

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets – Transportation Engineering

BRIEF DESCRIPTION:

Approving various routine traffic and parking modifications.

SUMMARY:

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

ENCLOSURE:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO _____ Tom Folks _____

ASSIGNED SFMTAB CALENDAR DATE: November 16, 2010

PAGE 2.

PURPOSE

To approve various routine traffic and parking modifications.

GOAL

This action is consistent with 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 – STOP SIGNS – Andover Street and Eugenia Street. **PH 10/15/10 Requested by Resident.**
- B. ESTABLISH – TOW-AWAY, NO STOPPING, 10 PM TO 6 AM, DAILY – Fairfax Avenue, both sides, between Keith and Mendell Streets. **PH 10/15/10 Requested by Businesses.**
- C. REVOKE – TOW AWAY NO STOPPING ANYTIME – Holloway Avenue, south side, from 82 to 42 feet west of Ramsell Street. **PH 10/15/10 Requested by SFMTA.**
- D. ESTABLISH – TOW AWAY NO STOPPING ANYTIME – Holloway Avenue, north side, from 26 to 51 feet east of De Soto Street. **PH 10/15/10 Requested by SFMTA.**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

- A. ESTABLISH – STOP SIGNS – Andover Street and Eugenia Street.
- B. ESTABLISH – TOW-AWAY, NO STOPPING, 10 PM TO 6 AM, DAILY – Fairfax Avenue, both sides, between Keith and Mendell Streets.
- C. REVOKE – TOW AWAY NO STOPPING ANYTIME – Holloway Avenue, south side, from 82 to 42 feet west of Ramsell Street.
- D. ESTABLISH – TOW AWAY NO STOPPING ANYTIME – Holloway Avenue, north side, from 26 to 51 feet east of De Soto 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 the Sustainable Streets Division 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: ADMINISTRATION, TAXIS AND ACCESSIBLE SERVICES

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute a new Cost-Sharing Agreement for Paratransit Services between Bay Area Rapid Transit District (BART) and the San Francisco Municipal Transportation Agency (SFMTA), pursuant to which the SFMTA shall be reimbursed for providing BART's ADA paratransit services within San Francisco; and authorizing the Executive Director/CEO to submit the Agreement to the San Francisco Board of Supervisors for approval.

SUMMARY:

- As part of its Americans with Disabilities Act (ADA) responsibilities, BART is required to provide paratransit services within its San Francisco service area.
- When BART was mandated to provide such paratransit services, SFMTA already had an operational paratransit program; thus, BART decided to contract with Muni to provide BART's ADA paratransit services in San Francisco.
- For the past 16 years, a cost-sharing agreement has been in place between SFMTA and BART, which provides a mechanism for BART to reimburse SFMTA for providing BART's share of paratransit services in San Francisco.
- The attached agreement continues the cost-sharing arrangement between SFMTA and BART for up to 10 additional years. Each year, BART's reimbursement amount will be approximately \$1.25 million.

ENCLOSURES:

1. SFMTAB Resolution
2. Cost Sharing Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO _____Annette Williams

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

To seek SFMTA Board approval to authorize the Executive Director/CEO to execute a Cost-Sharing agreement with BART commencing on July 1, 2010 for a term of up to 10 years.

GOAL

The Cost-Sharing Agreement with BART helps the SFMTA meet the following goal and objective of the 2008-2012 Strategic Plan:

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

- Objective 1.4 Improve accessibility across transit service.

DESCRIPTION

Since 1994, SFMTA has provided paratransit services to meet BART's ADA paratransit obligations for trips within San Francisco. This agreement was initially authorized after a consultant study was completed to determine BART's share of paratransit responsibilities in San Francisco. Currently, the SFMTA provides these services through its paratransit broker.

The key elements of the Cost-Sharing Agreement are:

- BART is responsible for 8.8 percent of all paratransit trips in San Francisco
- The 8.8 percent is based on a statistical analysis of the paratransit trips in San Francisco. A random sampling of actual paratransit trips was analyzed to determine BART's share of responsibility, based on route miles and trip duration for both Muni and BART service areas.
- BART provides 8.8 percent of the annual paratransit budget, excluding funding sources which BART is eligible to receive on its own; namely, State Transportation Development Act funds, State Transit Assistance funds and fare revenues. The amount for FY 10-11 is \$1.25 million.
- The agreement is for one year, with automatic renewals up to 10 years unless terminated by either party with a 180-day termination notice.

There are no substantive changes in this agreement from the prior agreement.

ALTERNATIVES CONSIDERED

An alternative to this agreement would be for BART to operate its own paratransit system in San Francisco for ADA-eligible persons traveling in the BART corridor. A separate program would likely not be cost effective because it would be duplicative, the fixed costs would be higher, and there would be no opportunity to take advantage of the economies of scale offered by the larger SFMTA program. A separate service would also be very complicated for customers because they would have to choose between two paratransit service programs for trips along the BART corridor.

PAGE 3.

FUNDING IMPACT

This agreement will bring approximately \$1.25 million to SFMTA's paratransit operating budget each year. Without the Cost-Sharing Agreement, SFMTA's expenditures would likely not decrease by the same margin because demand for SFMTA's paratransit services would likely not be reduced by the entire estimated 8.8 percent, as most SF Paratransit customers would likely continue to use the SF Paratransit service even if an additional service was offered by BART.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

This Agreement must be approved by the San Francisco Board of Supervisors because the revenue to be received from BART over the term of the agreement will exceed \$1 million.

This Agreement has been approved as to form by the City Attorney's office.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to execute a new Cost-Sharing Agreement between BART and the SFMTA pursuant to which the SFMTA shall provide BART's ADA paratransit services within San Francisco.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Section 223 of the Americans with Disabilities Act of 1990 (ADA) requires that BART and the San Francisco Municipal Transportation Agency (SFMTA) provide paratransit services within their service areas to individuals whose disabilities will not allow them to use regular fixed route transit service; and,

WHEREAS, The SFMTA administers a Paratransit Program for ADA paratransit-eligible individuals in San Francisco through its Paratransit Broker and has provided these services to eligible individuals in BART's service area since 1994; and,

WHEREAS, The City has applied for and received from the Metropolitan Transportation Commission, State Transit Assistance (STA) funds and Transportation Development Act (TDA) funds to implement paratransit services in San Francisco; and,

WHEREAS, BART has agreed to continue to contribute its share of the cost of providing ADA paratransit services in San Francisco, less the value of its share of STA and TDA funds which the MTC has allocated to the City for this purpose; and,

WHEREAS, BART commissioned a study of taxi, lift-van, group van and Commission on the Aging paratransit services to determine how much of the paratransit costs in San Francisco would be attributable to BART; the results of which indicated that approximately 8.8 percent of the overall costs for ADA paratransit should be borne by BART; and,

WHEREAS, The SFMTA and BART are entering into this Agreement for the purpose of continuing a cost-sharing arrangement whereby BART reimburses the SFMTA for providing BART's mandated ADA paratransit services within San Francisco for up to an additional 10-year period; now, therefore, be it

RESOLVED, That the Executive Director/CEO is authorized to execute a Cost-Sharing Agreement for Paratransit Services with BART requiring BART to reimburse the SFMTA for providing BART's ADA Paratransit services within San Francisco for a period of up to 10 years, and be it

FURTHER RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to submit the Cost-Sharing Agreement to the Board of Supervisors for approval.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

AGREEMENT No.
COST-SHARING AGREEMENT FOR PARATRANSIT SERVICES
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

This Agreement is entered into this _____ day of _____ 2010, between the City and County of San Francisco (“CITY”), a municipal corporation, acting through its Municipal Transportation Agency (“SFMTA”), and the San Francisco Bay Area Rapid Transit District (“BART”), a rapid transit district established pursuant to California Public Utilities Code, Sections 28500 et seq.

RECITALS

A. The CITY is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and the CITY Charter to operate the Municipal Railway (“MUNI”).

B. The SFMTA is empowered by the CITY Charter to manage and control all public transportation functions of MUNI.

C. BART operates in Alameda, Contra Costa, San Francisco and San Mateo Counties.

D. Section 223 of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. § 12143, requires that BART and the CITY provide paratransit services within their service areas to individuals who are unable because of their disability to use regular transit service.

E. The SFMTA administers a Paratransit Program for ADA paratransit-eligible individuals in San Francisco through a Paratransit Broker. Since 1994, the SFMTA has provided paratransit services in San Francisco, through its Paratransit Broker, to all certified ADA paratransit eligible users in areas where MUNI and BART service areas overlap.

F. The CITY has applied for and received from the Metropolitan Transportation Commission (“MTC”) State Transit Assistance (“STA”) funds and Transportation Development Act (“TDA”) funds to assist in funding paratransit services in San Francisco.

G. In 1994, BART commissioned a study of the CITY’s Paratransit Program, which included paratransit services provided by taxi, lift van, group van and the Commission on Aging to determine how much of the costs of the CITY’s Paratransit Program would be attributable to BART. The results of the study indicated that approximately 8.8% of the CITY’s overall costs for ADA paratransit should be borne by BART.

I. The CITY and BART are in accord with the results of the study and are entering into this Agreement to memorialize (1) SFMTA’s agreement to cover BART’s obligation under the ADA to provide paratransit services, and (2) BART’s agreement to share in the costs of SFMTA’s Paratransit Program.

FOR AND IN CONSIDERATION of the mutual promises contained herein, the parties agree as follows:

COST SHARING FORMULA

- A. BART shall pay 8.8% of the “Net Operating Expenses” of providing services to eligible paratransit individuals in the CITY’s service area, as calculated below.
- B. Calculation of Net Operating Expenses.
 1. On or about February 1, the CITY shall estimate the annual operating budget for SFMTA's Paratransit Broker Contract for the following fiscal year (July 1 through June 30) ("Total Operating Expenses").
 2. The Total Operating Expenses shall be reduced by the following to arrive at the Net Operating Expenses:
 - a. an estimate of STA population based revenue allocated to the CITY for paratransit as approved by MTC,
 - b. an estimate of TDA Article 4.5 funds allocated to the CITY as approved by MTC,
 - c. an estimate of paratransit fare revenues for the fiscal year, as submitted in the revenue line items in MUNI's budget request,
 - d. except for trips on paratransit taxi service, the difference between estimated fare revenues as calculated in SFMTA's budget request and the amount that would be generated if maximum fares were charged, if the fare charged for ADA SF Access services is less than the maximum amount allowed under ADA rules (i.e., twice the undiscounted fixed route fare).
- C. Billing of Net Operating Expenses
 1. SFMTA shall bill BART for one quarter of 8.8% of the estimated Net Operating Expenses for each of the following three fiscal year quarters: Quarter 1 (July through September) (“Q1”), Quarter 2 (October through December) (“Q2”), and Quarter 3 (January through March) (“Q3”), as provided in Section II.B below.
 2. Following the end of each fiscal year SFMTA shall calculate the actual amount of Net Operating Expenses according to the formula in Section I.B above. For Quarter 4 (April through June) (“Q4”), BART shall be billed an amount equal to 8.8% of actual Net Operating Expenses less amounts already billed for Q1, Q2, and Q3. The amount may be more or less than the amounts billed in the previous three quarters depending whether actual Net Operating Expenses were more or less than the estimated Net Operating Expenses.
- D. Notwithstanding the above, if for any fiscal year SFMTA's annual budget contribution is less than 91.2% of the total "Net Operating Expenses," BART's share of the costs would also be reduced proportionally so that the cost sharing between BART and SFMTA would remain the same.

RESPONSIBILITIES

- A. **BART shall:**

1. Pay to the SFMTA its annual monetary contribution for the paratransit services as described in Section I in quarterly payments. BART's payments shall be due on August 1 for Q1, on November 1 for Q2, on February 1 for Q3, and on August 15 for Q4.

B. City shall:

1. By February 1 of each year, submit an estimate to BART for 8.8% of the Net Operating Expenses for the following fiscal year.
2. Prior to the beginning of Q1, Q2, and Q3 of each fiscal year, submit an invoice to BART in the amount of one quarter of 8.8% of the estimated Net Operating Expenses, for a total of three invoices for Q1, Q2, and Q3.
3. Following the end of the fiscal year and calculation of the Actual Net Operating Expenses, submit a final invoice to BART for the fiscal year for the difference between 8.8% of the Actual Net Operating Expense and the amount billed in Q1, Q2, and Q3.
4. Provide paratransit services in the CITY and fulfill BART's obligation to ADA Paratransit in the limits of MUNI's service area and in Daly City in compliance with ADA requirements.
5. Apply for, and administer, all forms of grants or revenues, including but not limited to, TDA and STA funds, to fund the paratransit services in the CITY.
6. Credit the amount of STA and TDA funds for which BART is eligible for paratransit in the City and County of San Francisco to BART's 8.8% share of the cost of the provision of services to ADA paratransit eligible individuals.
7. Provide an annual report of service level statistics.
8. Provide an annual report of all funds received and disbursed under this Agreement in accordance with generally accepted accounting principles upon request by BART.

TERM OF AGREEMENT; AMENDMENT

- A. The term of this Agreement shall be for one year from its Effective Date, with automatic renewals for up to ten (10) years unless terminated by either party with a 180-day notice of termination.
- B. This Agreement may not be amended except by mutual written agreement of the parties.

IV. STUDY OF PARATRANSIT DEMAND; AUDIT OF PARATRANSIT COSTS

- A. BART or SFMTA may commission a study of paratransit services and costs at any time for the purpose of determining the continuing validity of the cost-sharing percentage contained in Section I, above. The study shall employ the same or better methodology, as mutually determined by staff, as that used in determining the original cost-sharing percentage (see Exhibit A, Allocation of Local ADA Paratransit Costs in San Francisco County, Final Report, September 29, 1994). If the results of the study determine that the percentage should change, either upward or downward, the parties shall amend this Agreement to reflect the new percentage. Such Amendment shall be approved by BART and by the SFMTA on behalf of the CITY. The cost of the study shall be borne equally by the CITY and BART. Charges to the CITY for the cost of the study will accrue only after prior written authorization certified by the CITY's Controller, and the amount of the

CITY's obligation for such study shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

- B. BART shall have the right to inspect and audit all accounts, records and data relating to the CITY's paratransit program, including the records of the CITY's paratransit broker. The records shall be made available for any such inspection or audit during normal business hours. BART's rights hereunder are expressly made subject to confidentiality and disclosure provisions of applicable Federal and State statutes and regulations. The CITY shall preserve and maintain such records for a period of three (3) years after the fiscal year for which such payments are made. The Auditor General of the State of California under California Government Code Section 8546.7 shall have the same rights conferred upon BART by this Section.

V. LIABILITY

- A. Neither BART nor any officer, director, agents, or employees thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by the CITY, its Paratransit Broker or any subcontractor in connection with providing the paratransit service pursuant to this Agreement. It is also agreed that pursuant to Government Code Section 895.4, the CITY shall indemnify, defend and hold BART harmless from any liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by the CITY, its paratransit broker or any subcontractor in connection with providing the paratransit service pursuant to this Agreement.
- B. Neither the CITY nor any officer, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by BART in connection with this Agreement. It is also agreed that pursuant to Government Code Section 895.4, BART shall indemnify, defend and hold the CITY harmless from any liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by BART in connection with this Agreement.

VI. GENERAL PROVISIONS

- A. This Agreement shall be deemed to be made in, and shall be construed in accordance with 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.
- B. 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.
- C. All captions are for reference only and shall not be considered in construing this Agreement.
- D. This Agreement sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section III.B.
- E. Should any part of this Agreement be declared invalid by a court of law, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect. Should the severance of any part of this Agreement materially affect any other rights and obligations of the

parties hereunder, the parties will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.

- F. The CITY and BART shall each bear its own internal costs associated with administration of this Agreement, including, without limitation, reporting, billing, accounting and auditing costs.
- G. This Agreement shall bind and benefit the parties hereto and their assignees, successors, and permitted assigns.
- H. This Agreement and any documents supplied hereunder are subject to public inspection under the California Public Records Act and the City's Sunshine Ordinance (see San Francisco Administrative Code §67.24(e)) unless exempted by law.

VII. NOTICES

All notices to be given by the parties hereto shall be in writing and delivered or mailed, postage prepaid, as follows:

To CITY: San Francisco Municipal Transportation Agency
1 South Van Ness Ave, 7th floor
San Francisco, CA 94103

Attn: Annette Williams, Manager
Accessible Services Program

To BART: BART
800 Madison Street
P.O. Box 12688
Oakland, CA 94604-2688

Attn: Laura Timothy, Manager of Access and Accessible Services

VI. EFFECTIVE DATE OF AGREEMENT

This Agreement is effective as of July 1, 2010.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, in triplicate, by their duly authorized officers, on the day and year first hereinabove written.

CITY AND COUNTY OF SAN FRANCISCO

Municipal Transportation Agency

By: _____
Nathaniel P. Ford Sr.
Executive Director/CEO

Municipal Transportation Agency
Board of Directors
Resolution No.
Dated: _____

Board of Supervisors
Resolution No.
Dated: _____

ATTEST:

ATTEST:

Secretary, SFMTA Board of Directors

Clerk of the Board

APPROVED AS TO FORM:

Dennis J. Herrera
City Attorney

By: _____
Robin M. Reitzes
Deputy City Attorney

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By: _____
Dorothy Dugger, General Manager

APPROVED AS TO FORM:

Office of the General Counsel

By: _____
BART Attorney

THIS PRINT COVERS CALENDAR ITEM NO. : 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs & Construction

BRIEF DESCRIPTION:

Authorizing the award of San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1237, Muni Metro Subway Escalator Rehabilitation – Phase I, to KONE, Inc., located at #1 KONE Court, Moline, Illinois 61265, as the lowest responsive and responsible bidder, in the amount of \$2,367,800, including all optional bid items and for a term not to exceed 535 calendar days.

SUMMARY:

- The project consists of rehabilitating five outdoor escalator units – two at Hallidie Plaza, two at Van Ness Station and one at Church Station. The contractor will install permanent stainless steel swing gates and barricades that will close off the entrances and exits of the escalators when they are out of service to the public.
- Five bids were received and publicly opened on May 28, 2010. Two of the bids were determined to be non-responsive to the bidding requirements.
- Staff recommends awarding Contract No. 1237 to KONE, Inc. as the lowest responsive and responsible bidder, in the amount of \$2,367,800.
- Federal and local sources are providing funds for the work under this contract.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget & Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

Jessie Katz

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The purpose of this calendar item is to award San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1237, Muni Metro Subway Escalator Rehabilitation – Phase I.

GOAL

Contract No. 1237 would assist in the implementation of the following goals, objectives and initiatives in the SFMTA Strategic Plan:

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

Objective 1.1 Improve safety and security across all modes of transportation

Objective 1.4 Improve accessibility across transit services

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

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

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

Objective 2.2 Ensure efficient transit connectivity and span of service

Objective 2.3 Fulfill bicycle and pedestrian network connectivity

Objective 2.4 Reduce congestion through major corridors

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

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

Objective 5.2 Improve facilities in which people are working

Objective 5.3 Improve internal communication and employee satisfaction

DESCRIPTION

Background

This project has been prioritized in the 2008 SFMTA Capital Investment Program (CIP), under Infrastructure – Rehabilitation. Capital projects are prioritized using a four-step process that groups and orders projects by program, project criteria, schedule, readiness and fund availability.

PAGE 3.

Scope of Work

Modernization/replacement of subway escalators has been scheduled to be performed in two phases. This contract will implement Phase I, which will modernize/replace the following five escalators, which are most in need of rehabilitation because of their heavy use and outdoor exposure:

- Two escalators at Hallidie Plaza (Powell Street Station),
- Two escalators at Van Ness Street Station, from the street to the mezzanine, and
- One escalator at Church Street Station, from the street to the mezzanine.

Based on the specific site conditions the work may include specific safety upgrades, such as lockable permanent safety barricades, comb impact devices, handrail speed sensing devices, step sag safety devices, missing step devices, step obstruction devices, broken step chain safety devices, broken drive chain safety devices, governors and/or seismic switches.

The time allotted to substantially complete construction of the project is 535 calendar days from the date of the written Notice to Proceed for the work. Liquidated damages are \$2,000 per calendar day for failure to complete the work on time and \$500 per calendar day of delay to complete the remaining work.

Bid Opening & Bids Received

On May 28, 2010, SFMTA's Capital Programs and Construction Division received and publicly opened five bid proposals.

The five bid proposals received were as follows:

	Bidders	Base Bid Price	Option Bid Item	Total Bid Price
1	KONE, Inc. #1 KONE Court Moline, IL 61265	\$1,176,000	\$1,191,800	\$2,367,800
2	Rodan Builders, Inc. 859 Cowan Road Burlingame, CA 94101	\$1,336,559	\$1,392,960	\$2,729,519
3	Angotti & Reilly, Inc. 1000 Mariposa Street San Francisco, CA 94107	\$1,362,652	\$1,372,988	\$2,735,640
4	Otis 444 Spear Street, Suite 100 San Francisco, CA 94105	\$1,834,800	\$2,022,600	\$3,857,400
5	Schembri Construction 1485 Bayshore Blvd. #130 San Francisco, CA 94124	\$2,700,000	\$1,785,000	\$4,485,000

PAGE 4.

The engineer's estimate for the work was \$4,393,300. Since the Engineer's estimate for the work was above the available budget, three of the escalators were originally designated as optional bid items to be exercised only if the total bid came in under budget. The SFMTA is able to exercise the option because the lowest bid was substantially under the Engineer's estimate.

Staff reviewed the five bid proposals and determined that KONE, Inc. is the lowest responsive and responsible bidder. Bids from Rodan Builders, Inc. and Angotti & Reilly, Inc. were determined to be non-responsive to the Buy America requirements of the contract and were rejected.

The Contract Compliance Office reviewed the bid proposals and confirmed that KONE, Inc. will meet the Small Business Enterprise (SBE) participation goal of five percent established for this contract and will commit to meeting the Non-discrimination Equal Employment Requirements of the contract. KONE, Inc. is in compliance with Chapter 12B, the Equal Benefits Provision of the San Francisco Administrative Code.

Section 6.6(A) of the San Francisco Administrative Code requires all contracts that are fully or partially funded by federal or state grants to be awarded within 120 days from the date bids are received. Such time may only be extended prior to award of the contract and only upon (a) written agreement of the apparent responsible bidder with the lowest responsive bid; (b) approval by resolution of the board or commission concerned; and (c) any necessary approvals of the federal, state or other governmental funding agency. The Buy America approval process (see discussion below) has extended the award process beyond 120 days. KONE, Inc. has agreed in writing to honor its bid price for this contract until November 30, 2010. No approvals from funding agencies are required to extend the award date for this contract.

ALTERNATIVES CONSIDERED

The project team held discussions with Maintenance staff concerning whether the work should be done by in-house staff. The preference was to have a contractor perform the work because we have no in-house experience and contractors have enough crews with electrical and construction expertise to complete the work in a timely manner with minimal impact to Operations. Staff determined that contracting out to contractors was the practical alternative.

FUNDING IMPACT

Funding for the entire project comes from a combination of federal and local funds. All funding for this project has been secured.

The budget and financial plan for this project is presented in Enclosure 2 of the calendar item.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Although KONE, Inc. certified that it would comply with the Buy America requirements, some of the other bidders, including an escalator manufacturer, certified that they could not comply, but may be entitled to a waiver. SFMTA decided to seek guidance from the Federal Transit

PAGE 5.

Administration (FTA) on this complex, Buy America issue. At the SFMTA's request, KONE, Inc. provided information required by the FTA to determine whether KONE's manufacturing process for subcomponents sourced outside of United States met the Buy America standards. The SFMTA recently received concurrence from FTA that KONE complies with the Buy America requirements.

The City Attorney has reviewed this report.

No other approvals from any other agency are required for the award of this contract.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors award SFMTA Contract No. 1237, Muni Metro Subway Escalator Rehabilitation – Phase I, to KONE, Inc., as the lowest responsive and responsible bidder, for a contract amount of \$2,367,800, including all optional bid items and a term not to exceed 535 calendar days.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1237, Muni Metro Subway Escalator Rehabilitation – Phase I, is identified in the latest SFMTA Short Range Transit Plan under Infrastructure - Rehabilitation of the Capital Investment Program; and,

WHEREAS, The work to be performed under this project will modernize/replace five escalators: two escalators at Hallidie Plaza (Powell Street Station), two escalators at Van Ness Street Station, from the street to the mezzanine, and one escalator at Church Street Station, from the street to the mezzanine. Anticipated specific safety upgrades include lockable permanent safety barricades, comb impact devices, handrail speed sensing devices, step sag safety devices, missing step devices, step obstruction devices, broken step chain safety devices, broken drive chain safety devices, governors and/or seismic switches; and,

WHEREAS, On May 18, 2010, the SFMTA received and publicly opened five bid proposals in response to its invitation for bids, two of which were determined to be non-responsive to the bidding requirements; and,

WHEREAS, The SFMTA determined that KONE, Inc., located at #1 KONE Court, Moline, Illinois 61265, is the lowest responsive and responsible bidder, in the amount of \$2,367,800; and,

WHEREAS, The SFMTA Contract Compliance Office reviewed the bid proposals and confirmed that KONE, Inc. will meet the revised Small Business Enterprise participation goal of five percent established for this contract and will commit to meeting the Non-discrimination Equal Employment Requirements of the contract; and

WHEREAS, The project is funded by federal grants (80%) and by local funding sources (20%); and

WHEREAS, KONE, Inc. agreed to hold its bid amount beyond 120 days through November 30, 2010; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the award of SFMTA Contract No. 1237, Muni Metro Subway Escalator Rehabilitation – Phase I, to KONE, Inc., as the lowest responsive and responsible bidder, in an amount not to exceed \$2,367,800, including all optional bid items and for a term not to exceed 535 calendar days.

FURTHER RESOLVED, That the SFMTA Board of Directors approves an extension of time to award the contract beyond 120 days from bid opening, under San Francisco Administrative Code Section 6.6(A); and be it

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

Contract No. 1237

**Muni Metro Subway Escalator Rehabilitation – Phase I
Project Budget and Financial Plan**

PROJECT BUDGET

Category	Budget
Conceptual Engineering Phase Staff Support (SFMTA and Other Dept. Services)	\$494,434 (Actual)
Detail Design Phase Staff Support (SFMTA and Other Dept. Services)	\$1,138,925
Construction Phase Construction Contract, Contingency and Staff Support	\$5,777,000
Total Cost	\$7,410,359

FINANCIAL PLAN

Project Funding Source	Amount
Federal Grant	\$5,967,574
Local Grants	
Prop K	\$1,320,854
Prop B	\$121,931
Total	\$7,410,359

THIS PRINT COVERS CALENDAR ITEM NO. 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transit Services

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute the First Amendment to Contract No. CS – 159, Transbay Transit Center Program Services, with the Transbay Joint Powers Authority (TJPA) for Parking Control Officer services during operation of the Temporary Transbay Terminal, to increase the contract amount by \$997,698 to a total not to exceed contract amount of \$3,280,677, and to extend the contract term from December 31, 2014 to December 15, 2015.

SUMMARY:

- On July 21, 2009, the San Francisco Municipal Transportation Agency (SFMTA) and the Transbay Joint Powers Authority (TJPA) executed an agreement to provide SFMTA staff services to assist TJPA in support of the new Transbay Transit Center construction.
- The First Amendment will reimburse the SFMTA for parking control officer services during operation of the Temporary Transbay Terminal.
- The First Amendment increases the not to exceed amount to \$3,280,677 for additional parking control officer services at the Temporary Transbay Terminal and extends the contract term to December 15, 2015.

ENCLOSURES:

1. SFMTAB Resolution
2. First Amendment to Contract No. CS -159, SFMTA Transbay Transit Center Program Services

APPROVALS:

	DATE
DIRECTOR OF DIVISION PREPARING ITEM _____	_____
FINANCE _____	_____
EXECUTIVE DIRECTOR/CEO _____	_____
SECRETARY _____	_____
ADOPTED RESOLUTION TO BE RETURNED TO: Joy Houlihan	
ASSIGNED SFMTAB CALENDAR DATE: _____	

PURPOSE

Requesting approval of the First Amendment to Contract CS-159, SFMTA Transbay Transit Center Program Services, with the TJPA, extending the contract term to December 15, 2015 and increasing the not to exceed amount to \$3,280,677

GOAL

The First Amendment to Contract CS-159 would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

- Goal 1: Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
Objective 1.4 - Improve accessibility across transit service

- Goal 2: System Performance: To get customers where they want to go, when they want to be there.
Objective 2.1 - Improves transit reliability to meet 85% on-time performance standard

- 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 3.4 - Enhance proactive participation and cooperatively strive for improved regional transportation

DESCRIPTION:

On June 2, 2009, the SFMTA Board of Directors adopted Resolution No. 09-086 authorizing execution of Contract No. CS-159, Transbay Transit Center Program Services, with the TJPA in the not to exceed amount of \$2,282,979 and a term until December 31, 2014. Under this agreement, the TJPA agreed to reimburse the SFMTA for engineering services related to re-routing of Muni's trolley coach service to accommodate the new TJPA temporary bus terminal.

The Transbay Transit Center Program is now requesting SFMTA Parking Control Officer (PCO) services during operation of the Temporary Transbay Terminal. These Parking Control Officers are needed to facilitate transit bus circulation during operations at the new Temporary Transbay Terminal. Access to/from the new Temporary Transbay Terminal is via City streets and it is essential to provide efficient and unobstructed transit bus access around the Temporary Transbay Terminal as well as to/from the Bay Bridge. As part of these services, PCOs will be stationed at key intersections to assure these intersections do not become gridlocked and impact transit bus circulation. It is expected that two PCOs will be assigned to each major intersection to control traffic circulation during the morning and afternoon peak hours.

SFMTA and TJPA staff have negotiated a First Amendment to Contract CS-159, Transbay Transit Center Program Services, for Parking Control Officer services during operation of the

Temporary Transbay Terminal.

Page 3

The First Amendment to Contract No. CS-159 extends the original termination date of December 31, 2014 to December 15, 2015 to ensure completion of new Transbay Transit Center construction.

On July 15, 2010, the Transbay Joint Powers Authority adopted Resolution No. 10-027 approving the First Amendment to Contract No. CS -159 with the SFMTA to provide additional Parking Control Officer services for an amount not to exceed \$997,698 increasing the total not to exceed contract amount to \$3,280,677 and extend the contract term to December 15, 2015.

ALTERNATIVES CONSIDERED

Alternatives studied included:

- a) Do Nothing: Which would severely impact bus transit operations due to gridlock on City streets during commute hour.
- b) Utilize SFPD: Which would be costly and would exceed the TJPA budget.

FUNDING IMPACT

This project will reimburse \$3,280,677 to the SFMTA for staff charges.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

The TJPA Board of Directors adopted Resolution No. 10-027 on July 15, 2010 approving this Amendment. Board of Supervisors approval is required after approval by the SFMTA Board of Directors.

RECOMMENDATION

SFMTA staff recommends authorizing the Executive Director/CEO to execute the First Amendment to Contract CS-159, SFMTA Transbay Transit Center Program Services, with the TJPA for Parking Control Officer services, to increase the contract amount by \$997,698 to a total not to exceed contract amount of \$3,280,677 and to extend the contract term from December 14, 2014 to December 15, 2015.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On June 2, 2009, the SFMTA Board of Directors adopted Resolution No. 09-086 authorizing execution of Contract No. CS-159, Transbay Transit Center Program Services, with the TJPA in the not to exceed amount of \$2,282,979 and a term until December 31, 2014; and

WHEREAS, Under this Contract No. CS-159, the TJPA agreed to reimburse the SFMTA for engineering services related to re-routing of Muni's trolley coach service to accommodate the new TJPA temporary bus terminal; and

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) and the Transbay Joint Powers Authority (TJPA) have negotiated a First Amendment to Contract No. CS-159, SFMTA Transbay Transit Center Program Services, for Parking Control Officer services during operation of the Temporary Transbay Terminal; and,

WHEREAS, The SFMTA agrees to provide Parking Control Officers (PCOs) during key commute hours to provide efficient and unobstructed transit bus access around the Temporary Transbay Terminal as well as to/from the Bay Bridge; and,

WHEREAS, The TJPA has agreed to increase the contract amount from \$2,282,979 to an amount not exceeding \$3,280,677 to reimburse the SFMTA for these additional PCO services until December 15, 2015; and,

WHEREAS, The First Amendment to Contract No. CS-159 also extends the contract termination date from December 31, 2014 to December 15, 2015 to ensure completion of the new Transbay Transit Center construction; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute the First Amendment to Contract No. CS-159, Transbay Transit Center Program Services, for Parking Control Officer services during operation of the Temporary Transbay Terminal, to increase the contract amount by \$997,698 to revised contract amount of \$3,280,677, and to extend the contract term to December 15, 2015.

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 No. 2
FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT BETWEEN THE TRANSBAY JOINT
POWERS AUTHORITY AND THE SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

This Amendment is made this _____ day of _____, 2010, in the City and County of San Francisco, State of California, by and between the Transbay Joint Powers Authority (the "TJPA") and the City and County of San Francisco, a municipal corporation (the "City") acting by and through its San Francisco Municipal Transportation Agency ("SFMTA").

RECITALS

WHEREAS, SFMTA and TJPA have entered into the Agreement (as defined below); and

WHEREAS, SFMTA and TJPA desire to amend the Agreement on the terms and conditions set forth herein;

NOW, THEREFORE, TJPA and the SFMTA agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:
 - a. Agreement. The term "Agreement" shall mean the Intergovernmental Agreement Between The Transbay Joint Powers Authority And The San Francisco Municipal Transportation Agency, dated July 21, 2009.
 - b. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.
2. Modifications to the Agreement. The Agreement is hereby modified as follows:
 - a. Section I, "Scope of Services" shall include SFMTA Parking Control Officer services for the operations of the Temporary Transbay Terminal during key commute hours.

Specifically, the required work to be performed by the SFMTA through its Sustainable Streets Division ("SSD") under this Amendment is set forth below:

Exhibit A-7 Temporary Terminal Operations

Exhibit B-1 SFMTA/SSD Wage Rates 2010

Exhibit B-2 SFMTA/MUNI Wage Rates 2009

Exhibits A-7, B-1 and B-2 are attached to this Amendment Agreement and incorporated by reference as though fully set forth herein.
 - b. Section II, "Contract Amount and Terms of Payment", the "Estimated Contract Amount" shall increase to an amount not to exceed \$3,280,677.
 - c. Section III, "Term; Termination", the "Term" shall extend the Agreement termination to December 15, 2015.
3. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties execute this Agreement in San Francisco as of the date first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY	CITY AND COUNTY OF SAN FRANCISCO
	MUNICIPAL TRANSPORTATION AGENCY
_____	_____
Maria Ayerdi-Kaplan Executive Director	Nathaniel P. Ford, Sr. Executive Director/CEO
APPROVED AS TO FORM:	APPROVED AS TO FORM:
Dennis J. Herrera, City Attorney	Dennis J. Herrera, City Attorney
By _____ Sheryl Bregman Deputy City Attorney	By _____ John I. Kennedy Deputy City Attorney
TJPA Board of Directors	SFMTA Board of Directors
Resolution No. _____	Resolution No. _____
Date: _____	Dated: _____
Attest:	Attest:
_____	_____
Secretary, TJPA Board	Secretary, SFMTA Board

EXHIBIT A7

TEMPORARY TERMINAL OPERATIONS PARKING CONTROL OFFICER SERVICES

A. Scope of SFMTA (DPT) Parking Control Officer Services:

- I. TJPA is constructing a Temporary Transbay Terminal at Howard Street between Beale and Main streets. SFMTA shall provide two parking control officers (PCOs) at key intersections to facilitate bus movement between the Temporary Terminal and the Bay Bridge as indicated in Temporary Transbay Terminal Posts for PM Commutes. The SFMTA shall be reimbursed for these services based on the rates set forth in Transbay Transit Center Program Reduced City Traffic Control Estimate.
- II. The scope of SFMTA's services is limited to the following:
 - Prior to scheduled opening of the Temporary Terminal, participate in initial planning session with TJPA to identify intersections where budgeted PCOs will be stationed.
 - In accordance with attached spreadsheet, provide PCOs on City streets at key commute hours to manage and direct traffic on the streets around the Temporary Terminal and the streets leading up to the Essex St. on ramp to the Bay Bridge as directed by the TJPA.

Not to Exceed Budget \$997,698

Transbay Transit Center Program

Temporary Terminal Operations - Reduced City Traffic Control Estimate

Date Revised: June 15, 2010; Prepared by: Phil Sandri

	# of PCOs	No. Morning Hours	No. Evening Hours	Rate	Cost /Day	Rounded to
Annual Operations (First Six Months)						
Parking Control Supervisor	1	0	4	\$ 91.71	\$ 367	\$ 367
Parking Control Officers	5	0	4	\$ 76.76	\$ 1,535	\$ 1,535
Total Cost /Day					\$ 1,902	\$ 1,902
Total Cost /Month				assume 22 days /month	\$ 41,845	\$ 41,844
Total Cost /1st Six Months				assume 132 days /six months	\$ 251,069	\$ 251,064
Cost for Special Event Days				assume 5 days /six months	\$ 9,510	\$ 9,510
Total Cost for 1st Six Months					\$ 260,579	\$ 260,574
Annual Operations (Second Six Months)						
Parking Control Supervisor	1	0	4	\$ 91.71	\$ 367	\$ 367
Parking Control Officers	3	0	4	\$ 76.76	\$ 921	\$ 921
Total Cost /Day					\$ 1,288	\$ 1,288
Total Cost /Month				assume 8 days /month	\$ 15,456	\$ 10,304
Total Cost /2nd Six Months				assume 48 days /six months	\$ 61,822	\$ 61,824
Cost for Special Event Days				assume 5 days /six months	\$ 9,510	\$ 9,510
Total Cost for 2nd Six Months					\$ 71,332	\$ 71,334
Total Cost for 1st Year					\$ 331,912	\$ 331,908
Annual Operations (Years 2 - 6)						
	# of PCOs	No. Morning Hours	No. Evening Hours	Rate	Cost /Day	Rounded to
Parking Control Supervisor	1	0	4	\$ 91.71	\$ 367	\$ 367
Parking Control Officers	3	0	4	\$ 76.76	\$ 921	\$ 921
Total Cost /Day					\$ 1,288	\$ 1,288
Total Cost /Month				assume 8 days /month	\$ 10,304	\$ 10,304
Total Cost /Year (Years 2 - 6)				assume 96 days /year	\$ 123,644	\$ 123,648
Cost for Special Event Days				assume 5 days /year	\$ 9,510	\$ 9,510
Total Cost /Year (Years 2 - 6)					\$ 133,154	\$ 133,158
Total Cost for 6 Years of Operations					\$ 997,684	\$ 997,698

Temporary Transbay Terminal Posts for PM Commutes

Time of Day = 1500 – 1930 Hours

Location	# of PCOs	Directions
Howard & Beale	2	Assist buses turning from westbound Howard to southbound Beale. Keep intersection clear.
Folsom & Beale	2	Assist buses from contra lane to northbound on Beale and westbound on Folsom. Keep intersection clear.
Folsom & 1st	2	Assist buses in contra lane westbound on Folsom. Keep intersection clear.

EXHIBIT B-1
SFMTA/SST Wage Rates 2010

SFMTA Wage Rates 2008/2009

JOB TITLE	JOB CLASS	BIWEEKLY	BIWEEKLY (x2.45)	HOURLY X 2.45	DAILY X 2.45	DAILY ROUNDED FOR EST
ENGINEERING DIVISION						
Planner IV	5290	\$ 4539.00	\$ 11,120.55	\$ 139.01	\$ 1,112.08	\$ 1,113.00
Principal Engineer	5212	\$ 7,061.00	\$ 17,299.45	\$ 216.24	\$ 1,729.95	\$ 1,730.00
Senior Engr.	5211	\$ 5,652.00	\$ 13,847.40	\$ 173.09	\$ 1,384.74	\$ 1,390.00
Engineer	5241	\$ 4,882.00	\$ 11,960.90	\$ 149.51	\$ 1,196.09	\$ 1,200.00
Assoc Engr.	5207	\$ 4,218.00	\$ 10,334.10	\$ 129.18	\$ 1,033.41	\$ 1,040.00
Asst Engr.	5203	\$ 3,626.00	\$ 8,883.70	\$ 111.05	\$ 888.37	\$ 890.00
Jr. Engr	5201	\$ 3,208.00	\$ 7,859.60	\$ 98.25	\$ 785.96	\$ 790.00
Stud Train I	5380	\$ 1,890.00	\$ 4,630.50	\$ 57.88	\$ 463.05	\$ 470.00
Stud Train II	5381	\$ 2,028.00	\$ 4,968.60	\$ 62.11	\$ 496.86	\$ 500.00
Stud Train III	5382	\$ 2,125.00	\$ 5,206.25	\$ 65.08	\$ 520.63	\$ 530.00
Civ. Eng. Asst.	5362	\$ 2,706.00	\$ 6,629.70	\$ 82.87	\$ 662.97	\$ 670.00
Civ. Eng. Assoc. I	5364	\$ 2,997.00	\$ 7,342.65	\$ 91.78	\$ 734.27	\$ 740.00
Civ. Eng. Assoc. II	5366	\$ 3,470.00	\$ 8,501.50	\$ 106.27	\$ 850.15	\$ 860.00
Survey Tech	5302	\$ 2,666.00	\$ 6,531.70	\$ 81.65	\$ 653.17	\$ 660.00
PAINT SHOP						
Manager Paint	5301	\$ 3,714.00	\$ 9,099.30	\$ 113.74	\$ 909.93	\$ 910.00
Sup Paint Shop	7242	\$ 3,446.00	\$ 8,442.70	\$ 105.53	\$ 844.27	\$ 850.00
Painter	7346	\$ 2,874.00	\$ 7,041.30	\$ 88.02	\$ 704.13	\$ 710.00
SIGNAL SHOP						
Elec Sup II	7276	\$ 4,416.00	\$ 10,819.20	\$ 135.24	\$ 1,081.92	\$ 1,090.00
Elec Sup I	7238	\$ 3,966.00	\$ 9,716.70	\$ 121.46	\$ 971.67	\$ 980.00
Elec	7345	\$ 3,513.00	\$ 8,606.85	\$ 107.59	\$ 860.69	\$ 870.00
Traffic Signal Electrician	9145	\$ 3815	\$ 9,346.75	\$ 114.78	\$ 934.47	\$ 935.00
SIGN SHOP						
Manager Sign	5306	\$ 4,458.00	\$ 10,922.10	\$ 136.53	\$ 1,092.21	\$ 1,100.00
Sr. Mgmt Asst	1844	\$ 3,138.00	\$ 7,688.10	\$ 96.10	\$ 768.81	\$ 770.00
Sup Trf Sign	5303	\$ 3,503.00	\$ 8,582.35	\$ 107.28	\$ 858.24	\$ 860.00
Sign Installer	7457	\$ 2,442.00	\$ 5,982.90	\$ 74.79	\$ 598.29	\$ 600.00
Traffic Survey Technician	5302	\$ 2,621.00	\$ 6,421.45	\$ 80.27	\$ 642.15	\$ 643.00
METER SHOP						
Manager Meter Shp Mgr 3	9177	\$ 4,866.00	\$ 11,921.70	\$ 149.02	\$ 1,192.17	\$ 1,200.00
Parking Meter Repair Sup. I	7243	\$ 2902.00	\$ 7,109.90	\$ 88.87	\$ 710.299	\$ 711.00
Parking Meter Repairer	7444	\$ 2647.00	\$ 6,485.15	\$ 81.06	\$ 648.15	\$ 649.00
Maintenance Machinist	7332	\$ 3047.00	\$ 7,465.15	\$ 93.31	\$ 746.52	\$ 747.00
Enforcement						
Parking Control Supervisor	8216	\$ 2,435.00	\$ 5,965.75	\$ 74.57	\$ 596.58	\$ 596
Parking Control Officers	8214	\$ 2,038.00	\$ 4,993.10	\$ 62.41	\$ 499.31	\$ 500

EXHIBIT B-2

SFMTA/MUNI Wage Rates 2009

BURDENED DAILY RATE = UNBURDENED DAILY X 3.06

JOB TITLE	JOB CLASS	UNBURDENED DAILY RATE	BURDENED DAILY RATE
Project Manager I	5502	\$ 485	\$ 1484
Project Manager II	5504	\$ 562	\$ 1722
Transit Planner	5290	\$ 453	\$ 1386
Principal Engineer	5212	\$ 664	\$ 2032
Senior Engineer	5211	\$ 568	\$ 1738
Engineer	5241	\$ 488	\$ 1493
Assoc. Engineer	5207	\$ 424	\$ 1297
Asst. Engineer	5203	\$ 368	\$ 1126
Jr. Engineer	5201	\$ 321	\$ 983
Civ. Engineer Asst.	5362	\$ 272	\$ 832
Civ. Engineer. Assoc. I	5364	\$ 304	\$ 930
Civ. Engineer Assoc. II	5366	\$ 347	\$ 1062
Executive Secretary I	1450	\$ 252	\$ 772
Secretary II	1446	\$ 232	\$ 710
Construction Inspector	6318	\$ 368	\$ 1126
Sr. Construction Inspector	6319	\$ 404	\$ 1236

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: SUSTAINABLE STREETS DIVISION

BRIEF DESCRIPTION:

Request the San Francisco Municipal Transportation Agency Board of Directors to authorize the Executive Director/CEO to execute the Sixth Amendment to the contract between the SFMTA and ACS State & Local Solutions, Inc. to extend the existing contract for an additional four months from December 31, 2010 through April 30, 2011.

SUMMARY:

- Staff recommends approval of the Sixth Amendment to the existing contract between ACS State & Local Solutions, Inc and the SFMTA, which expires on December 30, 2010.
- ACS State & Local Solutions, Inc. was recently selected as the highest ranked proposer to provide operational and administrative support services for the Red Light Photo Enforcement Program's Existing System for an additional five years in response to an RFP issued on August 5, 2009.
- Contract negotiations with ACS are not anticipated to be completed and Civil Service Commission approval is not anticipated to be obtained prior to December 30, 2010.
- An additional four months between December 31, 2010 and April 30, 2011 is needed to ensure that continued operational and administrative services are provided for the City's Red Light Photo Enforcement Program.
- The SFMTA anticipates returning to the SFMTA Board of Directors before April 30, 2011 to request approval to execute a Seventh Amendment to the contract with ACS for an additional five year term for operational and administrative services for the existing system.
- Funding for this contract comes from red light camera violations.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract Amendment

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO Leanne Nhan

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

To authorize the Executive Director/CEO to execute the Sixth Amendment to the contract between the SFMTA and ACS State & Local Solutions, Inc. to extend the existing contract for an additional four months from December 31, 2010 through April 30, 2011.

GOAL

The SFMTA will further the following goals of the Strategic Plan through execution of the contract amendment.

Goal 1: Customer Focus Objective:

1.1 Improve safety and security across all modes of transportation

Goal 6: Information Technology

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

DESCRIPTION

On October 18, 2005, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors approved Resolution 05-162 authorizing the acting Director of Transportation to execute the contract between the Department of Parking and Traffic and ACS State and Local Solutions (ACS) for operational and administrative support services for the City's Red Light Camera Enforcement Program. The San Francisco Board of Supervisors approved the contract on December 6, 2005. The contract was for a term not to exceed five years and an amount not to exceed \$9,424,195, ending on December 30, 2010. This agreement was amended by the First Amendment dated December 1, 2007, Second Amendment dated December 4, 2008, Third Amendment dated January 1, 2009, Fourth Amendment dated May 1, 2009 and Fifth Amendment dated October 16, 2009.

On August 5, 2009, the SFMTA issued a Request for Proposals (RFP) for continued operational and administrative support services including acquisition of System-specific equipment, professional services to design intersection installations, construction and construction consultation services, equipment maintenance and servicing, processing citations and other administration duties. On July 8, 2010, ACS was notified that they were the selected highest ranked proposer for the existing red light camera system. The SFMTA is currently in contract negotiations with ACS to provide these services for an additional five year term. The contract negotiations are not anticipated to be completed and Civil Service Commission approval is not anticipated to be obtained prior to the end of the existing contract on December 30, 2010. The SFMTA requires an additional four month extension to the existing contract to complete contract negotiations with ACS and obtain all necessary contract approvals for an additional five year contract term for the existing system.

The SFMTA is requesting approval of the attached Sixth Amendment to the contract between ACS and the SFMTA in order to continue operational and administrative services for the City's Red Light Photo Enforcement Program for an additional four months. During this time, the SFMTA shall complete contract negotiations and obtain all necessary contract approvals for an additional five year contract term for the existing system. The SFMTA anticipates returning to the SFMTA Board of Directors before April 30, 2011 to request approval to execute a Seventh Amendment to the contract to extend the term of the contract with ACS for an additional five years for the existing system.

The City Attorney has reviewed this report

ALTERNATIVES CONSIDERED

The existing contract with ACS includes the option for the SFMTA to self administer the Red Light Photo Enforcement Program. ACS could lease software, provide training, consultation and software development services to the SFMTA at the following cost:

Software License Lease Per Month	\$745
Training Per Hour	\$120
Consultation Services Per Hour	\$120
Software Development Services Per Hour	\$145

This option is not the preferred way to proceed due to the lack of SFMTA staffing resources and technical knowledge as of December 31, 2010 to provide administrative and operational support for the program.

FUNDING IMPACT

Monthly program administrative costs for the extension period will be as follows:

Operation of digital cameras: \$59,356 (\$14,839 x four months)

Operation of wet film cameras: \$365,944 (\$91,486 x four months)

Operating funds required for the operations/maintenance are budgeted in the SFMTA, Sustainable Streets Division current year budget. The source of funds are red light camera violation revenues.

RECOMMENDATION

Staff requests authorization for the Executive Director/CEO to execute the Sixth Amendment to the contract between the SFMTA and ACS State & Local Solutions, Inc. to extend the existing contract for an additional four months from December 31, 2010 through April 30, 2011.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SFMTA began the Red Light Photo Enforcement Program in collaboration with the Police Department in 1996, to reduce the number of collisions, property damage, physical injuries, and deaths caused by red light running; and

WHEREAS, The current contract with ACS State & Local Solutions, Inc. expires on December 30, 2010; and

WHEREAS, On August 5, 2009, a Request for Proposal (“RFP”) was issued for operational and administrative support services for the Red Light Photo Enforcement Program; and

WHEREAS, The SFMTA selected Contractor as the highest ranked proposer to provide operational and administrative support services for the existing system on July 8, 2010; and

WHEREAS, The SFMTA is currently in contract negotiations with ACS to provide operational and administrative support services for the existing system for an additional five year term; and

WHEREAS, These contract negotiations are not anticipated to be completed and Civil Service Commission approval is not anticipated to be obtained prior to December 30, 2010, now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute the Sixth Amendment to Contract #08-1045, Red Light Camera Enforcement Program between the SFMTA and ACS State & Local Solutions, Inc. to extend the existing contract for an additional four months from December 31, 2010 through April 30, 2011.

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**

Sixth Amendment

THIS AMENDMENT (this "Amendment") is made as of October 29, 2010 in San Francisco, California, by and between **ACS State & Local Solutions, Inc.** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

RECITALS

- A. City and Contractor have entered into the Agreement (as defined below); and
- B. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein;

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

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

a. Agreement. The term "Agreement" shall mean the Agreement dated December 19, 2005, between Contractor and City, as amended by the:

First Amendment,	dated December 1, 2007, and
Second Amendment,	dated December 4, 2008, and
Third Amendment,	dated January 1, 2009, and
Fourth Amendment,	dated May 1, 2009, and
Fifth Amendment,	dated October 16, 2009.

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

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

a. Section 2. Section 2 "Term of the Agreement" currently reads as follows:

Subject to Section 1 (Certification of Funds), the term of this Agreement shall be from December 30, 2005 to December 30, 2010.

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

2. Term of the Agreement

Subject to Section 1 (Certification of Funds), the term of this Agreement shall be from December 30, 2005 to April 30, 2011.

b. Submitting False Claims; Monetary Penalties. Section 8 is replaced in its entirety to read as follows:

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 the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. 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.

c. Requiring Minimum Compensation for Covered Employees. Section 43 is replaced in its entirety to read as follows:

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 Sections 12P.5 and 12P.5.1 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.

d. Requiring Health Benefits for Covered Employees. Section 44 is replaced in its entirety to read as follows:

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 section 12Q.5.1 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.

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

l. 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.

e. **First Source Hiring Program.** Section 45 is replaced in its entirety to read as follows:

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

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.

f. Insurance. Section 15 is replaced in its entirety to read as follows:

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 be endorsed to provide:

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

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

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any applicable endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor and its employees. Contractor shall require all its contract related agents and subcontractors to obtain similar Workers' Compensation policies and endorsements to meet the California statutory requirements. Furthermore, all contract related agents and subcontractors shall be required to include a waiver of subrogation in favor of City and Contractor to such agents' and subcontractors' workers' compensation policies. Contractor shall ensure that its agents and subcontractors comply with the requirements of this paragraph.

d. All required policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

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

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

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

Agreement effective on the date of such lapse of insurance.

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

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

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

g. Requiring Minimum Compensation for Covered Employees. Section 43 is replaced in its entirety to read as follows:

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.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after December 31, 2010.

•

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

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Nathaniel P. Ford Sr. Executive Director/CEO</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By:</p> <hr/> <p>John I. Kennedy Deputy City Attorney</p> <p>San Francisco Municipal Transportation Agency Board of Directors Resolution No. _____ Adopted: _____ Attest:</p> <hr/> <p>Secretary, SFMTA Board of Directors</p>	<p>CONTRACTOR</p> <p>ACS State & Local Solutions, Inc.</p> <hr/> <p>Mark Talbot Sr. VP & Managing Director 12410 Milestone Center Dr. Germantown, MD 20876</p> <p>City vendor number: 68769</p>
---	---