muni Metro Third Street Light Rail Project - Central Subway Segment to extend the term by 173 days to May 23, 2009.

GOAL

The Central Subway Project is consistent with the SFMTA Strategic Plan in the following goals and objectives:

Goal 1: Customer Focus:

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

Objective 1.3 Reduce emissions as required by SFMTA Clean Air Plan

Objective 1.4 Improve accessibility across transit service

Objective 1.5 Increase percentage of trip using more sustainable modes

Goal 2: Customer Focus:

To get customers where they want to go, when they want to be there

Objective 2.4 Reduce congestion through major corridors

Goal 3: External Affairs/Community Relations:

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

Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups

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

Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life

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

Goal 4: Financial Capacity:

To ensure financial stability and effective resource utilization

Objective 4.2 Ensure efficient and effective use of resources

DESCRIPTION

Background

San Francisco Municipal Transportation Agency's (SFMTA) Third Street Light Rail Transit (LRT) project is the most significant capital investment in generations for the

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seventh largest transit system in the nation. Phase 1 of the 6.9-mile two-phase project, began revenue service in April 2007, by restoring light rail service to the heavily transit-dependent Third Street corridor in eastern San Francisco for the first time in 50 years. The Phase 2 Central Subway Project will provide rail service to the Financial District and Chinatown, the most densely developed areas of San Francisco. The new light rail line will serve regional destinations, such as Union Square, Moscone Convention Center, Yerba Buena, and AT&T Ballpark, as well as connect directly to BART and Caltrain, the Bay Area's two largest regional-commuter rail services.

The primary purpose of the Third Street LRT project is to accommodate existing and future transit ridership in the corridor with greater reliability, comfort and speed. By 2030, the San Francisco Planning Department projects a 26% percent increase in overall corridor population and a 61% percent increase in corridor employment. These increases are greater than the increases anticipated for the City as a whole. The Central Subway is able to serve both the mobility needs of existing land uses (with 56,000 riders projected for 2016) as well as the future planned development (with 78,000 riders projected for 2030).

The Third Street LRT Project will significantly improve travel times reducing a current 46-minute bus trip between the southern terminus in Visitacion Valley and the northern terminus in Chinatown by 15 minutes to a more reasonable 31-minute light rail transit ride. For riders using only the Central Subway portion of the project, travel times will be reduced to less than half of current travel times, from a 20-minute bus ride to a 7-minute subway ride between the Caltrain terminal and Chinatown. The Central Subway allows transit to bypass the congestion faced by traffic and buses on City streets.

Critical populations will be well served by the project, bringing improved service to low-income, minority and no-car households, decreasing travel time and improving reliability. Over half of the trip-level user benefits are expected to accrue to low-income people, who comprise 19% of the total households along the Third Street alignment. The 2000 census shows that 54% of the households along the entire corridor do not have access to a vehicle, and within the Central Subway portion of the alignment, 68% of the households are transit-dependent.

The Final Environmental Impact Statement/Final Environment Impact Report (FEIS/FEIR) for the two-phase Project was completed and published in November 1998. The City Planning Commission certified the FEIS/FEIR on December 3, 1998. On January 19, 1999, the Public Transportation Commission approved Resolution No. 99-009, which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the Project's FEIR and Mitigation Monitoring and Reporting Program. The Federal Transit Administration (FTA) issued a Record of Decision (ROD) for the Initial Operating Segment (IOS) of the Project (the Third Street LRT Phase 1) on March 16, 1999, under the National Environmental Protection Act (NEPA), and authorized the SFMTA to enter into final design for the initial operating segment (IOS) in the early half of 2000.

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The SFMTA Board of Directors adopted Resolution No. 05-087 on June 7, 2005, selecting the Fourth Street alignment as the Locally Preferred Alternative for the Central Subway phase of the Project. This alternative was carried through the SEIS/SEIR and the federal New Starts funding process.

The City's Planning Commission certified the Final SEIR at its meeting on August 7, 2008. The SFMTA Board adopted Alternative 3B, CEQA Findings, Statement of Overriding Considerations, and the Mitigation and Monitoring Reporting Program at its meeting on August 19, 2008, and the San Francisco Board of Supervisors rejected an appeal to the document at its meeting on September 16, 2008. The ROD for the Central Subway phase from the FTA is anticipated in November of 2008.

Current Status

The Central Subway design consists of a short portion of in-street surface light rail in the southern portion of the system before transitioning into subway operation for most of the alignment. Twin bore tunnels are proposed for the subway with three subway stations serving the Moscone/Yerba Buena, Union Square/Market Street, and Chinatown areas. The Union Square/Market Street Station will interconnect with the existing BART/Muni Powell Street Station. A deep tunneling approach using tunnel boring machines (TBMs) is being proposed in order to reduce the amount of surface disruption during construction, to allow for a more direct alignment, and to shorten the construction period. The Central Subway tunnels will pass under the existing BART/Muni Market Street subway tunnels with the rail approximately 100 feet below the ground surface. Most of the alignment will be located under existing street rights-of-way with a limited number of underground easements. The stations are center-platform with passenger end-loading and designed to accommodate high-floor two-car trains. Whenever feasible, off-street properties have been identified for the primary station access with transit oriented development opportunities at the Moscone/Yerba Buena and Chinatown Stations.

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

The Project is currently completing the preliminary engineering work. Construction is scheduled to begin in 2010. The start of revenue operation is scheduled for 2016.

The SFMTA Board of Directors adopted Resolution No. 02-144 on November 19, 2002, which authorized the Director of Transportation to execute Contract No. CS-138 with the joint venture of Parsons Brinckerhoff Quade & Douglas (now PB Americas, Inc.) and PGH Wong for professional engineering and other support services for the Central

PAGE 5

Subway segment of the Project (“PB/Wong Agreement”), in an amount not to exceed \$29,800,000. The Board of Supervisors adopted Resolution No. 03-58 on January 27, 2003, which authorized the Director of Transportation to execute the PB/Wong Agreement. The PB/Wong Agreement included services to provide Conceptual and Preliminary Engineering services for the Project.

On July 15, 2005, the PB/Wong Agreement was amended by Amendment No. 1 to add additional services related to the preparation of a Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (SEIS/SEIR), necessitated by a new proposed alignment for the Central Subway, to add additional services related to providing FTA New Starts Modeling support, and to delete various services so that they may be performed by City staff. The amendment resulted in a net increase to the Agreement of \$166,610, for a total contract amount not to exceed \$29,966,610.

On August 1, 2007, the PB/Wong Agreement was amended by Amendment No. 2 to modify or add services related to preparation of the SEIS/EIR, Conceptual Engineering – Trackwork, FTA Management Plans, Alternative Alignment Studies/Cost Estimates, SEIS/EIR Financial Assistance, and Enterprise Capital Project Controls System; and to delete or reduce various services so that they may be performed by City staff. The amendment resulted in a net increase to the Agreement of \$174,110, for a total contract amount not to exceed \$30,140,720.

On November 1, 2007, the PB/Wong Agreement was amended by Amendment No. 3 to modify or add services related to public outreach, workforce study/ outreach, and Chinatown Station planning assistance. The amendment resulted in a net increase to the Agreement of \$418,220, for a total contract amount not to exceed \$30,558,940.

On June 3, 2008, the PB/Wong Agreement was amended by Amendment No. 4 to extend the term of the Agreement by 182 days to December 1, 2008, thereby facilitating the FTA Risk Assessment Procedure. The amendment did not change the contract amount.

Scope of Amendment No. 5

Amendment No. 5 to the PB/Wong Agreement extends its term by 173 days to May 23, 2009. The extension will allow the Consultant to facilitate an additional FTA Risk Assessment workshop anticipated for December 2008, support the results of the FTA Risk Workshops, continue scope work extended by the environmental process, and continue support of the utility design.

As part of the SFMTA’s overall annual, DBE goal, the Contract Compliance Office (CCO) has established a 30% DBE goal for this contract. Amendment No. 5 maintains the 30% DBE goal for this contract. The CCO also has approved this calendar item.

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

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FUNDING IMPACT

The amendment does not change the contract amount for the PB/Wong Agreement. The consultant services are funded from federal, state, and local sources. The Project Budget & Financial Plan is set forth in Enclosure 2.

RECOMMENDATION

It is recommended that the San Francisco Municipal Transportation Agency Board of Director approve a Resolution authorizing the Executive Director/CEO to execute Amendment No. 5 for Contract No. CS-138, Professional Engineering and Other Support Services for Muni Metro Third Street Light Rail Project - Central Subway Segment to PB/Wong, to extend the term of the Agreement by 173 days to May 23, 2009.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Final Environmental Impact Statement/Environment Impact Report (FEIR/FEIR) for the two-phase Third Street Light Rail Project (the "Project") was completed in November 1998; and,

WHEREAS, The Public Transportation Commission adopted Resolution No. 99-009 on January 19, 1999, which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the Project's Final Environmental Impact Report and Mitigation Monitoring Report; and,

WHEREAS, Design and construction of the 1.75-mile Central Subway ("Central Subway Project") is Phase 2 of the Third Street Light Rail Transit Project; and,

WHEREAS, The San Francisco Municipal Transportation Agency Board (SFMTAB) adopted Resolution No. 01-108 on November 6, 2001, which authorized the Director of Transportation to advertise a request for proposals for Contract No. CS-138, Professional Engineering Services for Central Subway Phase of Muni Metro Third Street Light Rail Project; and,

WHEREAS, The SFMTAB adopted Resolution No 05-087 on November 19, 2002, which authorized the Director of Transportation to execute Contract No. CS-138 with Parsons Brinkerhoff Quade and Douglas (now known as PB Americas, Inc.) and PGH Wong (PB/Wong) for Professional Engineering and other support services for the Central Subway ("PB/Wong Agreement"); and,

WHEREAS, On July 15, 2005, the PB/Wong Agreement was amended by Amendment No. 1 to add additional services related to the preparation of a Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (SEIS/SEIR), necessitated by a new proposed alignment for the Central Subway, to add additional services related to providing FTA New Starts Modeling support, and to delete various services so that they may be performed by City staff; Amendment No. 1 resulted in a net increase to the Agreement of \$166,610, for a total contract amount not to exceed \$29,966,610; and,

WHEREAS, On August 1, 2007, the PB/Wong Agreement was amended by Amendment No. 2 to modify or add services related to preparation of the SEIS/EIR, Conceptual Engineering – Trackwork, FTA Management Plans, Alternative Alignment Studies/Cost Estimates, SEIS/EIR Financial Assistance, and Enterprise Capital Project Controls System; and to delete or reduce various services so that they may be performed by City staff; Amendment No. 2 resulted in a net increase to the Agreement of \$174,110, for a total contract amount not to exceed \$30,140,720; and,

WHEREAS, On November 1, 2007, the PB/Wong Agreement was amended by Amendment No. 3 to modify or add services related to public outreach, workforce study/ outreach, and Chinatown Station planning assistance; Amendment No. 3 resulted in a net increase to the Agreement of \$418,220, for a total contract amount not to exceed \$30,558,940; and,

WHEREAS, On June 3, 2008, the PB/Wong Agreement was amended by Amendment No. 4 to extend the term of the Agreement by 182 days, until December 1, 2008, at no additional cost, in order to facilitate the FTA Risk Assessment Procedure; and,

WHEREAS, A 173-day extension of the PB/Wong Agreement is necessary to allow the Consultant to facilitate an additional FTA Risk Assessment workshop anticipated for December 2008, support the results of the FTA Risk Workshops, continue scope work extended by the environmental process, and continue support of the utility design; and,

WHEREAS, The funding for consultant services under this Contract is to be furnished from local, state and federal sources; and,

WHEREAS, As part of SFMTA's overall annual DBE goal, the Contract Compliance Office has established a 30% DBE goal for this contract; and,

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director to execute Amendment No. 5 to Contract No. CS-138, Professional Engineering and Other Support Services for Muni Metro Third Street Light Rail Project - Central Subway Segment to PB/Wong, to extend the term of the Agreement by 173 days to May 23, 2009.

I 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

ENCLOSURE 2
 THIRD STREET LIGHT RAIL PROJECT
 CENTRAL SUBWAY

San Francisco Municipal Railway Contract CS-138

Cost	(\$Millions)
Conceptual and Preliminary Engineering	43.41
Program Management & Construction Management	110.66
Final Design	89.39
Construction Contracts	934.42
Vehicles	28.34
Contingency	97.54
Total Central Subway Expense	\$ 1,303.76

Funding	(\$Millions)
Federal 5309 New Starts ¹	762.20
State RTIP Grant	88.20
CMAQ	4.00
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	100.00
Proposition 1B-MTA Share	100.00
Proposition Additional 1B-MTA Share	40.00
Proposition K Sales Tax Funds	126.00
Option Parking Revenue	69.36
Total Central Subway Funding	\$ 1,303.76

^{1.} New Starts funding to be determined after FTA issues approval to enter Final Design

AMENDMENT NO. 5

TO

AGREEMENT BETWEEN

CITY AND COUNTY OF SAN FRANCISCO

MUNICIPAL TRANSPORTATION AGENCY

AND

PB AMERICAS, INC. AND PGH WONG ENGINEERING, INC.,

A JOINT VENTURE

FOR

PROFESSIONAL ENGINEERING AND OTHER SUPPORT SERVICES

FOR MUNI METRO THIRD STREET LIGHT RAIL PROJECT -

CENTRAL SUBWAY SEGMENT

(CONTRACT CS-138)

(CCO NO. 01-836)

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

AMENDMENT NO. 5

TO

**THE AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
AND
PB AMERICAS, INC. AND PGH WONG ENGINEERING, INC., A JOINT VENTURE
FOR
PROFESSIONAL ENGINEERING & OTHER SUPPORT SERVICES
FOR MUNI METRO THIRD STREET LIGHT RAIL PROJECT:
CENTRAL SUBWAY SEGMENT**

This Amendment No. 5 is made this _____ day of _____, 2008, in the City and County of San Francisco, State of California, by and between: PB Americas, Inc. (formerly Parsons Brinckerhoff, Quade and Douglas) and PGH Wong Engineering, Inc., a Joint Venture ("Consultant"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA")

RECITALS

- A. On November 19, 2002, the SFMTAB adopted Resolution No. 02-144, which authorized the Director of Transportation to execute Contract No. CS-138 between City and Consultant for professional engineering and other support services for the New Central Subway segment of the Muni Metro Third Street Light Rail Project ("Agreement"), in an amount not to exceed \$29,800,000. On January 27, 2003, the Board of Supervisors adopted Resolution No. 03-58, which authorized the Director of Transportation to execute Agreement.
- B. On July 15, 2005, the parties executed Amendment No. 1 to the Agreement to add additional services related to the preparation of a Supplemental Environmental Impact Statement/Environmental Impact Report (Supplemental EIS/EIR), necessitated by a new proposed alignment for the Central Subway, to add additional services related to providing FTA New Starts Modeling support, and to delete various services so that they may be performed by City staff. The amendment resulted in a net increase to the Agreement of \$166,610, for a total contract amount not to exceed \$29,966,610.
- C. On August 1, 2007, the parties executed Amendment No. 2 to the Agreement to modify or add services related to (i) preparation of the Supplemental EIS/EIR, (ii) Conceptual Engineering – Trackwork, (iii) FTA Management Plans, (iv) Alternative Alignment Studies/Cost Estimates, (v) SEIS/SEIR Financial Assistance, and (vi) Enterprise Capital Project Controls System; and to delete or reduce various services so that they may be performed by City staff. The amendment resulted in a net increase to the Agreement of \$174,110, for a total contract amount not to exceed \$30,140,720.
- D. On November 1, 2007, the parties executed Amendment No. 3 to the Agreement to modify or add services related to (i) public outreach, (ii) workforce study/ outreach, and (iii) Chinatown Station planning assistance. The net increase to the contract for this amendment is \$418,220, for a total contract amount not to exceed \$30,558,940.
- E. On June 3, 2008, the parties executed Amendment No. 4 to the Agreement to extend the term of the Agreement by 182 days, until December 1, 2008, thereby facilitating portions of the FTA Risk Assessment Procedure.

F. The parties wish to amend the Agreement to extend the term by 173 days, to May 23, 2009, to allow the Consultant to facilitate an additional FRA Risk Assessment Workshop anticipated for December 2008, continue scope work extended by the environmental process, and continue support for the utility design.

Now, THEREFORE, the parties agree as follows:

1. Section 2 Term of Agreement is amended to read as follows:

2. Term of Agreement

Subject to Section 1, the term of this Agreement shall not exceed five (5) years and three hundred fifty-five (355) days from the Effective Date of this Agreement.

IN WITNESS WHEREOF, each party has duly executed this Amendment No. 5 to the Agreement as of the date first referenced above.

CITY

Municipal Transportation Agency

Nathaniel P. Ford, Sr.
Executive Director/CEO

Authorized By:
Municipal Transportation Agency
Board of Directors

Resolution No. _____

Adopted: _____

Attest:

By: _____
Secretary, MTAB

Approved as to Form:
Dennis J. Herrera
City Attorney

By: _____
Robin M. Reitzes
Deputy City Attorney

CONSULTANT

Gary E. Griggs
Senior Vice President
PB Americas, Inc.
303 Second Street, 700 North
San Francisco, CA 94107
Federal Employer ID No. 41- 2045366

Peter Wong
President
PGH Wong Engineering, Inc.
256 Laguna Honda Blvd.
San Francisco, CA 94116
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**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Parking and Traffic

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency (SFMTA) to establish 11 metered parking spaces on the west side of Davis Street, between Washington and Clay Streets. The proposal would:

- 1) Rescind: "Tow-Away, No Parking Anytime" on the west side of Davis Street between Washington and Clay Streets;
- 2) Establish: "Tow-Away No Stopping Except Buses between 3 PM and 6 PM, Monday through Friday" on the west side of Davis Street between Washington and Clay Streets; and
- 3) Establish: "General Metered Parking Area 1 (2-hour parking time limit, 7 AM - 3 PM, Monday through Friday and 7 AM – 6 PM Saturday)" on the west side of Davis Street between Washington and Clay Streets.

SUMMARY:

- Pier ½ provided 100 parking spaces to serve the patrons of the Ferry Building. In July 2008, Pier ½ was closed due to structural problems.
- Since the closure of Pier ½, Port staff has been working to increase parking availability in the area near the Ferry Building. The Port has considered improved utilization of on-street parking spaces, promotion of local parking garages, and expansion of the Golden Gateway Garage Chinatown/North Beach weekend Park'n'Ride shuttle program to the Ferry Building.
- Port staff requested that SFMTA consider establishing metered parking spaces on Davis Street between Washington and Clay Streets, which is approximately two blocks from the Ferry Building.
- SFMTA staff considered the proposal to establish metered parking on both sides of Davis Street and recommended establishing the metered spaces on the west side of the street only in order to ensure an adequate traffic circulation on Davis Street for large vehicles such as buses and fire trucks.
- The proposal was heard at a SFMTA public hearing on September 5, 2008 and no objection was expressed at the meeting.
- The proposal was presented at the SFMTA Board on October 21, 2008. At this meeting, two community members spoke against the proposal and one spoke in support.
- At the October 21 meeting, the SFMTA Board continued the item to November 18th pending a community outreach meeting on this issue.
- SFMTA and Port staff scheduled a public meeting on November 12th at Pier 1 to present the item to the community and to seek their feedback.

ENCLOSURES:

1. SFMTAB Resolution
2. Area Map
3. Project Location Map

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION BE RETURNED TO Rana Ahmadi

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

To establish metered parking spaces on the west side of Davis Street, between Washington Street and Clay Street.

GOAL

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.

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

Objective 3.1 - Improve economic vitality by growing relationships with businesses, community, and stakeholder groups.

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

DESCRIPTION

The proposal is to establish 11 metered parking spaces on the west side of Davis Street, between Washington and Clay Streets (see Enclosures 2 and 3). The proposal would:

- 1) Rescind: “Tow-Away, No Parking Anytime” on the west side of Davis Street between Washington and Clay Streets;
- 2) Establish: “Tow-Away No Stopping Except Buses between 3 PM and 6 PM, Monday through Friday” on the west side of Davis Street between Washington and Clay Streets; and
- 3) Establish: “General Metered Parking Area 1 (2-hour parking time limit, 7 AM - 3 PM, Monday through Friday and 7 AM – 6 PM Saturday)” on the west side of Davis Street between Washington and Clay Streets.

Davis Street, between Washington Street and Clay Street, is a one-way southbound street that is 32 feet wide curb-to-curb, with two 16-foot-wide traffic lanes. These traffic lanes are very wide. If parking were permitted on the west side of the street, the street would be restriped with two 12.5-foot-wide traffic lanes, which would still be wider than most traffic lanes in San Francisco.

Background

Pier ½ provided 100 parking spaces on an interim basis to serve the patrons of the Ferry Building, which is under the jurisdiction of the Port. In July 2008, Pier ½ was closed due to structural problems. Following the closure, Port staff has been working to increase parking availability in the area. The Port has considered various measures to address the parking shortage including: improved utilization of metered parking spaces, promotion of local parking garages, and expansion of the Golden Gateway Garage Chinatown/North Beach weekend Park’n’Ride shuttle program to the Ferry Building.

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One of the options identified by the Port to respond to the loss of parking in the vicinity of the Ferry Building was to allow parking on Davis Street, between Washington and Clay Streets. Port staff requested that SFMTA consider adding metered parking spaces on both sides of Davis Street between Washington and Clay Streets, approximately two blocks from the Ferry Building.

SFMTA staff considered establishing parking meters on both sides of Davis Street. In order to ensure that large vehicles such as buses and fire trucks can easily turn onto the street, staff recommended establishing the metered spaces on the west side of the street only.

The proposal was heard at an SFMTA public hearing on September 5, 2008 and no objection was expressed by any members of the public during the meeting. The proposal was presented to the SFMTA Board on October 21, 2008. At that meeting, two community members spoke against the proposal and one spoke in support. The SFMTA Board continued the item to its November 18th meeting pending a community outreach meeting on this issue. SFMTA and Port staff scheduled a public meeting on November 12th at Pier 1 to present the item to the community and to seek their input.

Issues Raised at the SFMTA Board Meeting of October 21, 2008

Telegraph Hill Parrots – One community member stated that the introduction of parking on Davis Street would negatively impact the Telegraph Hill parrots, also known as cherry headed conures, which are frequently present in Sue Bierman Park. The park is bounded by Davis Street on the west, Washington Street on the north, Clay Street on the south and Drumm Street on the east. Davis Street has a moderate amount of vehicular traffic and the addition of 11 parking spaces would not introduce additional noticeable noise to the park. The west side of Davis Street is currently used as a staging area for Municipal Railway during the PM peak period. The other three sides of the park already have metered parking spaces on both sides of the street bordering the park.

Other Facilities that Could Accommodate Parking Demand – Port staff have been working to increase parking availability in the area. The Port is working to improve utilization of existing on-street parking, promote the use of local parking garages, and expand the Golden Gateway Garage Chinatown/North Beach weekend Park'n'Ride shuttle program to the Ferry Building. Due to constrained parking availability in the vicinity of the Ferry Building, the Port finds any amount of additional parking valuable. Therefore, the Port considers the 11 additional spaces as being important to partially offset the 100 spaces eliminated with the closure of Pier 1/2. The Port is working with the other parking facilities in the area to provide additional spaces for their use, including the Golden Gateway Garage. According to the information provided to the Port by the Ferry Building manager, approximately 10,000 to 15,000 people visit the Ferry Building on a daily basis. The number of the visitors on Saturdays, when the Farmers' Market is held, is approximately 15,000 to 20,000 people.

Trucks Parking at the Metered Spaces – The width of the metered spaces on Davis Street would be similar to other metered spaces in San Francisco where both cars and trucks park. If a wide truck had to use one of the metered parking spaces on Davis Street between Washington Street and Clay Street, the traffic lane width of 12.5 feet would be sufficient to accommodate the parked truck and the moving traffic. In addition, Davis Street is not a high-volume traffic street and

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there would be minimal interaction or disturbance of the traffic flow as a result of the metered parking spaces.

Bus Staging Area – The Municipal Railway currently uses the west side of Davis Street between Washington Street and Clay Street during the PM peak period for bus staging before departing to the starting points for Lines 1AX, 1BX, 31AX, 31BX, 38AX and 38BX when there is not enough staging area available on Davis Street between California and Sacramento Streets. Beginning in fall 2009, when the Transbay Terminal moves to a temporary location, buses now using other locations such as Main Street, Folsom Street and Howard Street to stage to Pine and Davis Streets may all be routed through this segment of Davis Street.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

Two alternatives were considered to this proposal:

- Installation of metered parking spaces on both side Davis Street between Washington and Clay Streets; and
- No metered parking spaces on Davis Street between Washington and Clay Streets.

Staff originally considered installing metered parking spaces on both sides of Davis Street between Washington and Davis Streets. This would have resulted in two nine-foot-wide traffic lanes which are acceptable but narrow. Staff recommended that installing the metered parking spaces on the west side of the street would be desirable as it would result in two 12.5-foot traffic lanes and would not impact traffic flow. This option would partially satisfy the need of the Port for additional parking spaces in the vicinity of the Ferry Building and would be consistent with the goals and objectives of SFMTA's Strategic Plan.

The "No metered parking spaces on Davis Street" alternative would not introduce any changes to the current parking and traffic conditions on the street. However, this alternative would not respond to the desire of the Port to create additional on-street parking spaces and would not ameliorate the additional parking need created as a result of the loss of parking on Pier ½ for the Ferry Building. This alternative would not be consistent with Goal 2, Objectives 2.4 and 2.5, and Goal 3, Objectives 3.1 and 3.2 of SFMTA's Strategic Plan.

FUNDING IMPACT

SFMTA would cover the initial cost of purchase and installation of parking meters and restriping the street. After a short period of time, the cost would be recovered by the revenues from the meters and after that it would become a small source of revenue for SFMTA.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other department or agency needs to approve the installation of the meters.

RECOMMENDATION

Staff recommends regulations that the SFMTA Board authorize SFMTA to rescind the “Tow-Away, No Parking Anytime” regulation on the west side of Davis Street between Washington Street and Clay Street, to establish “Tow-Away No Stopping Except Buses between 3 PM and 6 PM, Monday through Friday” on the west side of Davis Street between Washington Street and Clay Street; and to establish “General Metered Parking Area 1 (2-hour parking time limit, 7 AM - 3 PM, Monday through Friday AND 7 AM – 6 PM Saturday)” on the west side of Davis Street between Washington Street and Clay Street.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) received a request from the Port of San Francisco to establish metered parking spaces on Davis Street, between Washington Street and Clay Street; and,

WHEREAS, Pier ½, which provided 100 parking spaces for the Port of San Francisco (the Port) to serve the patrons of the Ferry Building, was closed in July 2008 due to structural problems; and,

WHEREAS, SFMTA staff considered and agreed to the installation of 11 metered parking spaces on the west side of Davis Street, between Washington Street and Clay Street; and,

WHEREAS, A public meeting notice was posted on utility poles in the affected area and on SFMTA's website and the proposal was heard at SFMTA public hearing on September 5, 2008 and no objection was expressed by any members of the public during the meeting; and,

WHEREAS, The proposal was presented to the SFMTA Board on October 21, 2008 and the SFMTA Board continued the item to the November 18th meeting and directed the SFMTA staff to conduct community outreach; and,

WHEREAS, a notice of public meeting to discuss the proposal was emailed to the Port of San Francisco's Northeast Waterfront Advisory Group which includes representative from neighborhood groups, and to the citizens who have asked to be notified of issues before the Northeast Waterfront Advisory Group, to the merchants and Port tenants in the Ferry Building area, was mailed to parties who expressed interest during the October 21 Board meeting, and was posted on the bulletin board at the local coffee house and a neighborhood blog and, and SFMTA and the Port held a joint public meeting at Pier 1 on November 12th to present the proposal to the community and to seek their feedback; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to install 11 metered parking spaces on Davis Street between Washington Street and Clay Street; and, be it further

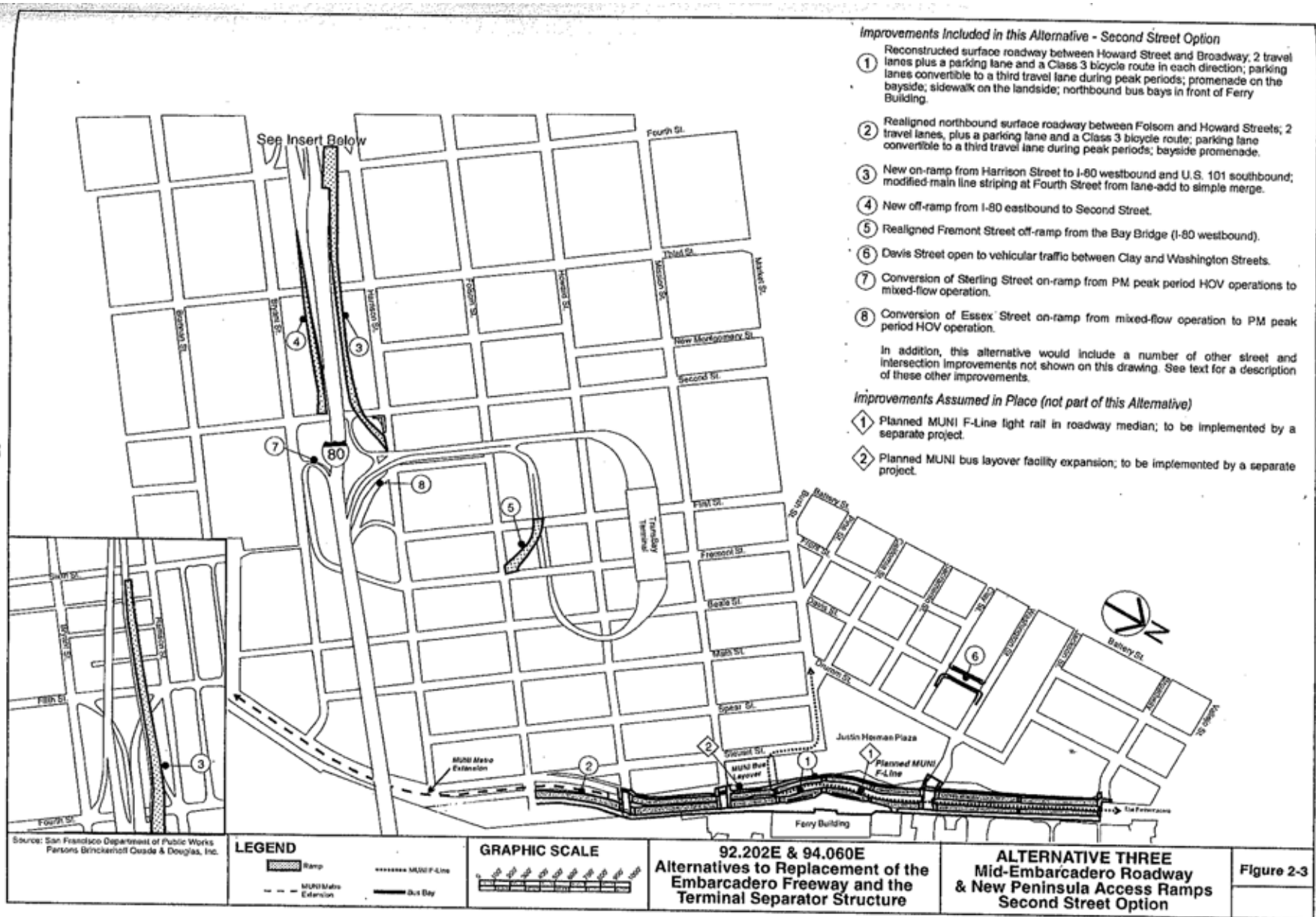
RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to rescind the "Tow-Away, No Parking Anytime" on the west side of Davis Street between Washington Street and Clay Street; and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to establish "Tow-Away No Stopping Except Buses between 3 PM and 6 PM, Monday through Friday" on the west side of Davis Street between Washington Street and Clay Street; and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to establish "General Metered Parking Area 1 (2-hour parking time limit, 7 AM - 3 PM, Monday through Friday AND 7 AM – 6 PM Saturday)" on the west side of Davis Street between Washington Street and Clay Street.

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

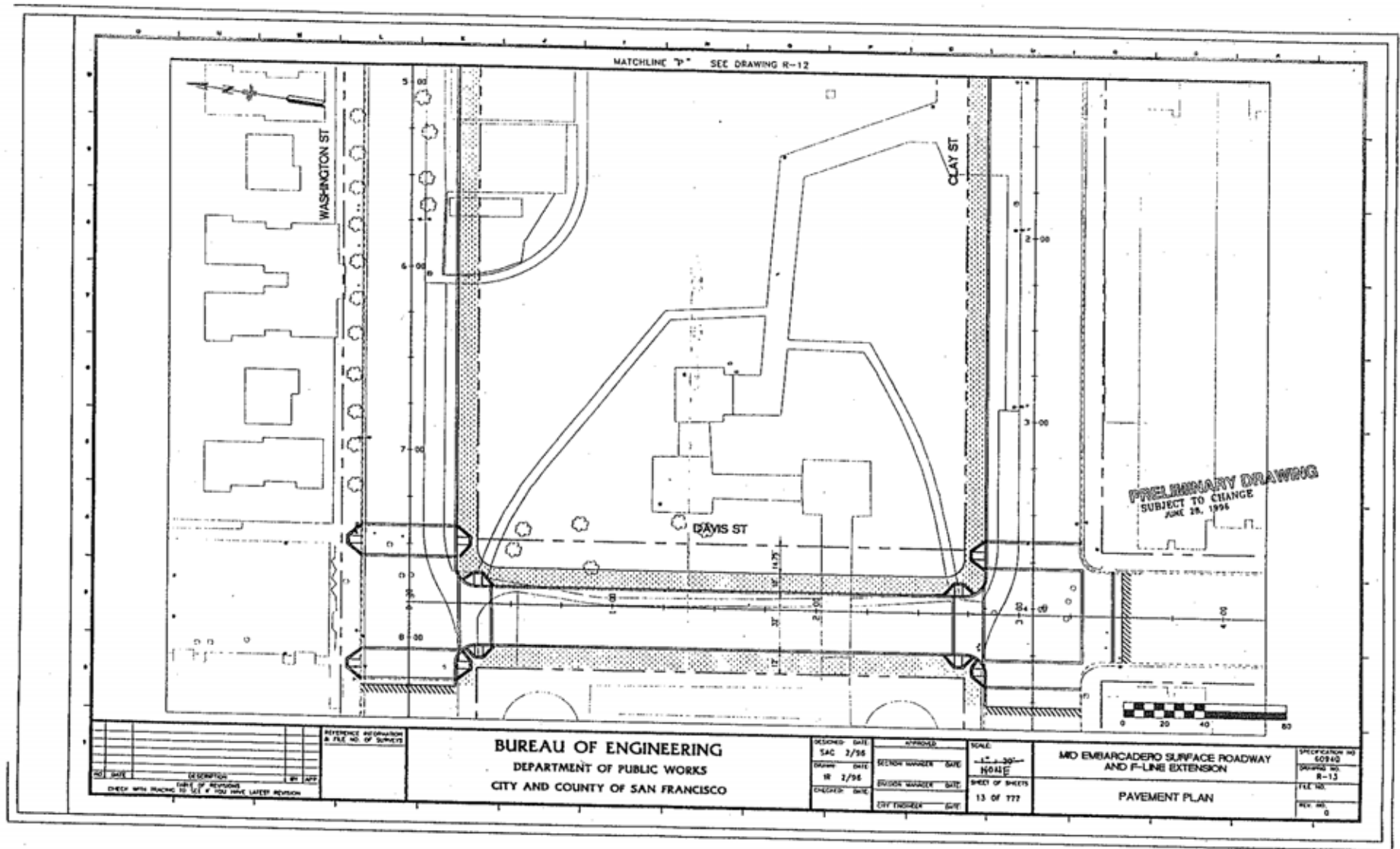
Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



Section 2 - Alternatives

ENCLOSURE 2

AREA MAP



ENCLOSURE 3

PROJECT LOCATION MAP

THIS PRINT COVERS CALENDAR ITEM NO. : 13

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION: For parking within the *SFpark* Parking Pilot Project Areas, approve pricing and time limit ranges associated with the *SFpark* Parking Pilot Projects, authorize the implementation of rates and time limits within those ranges, authorize changing the times and days when parking is metered when warranted, approve initial parking availability standards and targets, and authorize the adjustment of availability standards and targets during the pilot project period.

SUMMARY:

- *SFpark* will use pilot projects in San Francisco to evaluate new parking management approaches and technology in order to: a) better manage San Francisco's parking supply and demand; b) support SFMTA's overall transportation goals, and; c) comply with the requirements of the UPP funding criteria.
- As the next step in the implementation of *SFpark*, the Board is requested to approve the proposed pricing ranges to be used in the *SFpark* pilot projects to support the proposed availability standards and targets.
- *SFpark* staff will closely monitor effects of pilot programs and periodically report back to the SFMTA board on the progress of the pilot project.
- Pursuant to the requirements of Charter § 4.104 and 16.112, notice of this public hearing for changes to rates was published.

ENCLOSURES:

1. SFMTAB Resolution with Attachments A and B

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO: Jay Primus

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

As the next step in implementing *SFpark*, staff requests that the SFMTA Board of Directors:

- Approve ranges for parking pricing that will be used in the *SFpark* parking pilot projects.
- Approve initial availability standards and targets that will be used in the *SFpark* parking pilot projects.
- Allow the Executive Director/CEO or his designee to implement changes to parking prices within those ranges and to adjust the initial availability standards and targets that will be used in the *SFpark* parking pilot projects.

GOAL

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

- Goal #2: Customer Focus: To get customers where they want to go, when they want to get there.
 - 2.4 Reduce congestion through major corridors.
 - 2.5 Manage parking supply to align with SFMTA and community goals.
- Goal #3: External Affairs-Community Relations: To improve the customer experience, community value and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry.
 - 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits.
- Goal #4: Financial Capacity: To ensure financial stability and effective resource utilization.
 - 4.1 Increase revenue by 20 percent by 2012 by improving collections and identifying new sources.
 - 4.2 Ensure efficient and effective use of resources.
- Goal #5: SFMTA Workforce: To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency's mission and vision and leads the agency into the evolving, technology-driven future.
 - 5.1 Increase resources available to employees in performing their jobs.
- Goal #6: Information Technology: To improve service and efficiency, the SFMTA must leverage technology.
 - 6.1 Information Technology Leadership: Identify, develop and deliver new and enhanced systems and technologies to support SFMTA's 2012 goals.

DESCRIPTION

On November 6, 2007, the SFMTA Board approved Resolution 07-169, which authorized the acceptance and expenditure of various funds associated with the Urban Partnership Program

(UPP), in anticipation of establishing the *SFpark* program. The resolution included the option to implement a demand-responsive pricing strategy including Special Event Pricing, Peak Demand Pricing, and Market-Based Pricing based on achieving a targeted occupancy rate of 85 to 90 percent.

On April 15, 2008, the SFMTA Board was presented with information on *SFpark*, a new approach to parking management in San Francisco. *SFpark* pilot projects will be used to test and evaluate new parking management strategies and technology in order to manage San Francisco's parking supply and demand in ways that support the SFMTA's overall transportation goals as listed above.

On April 15, 2008, the SFMTA Board also approved Resolution 08-086, which approved two contracts needed to implement *SFpark* and the associated pilot projects.

Staff requests that the SFMTA Board approve the resolution that would implement the next steps of *SFpark*, which consists of establishing the pricing and time limit ranges to be used in the *SFpark* pilot projects and refining the parking occupancy and/or availability goals for the pilot projects. The *SFpark* Parking Pilot Project Areas and Parking Pilot Project Special Event Areas are described in detail in Attachments A and B to the resolution. The parking rates and rate structure options in the *SFpark* Parking Pilot Areas that would go into effect if the Board adopts the resolution are summarized below.

Today's public hearing on these revised rates was noticed in the City's newspaper in compliance with the requirements of SFMTA Board rule section 4.104 and Charter section § 16.112. As required, staff published in the official newspaper of the City and County for five days notice of its intention to revise rates and the date of the public hearing. The date of today's public hearing is at least 15 days after the last publication of the notice.

Rate Structure

- The rate structure for all parking meters, parking garages, and parking lots in *SFpark* Parking Pilot Project Areas can be either flat (same price per hour all day), or may be based on time of day (variable price by time of day), length of stay (variable price by how long a vehicle has been parked), or a combination of those structures.

On-Street Parking Meters and Metered Lots

- The rates for on-street meters and metered lots in the *SFpark* Parking Pilot Project Areas, including all types and kinds of parking, including but not limited to automobile, commercial loading, and motorcycle parking meters, could vary between \$0.25 per hour and \$6.00 per hour and could vary by parking type, purpose, location, and demand. The current range for pricing of on-street parking in the Pilot Project Areas is between \$1.50 and \$3.00 per hour, with the range for motorcycle parking being \$0.10 and \$0.25 per hour.

Public Parking Garages

- The hourly rates for public parking garages in the *SFpark* Parking Pilot Project Areas could be between \$1.00 per hour and \$10.00 per hour. Currently, the price of public

parking garages in the Pilot Project Areas is no more than \$6.00 per hour.

Special Event Pilot Areas

- For all on-street parking in the *SFpark* Parking Pilot Project Special Event Areas¹, rates could be between \$0.25 per hour and \$18.00 per hour during special events. Special event pricing for off-street parking will follow existing rules for setting those prices. For special event on-street parking pricing, one possible pricing structure would be to use the prevailing meter rates for the first one or two hours, and then charge a higher price for subsequent hours, to encourage parking availability for local businesses yet enable the price of on-street parking for the duration of a special event to more closely match demand.
- For a special event in a *SFpark* Parking Pilot Project Special Event Area, on-street parking prices during or up to four hours before the special event could vary within the ranges specified for *SFpark* Parking Pilot Project Special Event Area. After the special event, prices would go back to the most recent rates set for the pilot area.

Discounts

- For parking garages in *SFpark* Parking Pilot Project Areas, those drivers who pay an hourly rate at parking garages in *SFpark* Parking Pilot Project Areas (but not those drivers who pay a “early bird”, monthly, or other fixed time period or special rate structures) for at least three hours may receive a discount of between \$0.50 and \$2.50 for entering garages during off-peak times (based on availability and congestion targets) and/or a discount of between \$0.50 and \$2.50 for exiting garages during off-peak times as defined by congestion and parking availability data.
- The times for entering and exiting a parking garage when “early bird” parking rates would only apply could vary from garage to garage. The times for early bird could be applied could vary between 5:00 AM and 10:00 AM for entering a garage and exiting the garage between 3:00 PM and 8:00 PM.
- The cost of all types of daily, monthly, early bird, and all other non-hourly parking rates in garages in *SFpark* Parking Pilot Project Areas could increase by no more than 50 percent compared to those rates as of November 30, 2008.

Customer Outreach

- Parking price or rate changes for parking meters, garages, and lots that are within the ranges specified in this resolution will be posted on the SFMTA website no less than seven calendar days before the commencement of a price change. The exception to this notification requirement is any rate change for monthly parking rates in parking garages

¹ The Special Event Areas are defined in Attachment B. For the purposes of the *SFpark* program, special events are large, well-publicized events that are expected to generate a significantly higher level of parking demand, including baseball games, concerts, conventions, major parades and street festivals, entertainment/cultural shows, exhibitions, and other similar events.

would be posted on the SFMTA website and at the specific location where the price is changed at least 30 calendar days before the price is changed.

During the parking pilot project period and in Parking Pilot Project Areas, parking prices would be adjusted gradually and periodically based on parking availability and congestion targets. For on-street metered parking, prices would be adjusted up or down in increments of up to \$0.50 per hour no less than every 30 calendar days (i.e., every four to six weeks) for a specified geographic area no less than the block level (i.e., directly opposing sides of two blocks or opposing block faces). For example, all the parking spaces on both sides of Bryant Street between Fifth Street and Fourth Street would be priced the same. We may combine opposing block faces into groups of two or more for purposes of analysis or pricing to better align parking prices with demand. For off-street parking garages and lots, prices would be adjusted up or down in increments of no more than \$0.50 per hour every four to six weeks. *SFpark* staff will work with private parking garage and lot operators to encourage them to participate in *SFpark* pilot project approach to parking management to increase the effectiveness of the pilot projects.

SFpark will utilize gradual and periodic pricing adjustments in order to give people time to learn about new parking prices and policies, and have the opportunity to adjust their travel patterns and modal choices as necessary. The alternative of more dynamic or frequent price changes would likely frustrate drivers and not allow them to learn about new prices and policies over time and would therefore be expected to have less influence on modal choices.

As discussed on April 15, 2008 presentation to the SFMTA Board, one purpose of the *SFpark* pilot projects is to test the effect of changing the hours when parking is metered. As part of the pilot projects, the times and days (e.g., “hours of operation”) when parking is metered in *SFpark* parking pilot areas may change based on availability data and goals. In some pilot areas, this may include metering later into the evenings, earlier in the mornings, and on Sundays during the pilot period based on occupancy targets.

As highlighted in the April 15, 2008 presentation to the SFMTA Board, another purpose of the *SFpark* pilot projects is to combine changes to parking pricing with changes to time limits. In both metered and unmetered areas, time limits are currently the primary method used to promote parking turnover. Time limits for metered parking in pilot project areas may be relaxed where parking demand patterns justify such a change in order to allow *SFpark* staff to evaluate the effectiveness of using parking prices rather than time limits as the primary means to promote turnover and achieve availability targets.

The parking availability standards and targets that will be measured during the *SFpark* pilot projects and used to adjust the price of parking upwards or downwards have been further refined since the November 6, 2007 presentation, as follows:

- The availability **standard** defines the optimal level of availability for different types of parking.
- The availability **target** defines how much of the time that availability standards are met.

Expressing the availability standard for different types of parking as a range rather than a single

number (such as 85 percent) allows for more effective parking management and help to prevent “over management” of parking to achieve a too-narrowly defined goal.

The SFMTA Board is requested to approve the initial availability standard of 10 percent to 35 percent for the following different types of parking:

- Metered on-street parking (automobile);
- Metered on-street parking (motorcycle);
- Metered on-street commercial loading parking (yellow zones);
- Metered on-street short-term “pick-up/drop-off” parking (green zones); and
- Parking garages and lots.

The SFMTA Board is requested to approve an initial availability target of 80 percent, which means that the availability standards are met 80 percent of the time that parking is priced. An availability target of 80 percent acknowledges that while a higher availability target of 95 percent or 99 percent is theoretically possible, it would likely cause undesirable consequences such as result in parking prices that are higher than necessary to achieve availability goals. Because parking demand naturally varies both day-to-day and hour-to-hour, achieving a “perfect” adherence to an availability standard would require management toward the 99th percentile, or the "peak of the peak" of parking demand. This would result in prices that would risk driving vehicles away from commercial areas. Both results would fail to meet the overall goals of *SFpark*.

Finally, the SFMTA Board is requested to approve the authority of the Executive Director/CEO or his or her designee to make as-needed adjustments to availability standards and targets for different types of parking in *SFpark* Parking Pilot Areas during the pilot period. The initial availability standards and targets during the pilot period will be continuously monitored, evaluated, and adjusted as needed to determine how well they help achieve the overall goals of *SFpark*. If necessary, SFMTA staff may return to the SFMTA Board to revise the parameters of the *SFpark* project if there are unforeseen issues with or unintended changes in behavior that are counter to the goals of *SFpark*.

Staff will present the Board with quarterly reports on the status of *SFpark*.

The City Attorney’s Office has reviewed this item.

ALTERNATIVES CONSIDERED

SFpark is a pilot project. As such, the policy prescriptions to be tested are alternatives to San Francisco’s current parking policy. The results of *SFpark* will inform future proposals to the SFMTA Board about parking management in San Francisco.

FUNDING IMPACT

Funds required for *SFpark* and the associated pilots are budgeted in the SFMTA’s operating and capital budgets.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

SFpark has received three previous approvals and needs no future approvals. These previous approvals include:

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

RECOMMENDATION

It is recommended that the SFMTA Board of Directors approve the resolution authorizing pricing ranges for parking pricing associated with the SFpark program, establishing initial occupancy and availability targets, and authorizing the Executive Director/CEO or his designee to implement and adjust rates within those ranges as well as adjust availability standards and targets.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On November 6, 2006, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors approved Resolution 07-169, which authorized the acceptance and expenditure of various funds associated with the Urban Partnership Program (UPP) in anticipation of establishing the *SFpark* program and approved variable pricing required for the acceptance of these funds; and,

WHEREAS, On April 15, 2008, the SFMTA Board received a report on *SFpark*, a program to evaluate new parking management approaches and technology in order to manage San Francisco's parking supply and demand to support the SFMTA's overall transportation goals; and,

WHEREAS, The SFMTA Board approved Resolution 08-086 on April 15, 2008, approving two contracts required to implement *SFpark* and the associated pilot projects; and,

WHEREAS, Pricing ranges and strategies as well as occupancy standards for use in association with *SFpark* have been developed since presentations on those subjects were made to the Board; and,

WHEREAS, A public hearing on these pilot program parking pricing modifications was noticed in compliance with requirements of Charter § 4.104 and 16.112; and,

WHEREAS, The Port of San Francisco approved on October 28, 2008 Resolution No. 08-68, approving parking pricing and management changes consistent with those contained in this Resolution, and thereby adopting a consistent approach to parking management for the metered on-street parking in its jurisdiction, including areas along the Embarcadero that are adjacent to the *SFpark* Pilot Project Areas; and,

WHEREAS, The *SFpark* Parking Pilot Project received environmental clearance under the California Environmental Quality Act as a Class 6 Categorical Exemption from the San Francisco Planning Department on May 19, 2008; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to set parking rates within *SFpark* Parking Pilot Project Areas and Parking Pilot Project Special Event Areas for the approximate 18 month duration of the *SFpark* parking pilot projects; and, be it further

RESOLVED, That parking within the areas specified in Attachment A, incorporated by reference into this resolution, are designated as *SFpark* Parking Pilot Project Areas; and, be it further

RESOLVED, That parking within the areas specified in Attachment B, incorporated by reference into this resolution, are designated as *SFpark* Parking Pilot Project Special Event Areas; and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to adjust parking rates within *SFpark* Parking Pilot Project Areas as often as every 30 calendar days for the duration of the *SFpark* parking pilot projects; and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to adjust metered parking rates within *SFpark* Parking Pilot Project Areas in increments of no more than \$0.50 per hour and in increments of no more than \$0.50 per hour for parking garages and lots; and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to vary metered parking rates within *SFpark* Parking Pilot Project Areas in as small increments as the block level (i.e., two opposing block-faces or both sides of one street between two cross streets); and, be it further

RESOLVED, That the rate structure for all parking meters, parking garages, and parking lots in *SFpark* Parking Pilot Project Areas may be either flat rates (same price per hour all day), or may be based on time of day (variable price by time of day), length of stay (variable price by how long a vehicle has been parked), or a combination of those pricing structures; and, be it further

RESOLVED, That the rates for parking meters and metered lots in the *SFpark* Parking Pilot Project Areas, including all types and kinds of parking, including but not limited to automobile, commercial loading, and motorcycle, parking meters, shall be between \$0.25 per hour and \$6.00 per hour; and, be it further

RESOLVED, That the hourly rates for parking garages in the *SFpark* Parking Pilot Project Areas shall be between \$1.00 per hour and \$10.00 per hour; and, be it further

RESOLVED, That for on-street parking rates in the *SFpark* Parking Pilot Project Special Event Area shall be between \$0.25 per hour and \$18.00 per hour during or up to four hours before special events; and, be it further

RESOLVED, That the Executive Director/CEO is authorized to provide for those drivers who pay an hourly rate for at least three hours at parking garages in *SFpark* Parking Pilot Project Areas a discount of between \$0.50 and \$2.50 for entering garages during off-peak times (based on availability and congestion targets) and/or a discount of between \$0.50 and \$2.50 for exiting garages during off-peak times, without being required to provide this discount for those drivers who pay a “early bird”, monthly, or other fixed time period or special rate structures; and, be it further

RESOLVED, That for parking garages in *SFpark* Parking Pilot Project Areas, during the *SFpark* parking pilot period the Executive Director/CEO is authorized to specify the times when

“early bird” parking rates may apply, so long as those times are restricted to those drivers who enter a garage between 5:00 AM and 10:00 AM and exit the garage between 3:00 PM and 8:00 PM; and, be it further

RESOLVED, That for parking garages in *SFpark* Parking Pilot Project Areas, during the *SFpark* parking pilot period the Executive Director/CEO is authorized to adjust the cost of all types of daily, monthly, “early bird”, and all other non-hourly parking rates in garages in *SFpark* parking pilot areas by up to 50 percent compared to those rates as of November 30, 2008; and, be it further

RESOLVED, That any parking price or rate changes for parking meters, garages, and lots that are within the ranges specified in this resolution must be posted on the SFMTA website no less than seven calendar days in advance of the price change; and be it further

RESOLVED, That any parking price or rate changes for monthly parking in parking garages that are within the ranges specified in this resolution must be posted on the SFMTA website and at the specific location where price is changed no later than 30 calendar days before the commencement of the revised pricing; and, be it further

RESOLVED, That the initial availability standards for *SFpark* pilot project areas are 10 to 35 percent for metered on-street parking (automobile), 10 to 35 percent for metered on-street parking (motorcycle), 10 to 35 percent for metered on-street commercial loading parking (yellow zones), 10 to 35 percent for metered on-street short-term parking (green zones), and 10 to 35 percent for parking garages and lots; and, be it further

RESOLVED, That the initial availability target for the *SFpark* pilot project areas is to achieve the availability standards 80 percent of the time that parking is priced; and, be it further

RESOLVED, That the Executive Director/CEO is authorized to adjust availability standards and targets during the pilot project period to better achieve the goals of *SFpark*.

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

Attachment A: Definition of SFpark Parking Pilot Areas

The Downtown SFpark Pilot Parking Pilot Area shall include that portion of the City and County of San Francisco not under the jurisdiction of the Port of San Francisco commencing at a point where the southerly line of Folsom Street intersects the easterly line of The Embarcadero, thence south-westerly along the southerly line of Folsom Street to the westerly line of Fifth Street, thence north-westerly along the westerly line of Fifth Street to the northerly line of Market Street, thence easterly along the northerly line of Market Street to the westerly line of Powell Street, thence northerly along the westerly line of Powell Street to northerly line of Bush Street, thence easterly along the northerly line of Bush Street to the westerly line of Grant Avenue, thence northerly along the westerly line of Grant Avenue to the northerly line of Washington Street, thence easterly along the northerly line of Washington Street to the westerly line of Montgomery Street, thence northerly along the westerly line of Montgomery Street to the northerly line of Jackson Avenue, thence easterly along the northerly line of Jackson Avenue to the easterly line of The Embarcadero, thence south-easterly along the easterly line of The Embarcadero to the point of commencement.

The Civic Center SFpark Pilot Parking Pilot Area shall include that portion of the City and County of San commencing at a point where the southerly line of Market Street intersects the easterly line of Hyde Street, thence south-easterly along the southerly line of Market Street to the easterly line of Gough Street, thence northerly along the easterly line of Gough Street to the southerly line of Page Street, thence westerly along the southerly line of Page Street to the westerly line of Laguna Street, thence northerly along the westerly line of Laguna Street to the northerly line of Fulton, thence easterly along the northerly line of Fulton to the westerly line of Gough street, thence northerly along the westerly line of Gough Street to the northerly line of Eddy Street, then easterly along the northerly line of Eddy Street to the easterly line of Hyde Street, thence southerly along the easterly line of Hyde Street to the point of commencement.

The Fisherman's Warf SFpark Pilot Parking Pilot Area shall include that portion of the City and County of San Francisco not under the jurisdiction of the Port of San Francisco commencing at a point where the southerly line of Bay Street intersects the easterly line of Powell Street, thence westerly along the southerly line of Bay Street to the easterly line of Taylor street, thence southerly along the easterly line of Taylor street to the southerly line of Columbus Avenue, thence north-westerly along the southerly line of Columbus Avenue to the southerly line of North Point Street, thence westerly along the southerly line of North Point Street to the westerly line of Polk Street, thence northerly along the westerly line of Polk Street to the northerly line of Beach Street, thence easterly along the northerly line of Beach Street to the westerly line of Hyde Street, thence northerly along the westerly line of Hyde Street to the northerly line of Jefferson Street, thence easterly along the northerly line of Jefferson Street to the easterly line of Powell Street, thence southerly along the easterly line of Powell Street to the point of commencement.

The Marina SFpark Pilot Parking Pilot Area shall include that portion of the City and County of San Francisco commencing at a point where the southerly line of Filbert Street intersects the easterly line of Webster Street, thence westerly along the southerly line of Filbert Street to the westerly line of Steiner Street, thence northerly along the westerly line of Steiner Street to the southerly line of Lombard Street, thence easterly along the southerly line of Lombard Street to

the westerly line of Broderick Street, thence northerly along the westerly line of Broderick Street to the northerly line of Francisco Street, thence easterly along the northerly line of Francisco Street to where Francisco Street meets Alhambra Street, thence easterly along the northerly line of Alhambra Street to easterly line of Pierce Street, thence southerly along the easterly line of Pierce Street to the northerly line of Toldeo Way, thence easterly along the northerly line of Toldeo Way to the easterly line of Mallorca Way, thence southerly along the easterly line of Mallorca Way to the northerly line of Chestnut Street, thence easterly along the northerly line of Chestnut Street to the easterly line of Fillmore Street, thence southerly along the easterly line of Fillmore Street to the northerly line of Lombard Street, thence easterly along the northerly line of Lombard Street to the easterly line of Webster Street, thence southerly along the easterly line of Webster Street to the point of commencement.

The Fillmore SF*park* Pilot Parking Pilot Area shall include that portion of the City and County of San Francisco commencing at a point where the southerly line of McAllister Street intersects the easterly line of Webster Street, thence westerly along the southerly line of McAllister Street to the westerly line of Steiner Street, thence northerly along the westerly line of Steiner Street to the southerly line of Post Street, thence westerly along the southerly line of Post Street to the westerly line of Pierce Street, thence northerly along the westerly line of Pierce Street to the northerly line of Clay Street, thence easterly along the northerly line of Clay Street to the easterly line of Steiner Street, thence northerly along the easterly line of Steiner Street to the northerly line of Jackson Street, thence easterly along the northerly line of Jackson Street to the easterly line of Webster Street, thence southerly along the easterly line of Webster Street to the northerly line of Bush Street, thence easterly along the northerly line of Bush Street to the easterly line of Laguna Street, thence southerly along the easterly line of Laguna Street to the southerly line of Geary Boulevard, thence easterly along the southerly line of Geary Boulevard to the easterly line of Webster Street, thence southerly along the easterly line of Webster Street to the point of commencement.

The South Embarcadero SF*park* Pilot Parking Pilot Area shall include that portion of the City and County of San Francisco not under the jurisdiction of the Port of San Francisco commencing at a point where the southerly line of Mariposa Street intersects the easterly line of Terry A. Francois St, thence westerly along the southerly line of Mariposa Street to the easterly line of the CalTrain tracks, thence northerly along the CalTrain tracks to northerly line of King Street, thence easterly along the northerly line of King Street to the westerly line of Fifth Street, thence northerly along the westerly line of Fifth Street to the northerly line of Folsom Street, then easterly along the northerly line of Folsom Street to the easterly line of The Embarcadero, then southerly along the easterly line of The Embarcadero to the southerly line of King Street, thence easterly along the southerly line of King Street to the easterly line of Third Street, then southerly along the easterly line of Third Street to the northerly line of Terry A. Francois St, then easterly along the northerly line of Terry A. Francois St to the easterly line of line of Terry A. Francois St, then southerly along the easterly line of line of Terry A. Francois St to the point of commencement.

The Mission SF*park* Pilot Parking Pilot Area shall include that portion of the City and County of San Francisco commencing at a point where the southerly line of Twenty-Fourth Street intersects the easterly line of South Van Ness Avenue, thence westerly along the southerly line of Twenty-Fourth Street to the westerly line of Valencia Street, thence northerly along the westerly line of

Valencia Street to the southerly line of Sixteenth Street, thence westerly along the southerly line of Sixteenth Street to the westerly line of Guerrero Street, thence northerly along the westerly line of Guerrero Street to the northerly line of Fifteenth Street, thence easterly along the northerly line of Fifteenth Street to the easterly line of South Van Ness Avenue, thence southerly along the easterly line of South Van Ness Avenue to the point of commencement.

Attachment B: SFpark Parking Pilot Project Special Event Areas

SFpark Parking Pilot Project Special Event Areas include the following areas:

The South Embarcadero SFpark Pilot Parking Pilot Area shall include that portion of the City and County of San Francisco not under the jurisdiction of the Port of San Francisco commencing at a point where the southerly line of Mariposa Street intersects the easterly line of Terry A. Francois St, thence westerly along the southerly line of Mariposa Street to the easterly line of the CalTrain tracks, thence northerly along the CalTrain tracks to northerly line of King Street, thence easterly along the northerly line of King Street to the westerly line of Fifth Street, thence northerly along the westerly line of Fifth Street to the northerly line of Folsom Street, then easterly along the northerly line of Folsom Street to the easterly line of The Embarcadero, then southerly along the easterly line of The Embarcadero to the southerly line of King Street, thence easterly along the southerly line of King Street to the easterly line of Third Street, then southerly along the easterly line of Third Street to the northerly line of Terry A. Francois St, then easterly along the northerly line of Terry A. Francois St to the easterly line of line of Terry A. Francois St, then southerly along the easterly line of line of Terry A. Francois St to the point of commencement.

The Civic Center SFpark Pilot Parking Pilot Area, which shall include that portion of the City and County of San commencing at a point where the southerly line of Market Street intersects the easterly line of Hyde Street, thence south-easterly along the southerly line of Market Street to the easterly line of Gough Street, thence northerly along the easterly line of Gough Street to the southerly line of Page Street, thence westerly along the southerly line of Page Street to the westerly line of Laguna Street, thence northerly along the westerly line of Laguna Street to the northerly line of Fulton, thence easterly along the northerly line of Fulton to the westerly line of Gough street, thence northerly along the westerly line of Gough Street to the northerly line of Eddy Street, then easterly along the northerly line of Eddy Street to the easterly line of Hyde Street, thence southerly along the easterly line of Hyde Street to the point of commencement.

The Fillmore SFpark Pilot Parking Pilot Area, which shall include that portion of the City and County of San Francisco commencing at a point where the southerly line of McAllister Street intersects the easterly line of Webster Street, thence westerly along the southerly line of McAllister Street to the westerly line of Steiner Street, thence northerly along the westerly line of Steiner Street to the southerly line of Post Street, thence westerly along the southerly line of Post Street to the westerly line of Pierce Street, thence northerly along the westerly line of Pierce Street to the northerly line of Clay Street, thence easterly along the northerly line of Clay Street to the easterly line of Steiner Street, thence northerly along the easterly line of Steiner Street to the northerly line of Jackson Street, thence easterly along the northerly line of Jackson Street to the easterly line of Webster Street, thence southerly along the easterly line of Webster Street to the northerly line of Bush Street, thence easterly along the northerly line of Bush Street to the easterly line of Laguna Street, thence southerly along the easterly line of Laguna Street to the southerly line of Geary Boulevard, thence easterly along the southerly line of Geary Boulevard to the easterly line of Webster Street, thence southerly along the easterly line of Webster Street to the point of commencement.