

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Parking and Traffic

BRIEF DESCRIPTION:

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

SUMMARY:

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

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO _____ Maxine Louie

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

To approve various routine traffic and parking modifications.

Benefit to the SFMTA 2008 – 2012 Strategic Plan:

GOAL

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

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

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

Objective 2.4 - Reduce congestion through major corridors

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

ITEMS:

- A. ESTABLISH - BLUE ZONE - 495 Hayes Street, south side, at parking meter # 435 (20-foot zone). **PH 2/27/09 Requested by Resident**
- B. REVOKE - BLUE ZONE - 2100 Webster Street, east side, from Sacramento Street to 20 feet northerly (20-foot zone). **PH 3/27/09 Requested by Pan-Med Enterprises**
- C. REVOKE - METERED LOADING ZONE - 2100 Webster Street, east side, from 20 to 60 feet north of Sacramento Street, at parking meters #2104 and #2106 (40-foot zone). **PH 3/27/09 Requested by Pan-Med Enterprises**
- D. ESTABLISH - SIX-WHEEL TRUCK LOADING ZONE, 8AM TO 6PM, MONDAY THROUGH SATURDAY - 2100 Webster Street, east side, from Sacramento Street to 60 feet northerly, at parking meters #2102, #2104 and #2106 (60-foot zone). **PH 3/27/09 Requested by Pan-Med Enterprises**
- E. ESTABLISH - BLUE ZONE - 2099 Webster Street, west side, from 0-feet to 20-feet, south of Sacramento Street (20-foot zone). **PH 3/27/09 Requested by Pan-Med Enterprises**
- F. ESTABLISH - BLUE ZONE - 648 Stanyan Street, east side, from 3-feet to 21-feet, north of Page Street (18-foot zone). **PH 3/27/09 Requested by Movement Learning Center**
- G. ESTABLISH - NO PARKING ANYTIME - Corwin Street, west side, from the driveway of 95 Corwin Street to 223 feet northerly. **PH 3/20/09 Requested by Resident**
- H. ESTABLISH - LEFT LANE MUST TURN LEFT - Howard Street, eastbound, at The Embarcadero. **PH 3/20/09 Requested by Resident**
- I. ESTABLISH - RIGHT LANE MUST TURN RIGHT - Howard Street, eastbound, at The Embarcadero. **PH 3/20/09 Requested by Resident**
- J. ESTABLISH - ANGLED (60 DEGREE ANGLE) PARKING - Addison Street, south side, from 50 feet east of Farnum Street to 123 feet easterly. **PH 3/20/09 Requested by**

Resident

- K. ESTABLISH - BLUE ZONE - Addison Street, north side, from the west crosswalk crossing Addison Street to 18 feet westerly (18-foot zone). **PH 3/20/09 Requested by Resident**
- L. ESTABLISH - NO TURN ON RED - 6TH Street, northbound, at Market Street; Golden Gate Avenue, southbound, at Market Street; Market Street, eastbound, at 6th Street; and Market Street, westbound, at Taylor Street. **PH 3/20/09 Requested by SFMTA**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

- A. ESTABLISH - BLUE ZONE - 495 Hayes Street, south side, at parking meter # 435.
- B. REVOKE - BLUE ZONE - 2100 Webster St., east side, from Sacramento St. to 20 feet northerly.
- C. REVOKE - METERED LOADING ZONE - 2100 Webster Street, east side, from 20 to 60 feet north of Sacramento Street, at parking meters #2104 and #2106.
- D. ESTABLISH - SIX-WHEEL TRUCK LOADING ZONE, 8AM TO 6PM, MONDAY THROUGH SATURDAY - 2100 Webster Street, east side, from Sacramento Street to 60 feet northerly, at parking meters #2102, #2104 and #2106.
- E. ESTABLISH - BLUE ZONE - 2099 Webster Street, west side, from 0-feet to 20-feet, south of Sacramento Street.
- F. ESTABLISH - BLUE ZONE - 648 Stanyan St., east side, from 3-feet to 21-feet, north of Page St.
- G. ESTABLISH - NO PARKING ANYTIME - Corwin Street, west side, from the driveway of 95 Corwin Street to 223 feet northerly.
- H. ESTABLISH - LEFT LANE MUST TURN LEFT - Howard St., eastbound, at The Embarcadero.
- I. ESTABLISH - RIGHT LANE MUST TURN RIGHT - Howard Street, eastbound, at The Embarcadero.
- J. ESTABLISH - ANGLED (60 DEGREE ANGLE) PARKING - Addison Street, south side, from 50 feet east of Farnum Street to 123 feet easterly.
- K. ESTABLISH - BLUE ZONE - Addison Street, north side, from the west crosswalk crossing Addison Street to 18 feet westerly (18-foot zone).
- L. ESTABLISH - NO TURN ON RED - 6TH Street, northbound, at Market Street; Golden Gate Avenue, southbound, at Market Street; Market Street, eastbound, at 6th Street; and Market Street, westbound, at Taylor Street. (Explanatory documents include a staff report and resolution.) (Bond Yee)

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

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

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

Secretary to the Board of Directors

San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency (SFMTA), through its Executive Director/CEO (or his designee), to accept and expend FY2008-2009 Proposition 1B California Transit Security Grant Program (CTSGP) funds, in an amount not to exceed \$7,070,567, plus any subsequent interest earned in the account, for security-related projects.

SUMMARY:

- The SFMTA intends to apply for \$7,070,567 in funds from the CTSGP, administered by the California Emergency Management Agency (Cal EMA), for transit safety and security programs.
- These CTSGP funds are allocated by Cal EMA to the Metropolitan Transportation Commission (MTC), which suballocates funds based on a formula set forth in state law.
- The funds will be used to enhance and improve the safety and security of the SFMTA’s transit system. Projects include facility site hardening (perimeter security), procurement and installation of CCTV systems, and procurement and installation of equipment to improve security communications.
- Entities applying for CTSGP funds are required to submit a resolution approved by the entity's governing body that authorizes an agent to execute any actions necessary for the application.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO: Leda Young, 1 South Van Ness Ave., 8th Floor

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

Purpose

SFMTA Board approval of this resolution would authorize the SFMTA, through its Executive Director/CEO (or his designee), to apply for, accept and expend \$7,070,567 in CTS GP funds, plus any subsequent interest earned in the account, for transit security-related projects.

Goal

The SFMTA furthers the following goals of the Strategic Plan through acceptance of these funds:

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

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

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

Objective 4.2: Ensure efficient and effective use of resources.

Description

The Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006, approved by California voters as Proposition 1B in the 2006 general election, authorizes the issuance of general obligation bonds for specified purposes, including grants for transit system safety, security and disaster response projects.

The Cal EMA (formerly called the Office of Homeland Security) has created the CTS GP to administer and distribute Proposition 1B transit security funds. The purpose of the CTS GP is to provide funding to eligible entities for transit system safety, security and disaster response projects.

The Cal EMA has issued guidance for entities applying for CTS GP funds. An applicant is required to submit a new Governing Body Resolution that appoints agents authorized to execute any actions necessary for each application and to set up a separate interest bearing account from which funds are deposited. Any interest that is accrued must be accounted for and can be used towards CTS GP funded projects.

The Cal EMA allocates CTS GP funding to the Metropolitan Transportation Commission (MTC), which suballocates the funds to transit operators within its jurisdiction on a formula basis pursuant to Section 99314 of the Public Utilities Code. The SFMTA will apply for \$7,070,567 in FY08-09 CTS GP funding.

The SFMTA plans to use the CTS GP funding to engage in facility site hardening (perimeter security), procurement and installation of CCTV systems, and procurement and installation of

equipment to improve security communications.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

The \$7,070,567 for security-related projects derives from voter-approved state Proposition 1B funds. There are no required matching funds.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required.

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

RECOMMENDATION

Staff recommends that the SFMTA Board approve the attached resolution which would authorize the SFMTA, through its Executive Director/CEO (or his designee) to apply for, accept and expend FY2008-2009 Proposition 1B CTSGP funds in an amount not to exceed \$7,070,567, plus any subsequent interest earned in the account, for transit security-related projects.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Highway Safety, Traffic Reduction, Air Quality and Port Security Bond Act of 2006, approved by California voters as Proposition 1B in the November 7, 2006 general election, authorizes the issuance of general obligation bonds for specified purposes, including grants for transit system safety, security and disaster response projects; and

WHEREAS, The California Emergency Management Agency (Cal EMA) administers such funds under the California Transit Security Grant Program (CTSGP); and

WHEREAS, The Cal EMA allocates CTSGP funding to the Metropolitan Transportation Commission, which sub-allocates the funds to transit operators within its jurisdiction on a formula basis pursuant to Section 99314 of the Public Utilities Code; and

WHEREAS, The SFMTA is an eligible recipient for assistance under the CTSGP; and

WHEREAS, The SFMTA will apply for FY2008-2009 CTSGP funds in an amount not to exceed \$7,070,567 (plus subsequent interest earned in deposit) for security-related projects, including, but not limited to, facility site hardening (perimeter security), procurement and installation of CCTV systems, and procurement and installation of equipment to improve security communications; and

WHEREAS, The Cal EMA requires the SFMTA to submit a Governing Body Resolution for the purposes of identifying the authorized agent(s) to act on behalf of the SFMTA to execute any actions necessary for the purpose of obtaining the financial assistance provided by the Cal EMA; now, therefore be it

RESOLVED, That the SFMTA Board of Director authorizes the SFMTA, through its Executive Director/CEO (or his designee), to apply for, accept and expend FY2008-2009 Proposition 1B California Transit Security Grant Program funds in an amount not to exceed \$7,070,567, plus any subsequent interest earned in the account; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO (or his designee), to execute for and on behalf of the SFMTA, any agreements or actions necessary for the purpose of obtaining FY2008-2009 Proposition 1B California Transit Security Grant Program funds provided by the Cal EMA.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. :

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Traffic Engineering

BRIEF DESCRIPTION:

Authorizing a bid call for the Department of Public Works (“DPW”) Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, to install pedestrian pushbutton poles and conduits at 29 designated intersections.

SUMMARY:

The contract work will install new pedestrian pushbutton poles and conduits at 29 designated intersections. Following the contract work, DPT Signal Shop staff will install Accessible Pedestrian Signals (APS) at these intersections.

- The contract work, along with the subsequent APS installation by DPT Signal Shop, is designed to improve safety for visually impaired pedestrians by providing pedestrian signal indications in audible and tactile formats.
- DPT staff performed the initial conceptual design for this contract. DPW staff performed the design review and contract preparation. DPW staff will also provide contract advertising and construction management services.
- The contract work will be funded through Proposition K Sales Tax revenues.
- DPT staff will request authority from the SFMTA Board to award the contract after bids have been opened and the lowest responsible bidder has been determined.
- The Contract Compliance Officer from the Human Rights Commission has established a 20% Local Business Enterprise (LBE) subcontracting participation goal for this contract.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Eddie Tsui

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

SFMTA staff requests this Board to authorize a bid call for the Department of Public Works (“DPW”) Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, to install pedestrian pushbutton poles and conduits at 29 designated intersections.

GOAL

The SFMTA will further the following goals and objectives of the Strategic Plan through this contract:

- Goal 1 – Customer Focus: To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy
 - 1.1 Improve safety and security across all modes of transportation
 - 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, and rideshare)
- Goal 2 – System Performance: To get customers where they want to go, when they want to be there
 - 2.3 Fulfill bicycle and pedestrian network connectivity

DESCRIPTION

Scope of Work

SFMTA Parking and Traffic (“DPT”), utilizing DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, proposes to install new pedestrian pushbutton poles and conduits at 29 designated intersections located in San Francisco (“the Work”). These 29 intersections are as follows: 4th, Ellis, Market and Stockton Streets; 4th and Mission Streets; 6th Avenue and Geary Boulevard; 9th Avenue and Judah Street; 9th Avenue and Lincoln Way; 14th, Church and Market Streets; 17th, Castro and Market Streets; 24th Street and Potrero Avenue; 25th Avenue and Geary Boulevard; Arguello and Geary Boulevards; Beale and Howard Streets; Bosworth and Diamond Streets; Brannan Street and The Embarcadero; Bryant Street and The Embarcadero; Cole and Fell Streets; Cole and Oak Streets; The Embarcadero and Washington Street; Fell Street and Van Ness Avenue; Fulton and Hyde Streets; Geneva Avenue and Mission Street; Geneva, Ocean and Phelan Avenues; Grove and Larkin Streets; Hayes Street and Van Ness Avenue; Hyde and McAllister Streets; Jones and Turk Streets; Larkin and McAllister Streets; McAllister Street and Van Ness Avenue; O’Shaughnessy Boulevard, Portola Drive and Woodside Avenue; and Polk and Sutter Streets.

PAGE 3.

These locations were selected based on an agreement between SFMTA, the City Attorney's Office and advocacy groups for the blind and visually impaired. The Work is more specifically described in the "Accessible Pedestrian Signals (APS) – Phase 2 Contract No. 1577J Project Manual" and the accompanying contract plans and miscellaneous reference drawings (which are voluminous documents and are available for inspection at DPW's Bureau of Engineering, 30 Van Ness Avenue, 5th Floor, San Francisco, California).

The completion date for this contract is 90 calendar days after written Notice To Proceed. Following the Work, DPT Signal Shop staff will install APS units on the new pedestrian pushbutton poles at these intersections.

The Work, along with the subsequent APS installation by DPT Signal Shop, is designed to improve safety for visually impaired pedestrians by providing pedestrian signal indications in audible and tactile formats.

DPT staff performed the initial conceptual design for this contract. DPW staff performed the design review and contract preparation. DPW staff will also provide contract advertising and construction management services.

The Contract Compliance Officer from the Human Rights Commission has established a 20% Local Business Enterprise (LBE) subcontracting participation goal for this contract.

The City Attorney's Office has reviewed this report.

ALTERNATIVES CONSIDERED

Instead of contracting out using the competitive bid process for the construction of DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, the following alternatives were also considered but not selected:

- Replacement and/or refurbishment - Replacement and/or refurbishment of existing equipment was not a viable option since the new APS installations require new pedestrian pushbutton poles to be placed at appropriate locations where no poles currently exist. Some existing poles other than signal poles, such as streetlight poles, were utilized whenever possible.
- No build option – this option was not chosen because the installation of new poles and conduits were needed to install APS at the appropriate locations.
- Rebidding and/or renewing an existing contract – this option does not apply to Contract No. 1577J.

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Use of SFMTA in-house staff - Construction of the new pedestrian pushbutton poles and conduits through the use of in-house staff was found to not be feasible. SFMTA in-house staff such as the DPT Traffic Signal Shop are primarily staffed and equipped to perform maintenance of existing infrastructure rather than new construction. However, following the Work, in-house staff will be used to install APS units on the new pedestrian pushbutton poles.

Staff concluded that contracting out through the use of the competitive bidding process was the best alternative to proceed with the construction of DPW Contract No. 1577J. Historically, contracting out via competitive bidding has been the primary way that most signal infrastructure has been constructed in the City; DPT has found this method to be a cost effective and efficient way to construct new pedestrian pushbutton poles and conduits.

FUNDING IMPACT

The engineer's detailed cost estimate for this contract is in excess of \$120,000.

The Work is funded through Proposition K Sales Tax revenues, a half-cent sales tax approved by San Francisco voters in 2003. Please refer to attached enclosure 2 for details.

For the design phase of this project, the San Francisco County Transportation Authority ("SFCTA") approved \$161,500 from Proposition K.

For the construction phase of this project, the SFCTA has also already approved \$775,000 in Proposition K funds.

Operating funds required for the maintenance of the pedestrian pushbutton poles and conduits to be constructed as part of DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2 are included in the DPT budget for FY 09-10.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Department of Public Works will proceed with a bid call for DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, after the SFMTA's approval of this calendar item.

After bids are received, the Contract Compliance Officer from the Human Rights Commission will review and confirm that the lowest responsible bidder will meet the established Local Business Enterprise (LBE) subcontracting participation goal for this contract.

DPT staff will request authority from the SFMTA Board to award the contract after bids have been opened and the lowest responsible bidder has been determined.

The City Attorney's Office has reviewed this report.

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RECOMMENDATION

Staff recommends that the SFMTA Board authorize a bid call for the Department of Public Works (“DPW”) Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2, to install pedestrian pushbutton poles and conduits at 29 designated intersections.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SFMTA Parking and Traffic ("DPT") identifies intersections for new Accessible Pedestrian Signals (APS) installations to be funded by Proposition K Sales Tax revenues, a half-cent sales tax approved by the voters of the City and County of San Francisco in 2003; and,

WHEREAS, APS is designed to improve safety for visually impaired pedestrians by providing pedestrian signal indications in audible and tactile formats; and,

WHEREAS, DPT has identified the following 29 intersections as appropriate locations for new APS installations to improve pedestrian safety: 4th, Ellis, Market and Stockton Streets; 4th and Mission Streets; 6th Avenue and Geary Boulevard; 9th Avenue and Judah Street; 9th Avenue and Lincoln Way; 14th, Church and Market Streets; 17th, Castro and Market Streets; 24th Street and Potrero Avenue; 25th Avenue and Geary Boulevard; Arguello and Geary Boulevards; Beale and Howard Streets; Bosworth and Diamond Streets; Brannan Street and The Embarcadero; Bryant Street and The Embarcadero; Cole and Fell Streets; Cole and Oak Streets; The Embarcadero and Washington Street; Fell Street and Van Ness Avenue; Fulton and Hyde Streets; Geneva Avenue and Mission Street; Geneva, Ocean and Phelan Avenues; Grove and Larkin Streets; Hayes Street and Van Ness Avenue; Hyde and McAllister Streets; Jones and Turk Streets; Larkin and McAllister Streets; McAllister Street and Van Ness Avenue; O'Shaughnessy Boulevard, Portola Drive and Woodside Avenue; and Polk and Sutter Streets; and,

WHEREAS, DPT proposes to perform the Work under the Department of Public Works ("DPW") Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2; and

WHEREAS, The Work will be funded with Proposition K sales tax revenues; and,

WHEREAS, The Contract Compliance Officer from the Human Rights Commission has established a Local Business Enterprise (LBE) subcontracting participation goal of 20% for this contract; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to authorize the Department of Public Works to issue a bid call for DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Enclosure 2

DPW Contract No. 1577J: Accessible Pedestrian Signals (APS) – Phase 2 Project Budget and Financial Plan

PROJECT BUDGET

Category	Budget Amount
DPT Traffic Engineering & DPW Bureau of Engineering (Design, Planning Coordination, & Detailed Design)	\$161,500
SUBTOTAL (DESIGN PHASE)	\$161,500
Detailed Engineering Estimate for Construction Contract Cost and 10% Construction Cost Contingency and DPW Bureau of Construction Management (BCM) & Bureau of Engineering (BOE) (Public Affairs, Materials Testing Lab, Wage Check & Construction Inspection)	\$235,995
APS Equipment Purchase	\$296,991
DPT Traffic Engineering & SFMTA Planning (Construction Support)	\$45,014
APS Equipment Installation by DPT Signal Shop (Post Contract Work)	\$152,000
Post Installation Adjustment by DPT Signal Shop	\$45,000
SUBTOTAL (CONSTRUCTION PHASE)	\$775,000
TOTAL (DESIGN AND CONSTRUCTION PHASES)	\$936,500

FINANCIAL PLAN

Funding Source	Amount	Percentage
Local Half Cent Sales Tax - Proposition K	\$936,500	100%
TOTAL	\$936,500	100%

THIS PRINT COVERS CALENDAR ITEM NO. : 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Requesting authorization to award and execute Contract No. 1226, Advanced Train Control System Improvement Services and Equipment Purchases Agreement, with Thales Transport & Security, Inc. in an amount not to exceed \$30,000,000 and an initial term of five years with an option to extend the term for an additional three years.

SUMMARY:

- Thales Transport & Security Inc. (formerly “Alcatel”) has supplied an Advanced Train Control System (“ATCS”) to the Municipal Railway under Contract No. MR-1034R, now closing out. The ATCS has been in revenue service since 1998.
- In August, 2006, the SFMTA executed a framework Master Agreement, Contract No. 1221, for purchase orders to obtain ATCS goods and services from Thales, for an amount not to exceed \$5,000,000, and an initial two-year term, renewable annually for up to ten years. To date, \$2,712,861 of the spending authority under Contract No. 1221 has been obligated.
- Goods and services beyond the spending authority of Contract No.1221 are needed from Thales to support and upgrade the ATCS, and to maintain the system in a good state of repair.
- Contract No. 1226 is a new framework master agreement providing a mechanism to procure goods and services from Thales, in an amount not to exceed \$30,000,000 and an initial term of five years with an option to extend three years. Work under Contract No. 1226 would be contracted on a purchase-order basis, as each task’s scope is defined and funding is identified.
- Staff seeks approval from the SFMTA Board of the framework master agreement, Contract No. 1226, with Thales Transport & Security, Inc.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract No. 1226

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO: Gigi Pabros

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

The Advanced Train Control System (ATCS) project goal is a state-of-the art fully automated train control system. The purpose of the new Contract No. 1226 is to maintain the ATCS in a good state of repair, current with system upgrades as technology evolves and as changes to Muni’s operating environment are implemented.

GOAL

The ATCS contributes to the following Strategic Goals:

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: Customer Focus: To get customers where they want to go, when they want to be there

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

Objective 2.4 Reduce congestion through major corridors

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

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

DESCRIPTION

In August 1992, the City, through its Public Utilities Commission, awarded Contract No. MR-1034R with Alcatel to provide an Advanced Train Control System (ATCS) to the Municipal Railway. Work under this 1992 contract is complete. The ATCS has been in revenue service since 1998.

The ATCS controls light rail vehicles operating within the Metro subway. The ATCS enhances light rail system performance and safety by controlling train speed, braking, routing and headways (the time between trains), more efficiently and accurately than can be accomplished by manual operator control. The ATCS controls trains at a rate of up to 60 vehicles-per-hour in each direction through the subway, an increase of 130 percent over the 26 vehicles-per-hour pre-ATCS limitation. The ATCS transmits train arrival information to platform level information systems, both visual and audio, through the SFMTA’s legacy Platform Display Signs (PDS) and Public Address (PA) Systems. The ATCS also provides real-time train location data to the NextMuni

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arrival prediction system (supplied by NextBus) for those trains which are in the subway and outside the range of Global Positioning Satellite (“GPS”) vehicle tracking devices.

MTA's Need for ATCS Equipment, Software and Associated Professional Services

The ATCS is a state-of-the-art train control system. The Executive Director/CEO authorized staff to negotiate this sole-source contract because most ATCS hardware and all ATCS software are proprietary technology of Thales Transport & Security, Inc. Most ATCS replacement parts and all software upgrades can only be purchased from Thales, as there is no other supplier. It is necessary periodically to purchase additional hardware and software from Thales to keep the ATCS working, to keep the ATCS out of obsolescence and in a configuration supported by the supplier, and to adapt to changes in the SFMTA’s rail operating environment.

The ATCS main computers reside at Muni’s Central Control. “Wayside” zone controllers are distributed throughout the subway, in eight wayside equipment rooms. There is additional wayside ATCS equipment at trackside to track trains, to communicate with trains, and to control switches and signals. Each LRV in the rail fleet is equipped with an ATCS Vehicle On-Board Computer (VOBC). The ATCS computers at Central Control communicate electronically directly with the LRVs while they are within the Metro subway to control safe separation between trains while operating at optimal speeds to obtain maximum throughput. The wayside computers are controlled from the ATCS central computers to manage routing of trains, and to deliver passenger announcements to Muni’s legacy Public Address (PA) and Platform Display (PDS) systems.

In August, 2006, the SFMTA executed a framework Master Agreement, Contract No. 1221, for purchase orders to obtain ATCS goods and services from Thales, for an amount not to exceed \$5,000,000, and an initial two-year term, renewable annually for up to ten years. To date, \$2,712,861 of the spending authority under Contract No. 1221 has been obligated to purchase the following upgrades to the ATCS as follows:

- \$1,093,421 for upgrades to the passenger announcement system (this work is underway)
- \$842,000 to upgrade the wayside axle counter evaluator (ACE) subsystem to current technology
- \$574,040 to purchase an ATCS test track at the new Muni Metro East (MME) Rail Facility
- \$203,400 to purchase a one-year maintenance support agreement, to provide an ATCS full system asset evaluation, to purchase ATCS training, and to provide on-call technical assistance.
- \$0 (no-cost) to investigate and resolve the cause of an increase in the incidence of LRV Error-Code 17 events, which appear to be the unintended byproduct of an earlier LRV on-board software update.

An additional purchase order under Contract No. 1221 is being developed to purchase technical assistance from Thales as Muni removes residual elements of the original pre-ATCS signal system in the pre-MMT portion of the subway and implements full control by the ATCS systemwide.

To continue to operate in a configuration supported by the vendor, and to manage obsolescence of the various technology components of the ATCS, software and equipment upgrades are periodically required. The ATCS has 30-year design life, and will be in service through at least 2028, and potentially longer. This life-cycle is consistent with other train-control systems worldwide. If the SFMTA appropriately maintains and upgrades the ATCS, it should meet the SFMTA's train control requirements at a minimum for the next 20 years.

The SFMTA is planning additional upgrades to the ATCS, which fall outside the spending authority and term of the existing Contract No. 1221. Therefore, the SFMTA seeks to execute a new framework Master Agreement, Contract No. 1226, for purchase orders to obtain ATCS goods and services from Thales, for an amount not to exceed \$30,000,000, and an initial five-year term, renewable for three years, to a maximum of eight years.

Staff have initially identified over \$18,000,000 in ATCS infrastructure investment which could be undertaken as funding and agency resources allow. Staff anticipates that the following equipment and software and associated services would be procured as purchase orders under Contract No. 1226 with associated order-of-magnitude cost estimates:

1. ATCS software upgrades, from the obsolete OS2 platform to a supported Microsoft Windows platform (\$5,000,000)
2. Upgrade System Simulator and in-line “snooper” diagnostic device (\$1,000,000)
3. Transition to full ATCS operating and decommission residual elements of the pre-ATCS signaling system between the Embarcadero and West Portal stations to the ATCS (\$1,000,000)
4. Add Digital Signal Processors (DSPs) to Axle Counters (\$500,000)
5. Replace VCC CPUs with modern CPUs (\$2,000,000)
6. Upgrade I/O and Data Transmission Rack Power Supply Units (PSUs) (\$250,000)
7. Station Controller overhaul (\$200,000)
8. Upgrade signal system from Inductive Loop to wayside Radio SelTrac (\$8,000,000)
9. Refurbish shop special test equipment, Station Controller Maintenance Equipment (SCME) (\$500,000)
10. ATCS vehicle on-board hardware upgrades (not yet scoped or estimated)

FUNDING IMPACT

A funding plan will be developed specific to each purchase order. The primary funding source for these funds is anticipated to be from the Federal 5309 Fixed Guideway program for Wayside Train Control.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Contract No. 1226 is contingent upon approval by the Civil Service Commission.

Contract No. 1226 is contingent upon approval by the San Francisco Board of Supervisors.

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

The SFMTA Executive Director/CEO will document sole-source approval for each purchase order against Contract No. 1226 before negotiation with the Contractor.

The SFMTA Project Manager will forward all purchase orders to the Contract Compliance Office to review and determine whether there are any subcontracting opportunities and if applicable set a Small Business Enterprise (SBE) participation goal.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approves and authorizes the Executive Director/CEO to execute the framework master agreement Contract No. 1226, Advanced Train Control System Improvement Services and Equipment Purchases Agreement, with Thales Transport & Security, Inc., for an amount not to exceed \$30,000,000 and an initial term of five years with an option to extend the Contract for an additional three years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA wishes to obtain software, hardware, and related services for ongoing support and improvement of the SFMTA's existing Advanced Train Control System ("ATCS"); and,

WHEREAS, The ATCS is a proprietary system supplied to the SFMTA by Thales Transport & Security, Inc.; and,

WHEREAS, SFMTA seeks to procure additional software, hardware, and related services from the Contractor, under general terms and conditions set forth in a purchase-order agreement and under any purchase orders under that agreement; and,

WHEREAS, Contract No. 1226, Advanced Train Control System Improvement Services and Equipment Purchases Agreement, is a framework master agreement for the provision of incremental works in respect of the operation and maintenance of the ATCS; and,

WHEREAS, Contract No. 1226 shall not be applicable to procurement of extensions of the ATCS to new rail lines or to new systems as a whole, or to any other design and/or development activities; and,

WHEREAS, Each purchase order against Contract No. 1226 will document sole-source approval from the SFMTA Executive Director/CEO before negotiation with the Contractor; and,

WHEREAS, A funding plan will be developed specific to each purchase order; and,

WHEREAS, SFMTA's Project Manager will forward all purchase orders to the Contract Compliance Office to review and determine whether there are any subcontracting opportunities to set a Small Business Enterprise (SBE) participation goal; and,

WHEREAS, Contract No. 1226 is contingent upon approval by the Civil Service Commission and the San Francisco Board of Supervisors; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors approves and authorizes the Executive Director/CEO to execute the framework master agreement Contract No. 1226, Advanced Train Control System Improvement Services and Equipment Purchases Agreement, with Thales Transport & Security, Inc., for an amount not to exceed \$30,000,000 and an initial term of five years with an option to extend the Contract for an additional three years.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**Advanced Train Control System Improvement
Professional Services and Equipment Purchases Agreement**

between the

San Francisco Municipal Transportation Agency

and

Thales Transport & Security, Inc.

Contract No. 1226 (CCO # 09-1067)

April 21, 2009

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**Advanced Train Control System Improvement
Professional Services and Equipment Purchases Agreement
between the
San Francisco Municipal Transportation Agency and
Thales Transport & Security, Inc.**

This Advanced Train Control System Improvement Professional Services and Equipment Purchases Agreement between the San Francisco Municipal Transportation Agency and Thales Transport & Security, Inc. is dated for convenience as April 21, 2009, between the City and County of San Francisco, acting by and through its Municipal Transportation Agency, a municipal corporation organized and existing under the laws of the State of California, whose principal place of business is at 1 South Van Ness Avenue, San Francisco, California 94102, U.S.A. (hereinafter referred to as "SFMTA" or "City"); and Thales Transport & Security, Inc., a corporation organized and existing under the laws of the State of Delaware, whose principal place of business is at 5700 Corporate Drive, Suite 750, Pittsburgh, PA 15237, U.S.A., (hereinafter referred to as "Contractor" or "Thales");

When appropriate herein, SFMTA and Contractor are individually hereinafter referred to as "Party" and collectively referred to as "Parties".

A. RECITALS

1. The SFMTA's Advanced Train Control System ("ATCS") is a proprietary system that was supplied to the SFMTA by Contractor (formerly Alcatel Transport Automation (U.S.) Inc.) under San Francisco Municipal Railway contract MR 1034R, dated August 10, 1992.
2. The ATCS is a specialized system critical to the functioning and control of the City's public transit system that requires upgrades, improvements and expansion of the ATCS Software and hardware to meet current and future SFMTA needs. Due to the proprietary nature of the ATCS, no vendor other than Contractor can supply the necessary maintenance services to the SFMTA, and this Agreement is necessarily therefore a sole source contract.
3. On or about October 10, 2008, Contractor provided the SFMTA a report, "MUNI ATCS Asset Evaluation 2008 – Final Report" ("Asset Evaluation Report"), that documented deficiencies to be corrected, necessary upgrades, and maintenance work to be performed on the ATCS. Based on the SFMTA's review of Asset Evaluation Report and its independent assessment of the condition of the ATCS, the SFMTA has determined that the ATCS requires upgrades to its Software and Equipment in addition to related services to maintain, upgrade, improve and operate the ATCS.
4. Contractor desires to supply the SFMTA and the SFMTA desires to procure from the Contractor such Software, Equipment, and related professional services, under the general terms and conditions set forth in this Agreement and in Purchase Orders executed under this Agreement;

5. Approval for this Agreement was obtained from a Civil Service Commission Notice of Action for SFMTA Contract Number 1226 on _____, 2009;

Now, therefore, in consideration of the facts recited above, the premises and the mutual undertakings of the Parties herein contained, the Parties agree as follows:

B. DEFINITIONS

For the purposes of this Agreement, the following words and expressions shall have the meanings set forth herein below:

Agreement shall mean this ATCS System Improvement Professional Services and Equipment Purchases Agreement and its Included Appendices.

ATCS shall mean the Advanced Train Control System provided to the SFMTA by the Contractor.

Confidential Information shall mean any and all information, whether disclosed orally, visually, in machine-readable or written form, that the disclosing Party identifies is proprietary or confidential in writing at the time of disclosure or is subsequently specified and confirmed in writing by the disclosing Party at the latest within thirty (30) Days following oral and/or visual disclosure. The Documentation and Software are Confidential Information.

Days shall mean consecutive calendar days, including weekends and holidays, unless otherwise specified.

Director shall mean the Director of Transportation: The Executive Director/Chief Executive Officer of the Municipal Transportation Agency of the City and County of San Francisco.

Documentation shall mean any instruction manuals, consisting of the user documentation, maintenance documentation and Equipment and Software documentation for Software and Equipment and any updates or revisions thereof licensed under this Agreement.

Effective Date shall mean the date when i) authorized officers of both Parties have executed this Agreement; and ii) the SFMTA has certified to the availability of funds for the services requested under this Agreement and Contractor has been so notified in writing.

Equipment shall mean the ATCS hardware, computers, servers, and other ATCS components, diagnostic and simulation tools, spare parts and other parts and electronic, mechanical or electrical components to be supplied by the Contractor under this Agreement as specified in the applicable Purchase Order.

Force Majeure shall mean any act of God or any other cause beyond a Party's control (including, but not limited to, any restriction, strike, lock-out, plant shutdown, material shortage, delay in transportation or delay in performance by its suppliers or subcontractors for any similar cause).

Included Appendices are those documents attached to the Agreement, listed above the signature page, and that are incorporated into this Agreement by reference.

Purchase Order shall mean a negotiated agreement for the provision by the Contractor of professional services, Software and/or Equipment to improve the ATCS.

Site(s) shall mean the premises at the location(s) at the SFMTA where the Equipment and or Software are installed.

Software shall mean all or any part of the specific collection of computer programs and/or machine-readable instructions bundled with or embedded in the Equipment provided by Contractor under this Agreement, whether as a stand-alone product or pre-installed on Equipment. Software shall include any updates or upgrades to the original ATCS software that may be licensed to the SFMTA pursuant to this Agreement.

Systems Manager shall mean the individual designated by City to be the primary liaison to Contractor for the purposes of this Agreement.

Thales Affiliate shall mean a company which controls, is controlled by, or is under the common control with the Contractor, but only for as long as such control exists; for the purposes of this clause, control is deemed to exist when the company in question has the authority, directly or indirectly through one or more intermediaries, to direct or utilize the voting rights of more than 50% of the stock entitled to vote for directors, general managers or persons performing a similar function, whereby such authority may exist by ownership of such stock or by contract.

C. SCOPE OF AGREEMENT

This Agreement is intended to provide the legal and procedural framework for the provision of incremental services and Software, and Equipment for the improvement, upgrade, operation and maintenance of the ATCS. The City shall procure same from Contractor through Purchase Orders negotiated by the Parties under the requirements and procedures set out in this Agreement. The Parties shall separately negotiate the scope, price, performance or delivery schedule and other terms and conditions of every Purchase Order under this Agreement. The Parties anticipate that services, Software and Equipment to be procured hereunder will include, but may not be limited to the following:

- a. ATCS Software Upgrades
- b. ATCS Hardware Upgrades
- c. Incorporation of new vehicles into the ATCS (adapt existing hardware for installation in new vehicles provided by a third party)
- d. Transfer (“final cutover”) of remaining old signaling system operating between the Embarcadero and West Portal stations to the ATCS
- e. Transfer of SMC user-interface from the OS2 platform to Windows-based system
- f. Add Digital Signal Processors (DSPs) to Axle Counters
- g. Replace VCC CPUs
- h. Upgrade I/O and DT Power Supply Units (PSUs)
- i. Upgrade signal system from Inductive Loop to wayside Radio SelTrac

- j. Upgrade "Snooper" diagnostic device from OS2 platform to run on a Microsoft Windows platform
- k. Refurbish shop special test equipment, Station Controller Maintenance Equipment (SCME)

D. COMPENSATION

1. The pricing and payment schedule associated with the Contractor's services or supply under this Agreement shall be mutually agreed and set forth in each Purchase Order as applicable.

2. In no event shall the amount of this Agreement exceed Thirty Million United States Dollars (\$30,000,000 U.S.) provided that nothing herein shall absolve the City from its obligation to reimburse Contractor in accordance with Section H.17.b., below.

3. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the SFMTA as being in accordance with this Agreement and the applicable Purchase Order, such approval not to be unreasonably delayed or withheld. City may reasonably withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. The City shall provide Contractor written notice by facsimile of suspension of payment for Contractor's non-performance no later than the date payment is due.

4. For compensation performed under a Purchase Order in which a subcontractor other than a Thales Affiliate performs Work, the following shall apply:

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

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

5. The City will make a good faith effort to pay all undisputed invoices within thirty (30) days of receipt. In no event shall City be liable for interest or late charges for any late payments provided that Contractor may suspend its performance hereunder together with written notice to City, and without penalty or liability, if any compensation owing pursuant to this Agreement is overdue in excess of fifteen (15) days. The Contractor shall resume performance upon the City's remedy of overdue amounts and receipt of City's written notification confirming payment of all compensation due. Contractor shall provide the MTA written notice by email or

facsimile of its suspension of performance no less than two (2) business days before such suspension.

E. WARRANTY

All warranties provided by Contractor in respect of any Equipment and Software supplied under this Agreement shall be as set forth in the warranty provision applicable to the Purchase Order for goods or services at issue.

F. SOFTWARE LICENSE

1. The City is hereby granted a non-exclusive, non-transferable, perpetual, restricted license to use the Software purchased under this Agreement from the date of full payment for same but only for its own operation and maintenance of the ATCS supplied by the Contractor. The City has no right to grant sublicenses. Contractor warrants that it has the title to and/or authority to grant said license(s) and sublicenses(s) to the City.

2. Notwithstanding anything to the contrary contained in this Agreement, it is understood that the City receives no title or ownership rights to Software purchased under this Agreement, and all such rights shall remain with the Contractor or its suppliers.

3. The City agrees that the Software provided to it by the Contractor under this Agreement or any renewals, extensions or expansions hereof shall, as between the Parties, be treated as proprietary and a trade secret of the Contractor or its suppliers and be subject to the provisions of Section 24 (Proprietary or Confidential Information).

4. The City shall not:

- (a) make any copies of Software provided under this Agreement or parts thereof, except for archival back up purposes and when making copies as permitted herein, shall transfer to the copy/copies any copyright or proprietary legends or other marking on said Software ; or
- (b) use said Software for any other purpose than permitted in this Section; or
- (c) translate, reverse engineer, adapt, arrange or error-correct or make any other alterations to said Software.

5. The obligations of the City under this Section shall survive the termination or expiration of this Agreement.

6. The license to use Software provided under this Agreement may contain freely available Software obtained by Contractor from a third party source. No license fee has been paid by Contractor for the inclusion of any such freely available Software, and no license fee is charged to City for its use. City acknowledges and agrees that the third party source provides no warranties and shall have no liability whatsoever in respect of City's possession and/or use of the freely available Software.

7. Contractor shall comply with the Three Party Software Escrow Agreement dated _____, 2009 between Contractor, City and Iron Mountain Intellectual Property Management, Inc., with respect to the updating of the Deposit Material escrowed thereunder.

G. SFMTA RESPONSIBILITIES

To facilitate Contractor's provision of professional services, the SFMTA shall do the following:

1. **Appoint Systems Manager and Contact Persons.** SFMTA shall appoint a System Manager to oversee and coordinate the SFMTA's use of the Equipment and Software and an alternate, both trained on the use of the ATCS, who shall act as SFMTA's primary contact person for all communications with Contractor. All information and materials provided to SFMTA by Contractor pursuant to this Agreement shall be sent to the attention of the Systems Manager as directed by the SFMTA. SFMTA may, by notice in writing to Contractor, substitute the System Manager with other employees as its designated representatives, for specified issues, project or problems or a particular Purchase Order. The Systems Manager and any delegates must speak English with sufficient competence to assist the Contractor in performing the work under this Agreement.

2. **Access To ATCS.** SFMTA shall provide Contractor with access to and use of all information and system facilities Contractor determines are necessary for it to provide timely services pursuant to this Agreement.

3. **Contractor Working Space.** The SFMTA shall provide at its own expense, for use by the Contractor's personnel, adequate working space within a reasonable distance of the ATCS main control room or as otherwise agreed between the Parties. Such space shall provide suitable working arrangements as necessary for the services to be performed. The SFMTA shall also provide adequate facilities for storage keeping of any and all items belonging to the Contractor within a reasonable distance of the Equipment to be serviced. Contractor shall use said storage space at its own risk; SFMTA shall not be responsible for the safekeeping or loss of Contractor's property.

4. **Service Activities.** Any maintenance activity performed by the SFMTA shall be in accordance with the relevant procedures prescribed by the Contractor in the Documentation.

5. **Logbook.** The SFMTA shall keep a logbook in which all events relevant to the services shall be kept. This logbook shall be available to both Parties at all times.

6. **Access to Tools, Documentation, Parts.** The Contractor shall have the right to make use of all tools, documentation and, if applicable, spare parts which may be relevant to the services and which shall be available on the Site(s) at all times.

7. **Copies of Software and Documentation.** SFMTA shall make available to the Contractor as needed a copy of all the Software installed and related Documentation and a copy of certificates of the Software licenses provided by third-parties.

8. **Maintenance Records.** The SFMTA shall maintain in written or electronic form records of maintenance performed by the SFMTA performed by Contractor and the parts used. The SFMTA shall also manage in an adequate manner its stock of consumable items

and/or spare parts to ensure the continued availability of such consumable items and/or spare parts.

H. GENERAL PROVISIONS

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

a. This Agreement is subject to the budget and fiscal provisions of the City's Charter. This Agreement shall not come into force and effect and Contractor shall have no obligation to perform hereunder until such time as City has provided prior written authorization certified by the Controller confirming the full amount of City's obligation for payment of the services, Software or Equipment contemplated hereunder. The full amount of the City's payment obligations and the Contractor's performance obligations under this Agreement shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

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

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

The City shall pay charges under this Agreement, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Agreement. A Purchase Order shall not be effective unless funding for same has been certified.

THIS SECTION H.1.a CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for services, Software or Equipment beyond the agreed upon contract scope unless the changed scope is authorized by amendment to this Agreement and approved as required by law. The Parties accept and agree that any change or variation to this Agreement shall be null and void unless the Parties have mutually agreed to the terms and conditions of such change or variation and it has been authorized by amendment and approved as required by law.

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

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

2. Term of the Agreement

Subject to Section H.1 above, the Term of this Agreement shall commence from the Effective Date pursuant to Section 3 below, and unless terminated earlier in accordance with its terms, will continue in force and effect for a period of five (5) years thereafter (the "Term"). The Term may be extended for an additional three (3) years upon agreement of the Parties.

3. Effective Date of Agreement

This Agreement shall become effective when i) authorized officers of both Parties have executed this Agreement; and ii) the SFMTA has certified to the availability of funds stated in Section 5 of this Agreement and Contractor has been so notified in writing.

4. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement shall be in the form attached as Appendix C (Sample Invoice) and must reference this Agreement and the relevant Purchase Order number, and it must include a unique invoice number assigned by Contractor. City shall make payment to Contractor at the address specified in the invoices submitted by the Contractor.

5. Submitting False Claims; Monetary Penalties

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

6. Disallowance.

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor

shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement.

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

To the extent that work under any Purchase Order is funded by federal or State grants, the City shall only request work under said Purchase Order(s) that comport with the purpose and scope of the applicable grant.

7. Taxes

Payment of any taxes, customs duties, fees, levies or charges of any kind, including possessory interest taxes and California sales and use taxes (hereinafter collectively referred to as "Taxes"), levied upon or as a result of this Agreement, or the services, Software or Equipment delivered pursuant hereto, shall be the obligation of the City and paid by the City directly to the relevant taxing authority. Should Contractor and/or their respective employees be obliged to pay directly any such Taxes, the City shall reimburse them within sixty (60) Days after presentation of documentary evidence. Contractor agrees to provide such information as may be reasonably requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

8. Payment Not a Waiver of Warranty

The granting of any payment by City, or the receipt thereof by Contractor, shall not be deemed to be a waiver of the provisions for warranty provided in the relevant Purchase Order.

9. Qualified Personnel

Services under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor or its subcontractors. Contractor will comply with City's reasonable requests regarding assignment of personnel, but Contractor must supervise all personnel, including those assigned at City's request. Contractor shall commit adequate resources to perform the services described in this Agreement.

10. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment provided by and used by Contractor, or by any of its employees, for the purposes of performing any services hereunder.

11. Independent Contractor; Payment of Employment Taxes and Other Expenses

a. Independent Contractor

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

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

b. Payment of Employment Taxes and Other Expenses

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

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

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

12. 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:

(i) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident/illness and \$2,000,000 in the general aggregate; and

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

(iii) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 in the general aggregate Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

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

(i) Include as Additional Insured on Contractor's blanket additional insured endorsements, the City and County of San Francisco, its Officers, Agents, and Employees strictly with respect to liability arising out of the Contractor's services.

(ii) 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. Contractor shall provide thirty (30) days' advance written notice to City of cancellation of any required insurance policy hereof, which Contractor shall mail to the following address:

Municipal Transportation Agency
1 South Van Ness Avenue, 3rd floor
San Francisco, CA 94102
Attention: System Manager, ATCS Project

with copies to:

Municipal Transportation Agency
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94102
Fax No. 415-701-4300
Attention: Chief Operating Officer

and

City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685
Attention: Risk Manager

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

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

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

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

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

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

13. Indemnity for Infringement of Intellectual Property Rights

a. Contractor shall indemnify, defend, and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark in the United States or Canada, and all other intellectual property claims of any person or persons in consequence of the use by City of the Equipment or Software to be supplied in the performance of this Agreement. Contractor shall at its sole expense and election, provided any such election does not result in any cost to the City arising from the claim, either: (1) indemnify the City; or (2) obtain the right to use the infringing item; or (3) modify the infringing item so

that it becomes non-infringing; or (4) replace the infringing item with a non-infringing item,

b. Contractor shall have no obligations hereunder with respect to intellectual property infringements caused by: (1) Contractor's compliance with the City's designs; (2) City's use or combination of the Software or Equipment with products or data of the type for which the Equipment and Software was neither designed nor intended; or (3) the modification of the Software or Equipment without the Contractor's prior written consent.

c. The provisions of this Article 16 shall be the City's sole remedy for infringement claims and is conditional upon City: (1) giving prompt notice in writing to Contractor of any claim or proceeding being made or threatened; (2) allowing the Contractor to defend and settle under its responsibility any proceedings or claims through counsel chosen by Contractor at the Contractor's own expense and (3) affording all reasonable assistance in connection therewith.

d. Contractor shall be entitled to modify or replace any infringing item so that it becomes non-infringing or in the event that such modification or replacement is not possible using reasonable technical efforts, to repurchase the item concerned for an amount equivalent to the original purchase price of the item.

14. Limitation of Liability.

Notwithstanding anything to the contrary contained in this Agreement, regardless of the number of claims or the form or cause of action, whether in contract or tort or otherwise, (a) neither Party shall have any liability to the other for any special, indirect, incidental or consequential damages of any kind, and neither Party shall be liable for losses of use, data, profit, revenue, income, business, anticipated savings, reputation, and more generally, any losses of an economic or financial nature, whether these may be deemed as consequential or arising directly and naturally from the incident giving rise to the claim, and (b) each Party's respective liability to the other Party arising out of or in connection with this Agreement, other than in respect of claims for infringement of intellectual property rights in accordance with Article 13, shall in no event exceed, actual, direct provable damages, up to the total price of the Purchase Order out of which said damages arise, whether or not such damages are foreseeable and whether or not the non-damaged Party has been advised of the possibility of such damages. The limitations of liability as to each Party to the other set forth in this section shall not limit the Parties' rights to seek indemnity or contribution for claims brought by third parties.

15. Default; Remedies; Right to Injunctive Relief

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

(1) Either Party, where applicable, fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement and such failure or refusal materially affects the performance of the Agreement: F (Software License), G (Compensation), H5 (False Claims), H7 (Taxes), H12 (Insurance), H21 (Proprietary or Confidential Information), H26 (Subcontracting), H34 (Drug-Free Workplace

Policy), H48 (Compliance with Laws).

(2) Either Party, where applicable, fails or refuses to perform or observe any other material term, covenant or condition contained in this Agreement, and such default continues for a period of thirty (30) Days after written notice thereof from the other Party.

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

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

b. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall be construed to restrict or prevent a Party from applying or obtaining injunctive relief before any competent court under any competent jurisdiction, in case of effective or threatened breach or infringement in respect of Confidential Information or intellectual property rights.

16. Commencement of Services and Termination

a. Commencement. The Contractor's obligation to provide the services hereunder shall begin on the Effective Date of this Agreement subject to Article 5 c. above.

b. Termination for Cause. A Party may terminate this Agreement for cause with written notification to the other Party upon occurrence of the following events:

(i) if the other Party shall commit any material breach of its obligations under this Agreement and fails to take action to remedy such breach within thirty (30) Days from the date of receipt of the notifying Party's written notice to the Party in default, such notice specifying the nature of the breach.

(ii) in case of any action or proceeding against the other Party relating to insolvency, bankruptcy, receivership or relief towards creditors, dissolution or winding-up, which are not discharged within thirty (30) Days therefrom.

17. Delays

a. Delay Due to Contractor. By entering into this Agreement, Contractor agrees that in the event the Equipment, Software or services Contractor provided for under this Agreement are delayed the City will suffer actual damages that will be impractical or extremely difficult to determine. For each Purchase Order made under this Agreement, the Parties shall mutually agree upon a key date or dates (the “Key Date(s)”) in respect of the delivery or project schedule and a corresponding amount of liquidated damages that the Contractor shall pay to the SFMTA for each business day of delay solely and directly attributable to the Contractor beyond said Key Date(s). Said liquidated damages are not a penalty, but are a reasonable estimate of the losses that City will incur based on the delay, established in light of the circumstances existing at the time the parties executed the Purchase Order for the relevant equipment, software or services. The City shall subtract said amounts of liquidated damages from amounts that are due Contractor.

b. Delay Not Due to Contractor. In the event that the Contractor incurs additional cost or delay in the scheduled milestones or timelines due to: a) any act, omission or delay of the City with respect to its obligations under this Agreement or the relevant Purchase Order; or b) any circumstance not solely and directly attributable to the Contractor; or c) another contractor or subcontractor, the relevant Purchase Order shall be modified accordingly such that the scheduled milestones or timelines shall be extended for a period not less than the period of delay unless otherwise mutually agreed by the Parties. If the delay is attributable to the City, the City shall reimburse Contractor for all reasonable additional costs and expenses incurred by the Contractor as a result of such delay.

18. Termination for Convenience.

a. Contractor may terminate this Agreement for convenience and without cause provided that it has completed all Work, and delivered all Software and Equipment under executed Purchase Orders then in effect.

b. The City may terminate this Agreement at any time during the Term hereof, for convenience and without cause by giving Contractor written notice of termination, which shall specify the date on which termination shall become effective. Upon any termination for convenience of a Purchase Order, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of the Purchase Order on the date of termination specified in said notice and to minimize the liability of Contractor and City to third parties as a result of termination. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.

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

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

c. Within thirty (30) days after the specified termination date, Contractor shall submit to the SFMTA an invoice, which shall set forth each of the following as a separate line item and the SFMTA shall pay to the Contractor within thirty (30) days of the date of such invoice or delivery of the materials listed below, as applicable, whichever is later:

(1) the unpaid balance of the price of Equipment and Software delivered and services performed up to the date of giving notice of termination that conform to requirements and specifications of this Agreement and the applicable Purchase Orders; and

(2) the unpaid balance of the Purchase Order Price of Equipment and Software in manufacture on the date of giving notice of termination or, if less, the costs of modifying the same for reuse or resale; and at City's option, be delivered to City; and

(3) the unpaid portion of the Purchase Order Price of Equipment and Software manufactured or purchased from third parties prior to the date of the notice of termination, but not yet delivered on the date of giving notice of termination (which Equipment and Software shall, at City's option, be delivered to the City); and

(4) costs and expenses resulting from any legally unavoidable commitments due or to become due in respect of sub-contracts and orders entered into and obligations incurred prior to the date of notice of termination, including demobilization costs and similar expenses, and if termination for convenience is at the City's election, an amount of ten per cent (10%) on such costs and expenses.

d. City's payment obligation under this Section shall survive termination of this Agreement and any relevant Purchase Order.

e. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c).

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

19. Rights and Duties Upon Termination or Expiration

a. This Section H19 and the following Sections of this Agreement shall survive termination or expiration of this Agreement: E (Software), H5 (Submitting False Claims; Monetary Penalties), H13 (Indemnity for Infringement), H14 (Limitation of Liability), H21

(Proprietary or Confidential Information), H25 (Audit and Inspection of Records), H45 (Agreement Made in California, Venue), H51 (Protection of Private Information).

b. Subject to the immediately preceding subsection (a) and the provisions of Article 18 c. above, upon termination of this Agreement prior to expiration of the Term specified in Section D.2, this Agreement shall terminate and be of no further force or effect.

20. Conflict of Interest

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

21. Proprietary or Confidential Information

a. Each Party understands and agrees that, in the performance of this Agreement or in contemplation thereof, a Party may have access to private or Confidential Information which may be owned or controlled by the other Party and that such Confidential Information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Party that owns that Confidential Information. Each Party agrees that all information disclosed by a Party to the other Party shall be held by the receiving Party in confidence and used only in performance of this Agreement. Each Party shall exercise the same standard of care to protect such information as a reasonably prudent software developer would use to protect its own proprietary data.

b. The Parties agree to keep confidential all Confidential Information received prior and after the signature of this Agreement from the other Party, to instruct and obligate all of its personnel to adhere to this obligation of confidentiality and not to use the Confidential Information for other purposes than for the undertakings of this Agreement.

c. The Confidential Information shall always remain the property of the disclosing Party, and shall not be copied or otherwise reproduced without the prior written permission of the disclosing Party.

d. No obligation of confidence under this Agreement shall extend to information which is: (a) publicly available through no breach of contract; (b) independently developed by the receiving Party; (c) already in the possession of the receiving Party; (d) lawfully received from a third party not under an obligation of confidence; or (e) required to be disclosed by government or court order or other legal process, provided that the receiving party will take all reasonable steps to permit the disclosing party to prevent or limit such disclosure.

e. Notwithstanding the foregoing, Contractor shall be entitled to disclose Confidential Information to a Thales Affiliate on a need to know basis for the undertakings of this Agreement, provided that Contractor ensures that the Thales Affiliate abides by the confidentiality terms of this Agreement.

f. The confidentiality obligations shall survive termination of this Agreement for a period of five (5) years.

22. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all formal written notices sent by the Parties shall be signed by an authorized representative of the sending Party, or by facsimile immediately confirmed in writing. All notices under this section of the Agreement shall be considered as validly served if mailed in the form of pre-paid registered letter, return receipt requested, and shall be addressed as follows:

To City: Municipal Transportation Agency
1 South Van Ness Avenue, 3rd floor
San Francisco, CA 94102
Fax No. 415-701-4300
Attention: Thomas Kennedy, Deputy Director, Maintenance of Way
E-mail: Thomas.Kennedy@SFMTA.org

with a copy to: Municipal Transportation Agency
1 South Van Ness Avenue, 3rd floor
San Francisco, CA 94102
Fax No. 415-701-4300
Attention: Kenneth McDonald, Chief Operating Officer
E-mail: Kenneth.McDonald@sfmta.com

To Contractor: Kim Wagar
SFMTA Account Manager
Thales Transport & Security, Inc.
250 – 4190 Still Creek Drive Burnaby
British Columbia V5C 6C6 Canada
Direct phone: 604-453-3137
Telefax: 604-434-7699
E-mail: Kim.Wagar@thalesgroup.com

with a copy to: Thales Transport & Security, Inc.
1235 Ormont Drive
Toronto, Ontario M9L 2W6
Fax (416) 742 49 93
Attention: Martine Funston, Legal Counsel

This section shall only apply to formal legal notices between the Parties, not to the parties communications made in the course of negotiating or performing Work Orders.

Any notice of default must be sent by registered mail.

23. License of Documentation.

Contractor shall supply Documentation to the City for Equipment and Software purchased under this Agreement in the format and number of copies as set out in the relevant Purchase Order(s). The City shall have the right to use the Documentation for the operation and maintenance of the ATCS. The City may make limited copies of the Documentation to the extent necessary to maintain one (1) archive version and as required to train its employees in the operation and maintenance of the ATCS provided always that all copyright, confidentiality or proprietary legends or other markings shall be transposed onto such permitted copies. The Documentation and all permitted copies thereof shall at all times be treated as proprietary and a trade secret of the Contractor or its suppliers and be subject to the provisions of this Agreement for Confidential Information.

24. Delivery, Title and Risk of Loss in Shipping.

Contractor shall deliver all equipment and software purchased under this Agreement Free on Board (F.O.B.) Origin, in accordance with the Uniform Commercial Code to the MTA's delivery address specified in the relevant Purchase Order for the Equipment or Software. Contractor shall assume risk of loss until the Equipment or Software is delivered to the first carrier. The price listed in any Purchase Order shall include for the corresponding goods all shipping costs and insurance for loss during shipping in accordance with said F.O.B. delivery term but excludes any customs duties, import taxes or other charges which shall be borne by the City. Contractor shall select the carrier, means, and method of delivery best to ensure safe delivery. Contractor shall insure all goods shipped for the full replacement value. Title to the Equipment shall pass to the City upon payment in full of the price determined in the Purchase Order for said goods.

Title to any Software, Documentation and other confidential information or data delivered to the City under this Agreement shall remain vested solely in Contractor or its licensors. Upon delivery of goods, the City shall perform a visual and quantitative check of thereof and shall notify the Contractor in writing of any apparent defect, omission or damage. If such notice is not given within ten (10) business days, the goods shall be considered in conformity with the packing list and free from apparent defects.

25. Audit and Inspection of Records

Contractor agrees to maintain and make available to the City, during regular business hours and subject to City's prior written request, accurate books and accounting records relating to this Agreement. Contractor will permit City to reasonably audit, examine and make excerpts and transcripts from such books and records, and to make reasonable audits of all invoices, materials, payrolls, records and other data directly related to matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years after final payment under this Agreement. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

26. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless City first approves such subcontracting in writing. Neither Party shall, on the basis of this Agreement, contract on behalf of or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any Party and shall be null and void. Notwithstanding all of the foregoing, Contractor is hereby granted authority to subcontract all or any portions of the work under this Agreement to Thales Affiliates. In addition, the Contractor shall be entitled to subcontract any portion of the work under this Agreement to a third party, with the written approval of the SFMTA, which shall not unreasonably be withheld, provided that the Contractor will continue to be liable for the obligations of the subcontractor under this Agreement.

27. Assignment

The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument lawfully executed and approved. Notwithstanding the foregoing, the Contractor shall be entitled to assign any or all of its rights and obligations under this Agreement to a Thales Affiliate without the prior consent of the SFMTA. The Contractor shall be entitled to assign in connection with the sale of the relevant business any or all of its rights and obligations under this Agreement to a third party, with the prior approval of the SFMTA, which shall not unreasonably be withheld. The SFMTA may not assign any or all of its rights and obligations under this Agreement unless prior authorization is granted in writing by the Contractor, which shall not unreasonably be withheld.

28. Non-Waiver of Rights

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

29. Earned Income Credit (EIC) Forms

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

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) Days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the Term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty (30) Days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) Days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

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

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

30. Small Business Enterprise Requirements

The SFMTA will evaluate subcontracting opportunities and will assign an appropriate Disadvantaged Business Enterprise ("DBE") participation goal, if applicable, prior to requesting a quotation from the Contractor for any services or supply hereunder. If Contractor determines that the Contractor cannot meet the SBE goal established by the SFMTA, the Contractor may decline the requested services and/or supply without any liability and at no cost to either Party. Once Contractor has negotiated all the terms and conditions of a Purchase Order, including any SBE goal, and such Purchase Order has come into force and effect, then the Contractor shall be subject to the SBE requirements for the Purchase Order, as set out in Appendix D to this Agreement. SBE requirements shall not apply to a subcontractor that is a Thales Affiliate.

31. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

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

b. Subcontracts

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

c. Nondiscrimination in Benefits

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

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

32. MacBride Principles - Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this

Agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

33. Tropical Hardwood and Virgin Redwood Ban

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

34. Drug-Free Workplace Policy

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

35. Resource Conservation

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

36. Compliance with Americans with Disabilities Act

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

37. Sunshine Ordinance

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

38. Limitations on Contributions

Contractor acknowledges that it has been provided a copy of section 1.126 of the City’s Campaign and Governmental Conduct Code and shall adhere to all applicable provisions thereof.

39. 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. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. 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 with a US registered subcontractor 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 such 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.

40. Requiring Health Benefits for Covered Employees

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

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

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

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the

remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor with a US registered subcontractor 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.

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.

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

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

n. As allowed under San Francisco Administrative Code section 12.Q.2.9 (defining a covered employee), the provisions of this Section 44 shall apply only to Contractor's employees

residing in the United States performing work under this Agreement. In lieu of providing the benefits required under this Section 44, Contractor may pay such employees the cash value of the benefit.

41. Prohibition on Political Activity with City Funds

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

42. Preservative-treated Wood Containing Arsenic

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

43. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by as provided for herein by written instrument lawfully executed and approved. Any modification of this Agreement must be signed by the Executive Director/CEO of the SFMTA and the President or Corporate Counsel of the Contractor.

44. Dispute Resolution

For any dispute involving a question of fact, the aggrieved Party shall furnish the other Party with a notice of dispute within fifteen (15) Days of the determination of the dispute. The Party receiving a notice of dispute shall submit a written reply with fourteen (14) Days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the Party’s position and a summary of the arguments supporting that position, and (b) any evidence supporting the Party’s position. Disputes arising in the performance of this Agreement that are

not resolved by negotiation between the Parties shall be decided by a competent court of jurisdiction in California. If agreed to by both Parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

45. Agreement Made in California; Venue

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

46. Construction

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

b. This Agreement and each of its terms is the product of mutual negotiation and drafting by the Parties. The Parties acknowledge and agree that the rule of interpretation or construction of contracts that a document or ambiguities in a document shall be construed against the drafter of the document shall not apply to this Agreement.

47. Entire Agreement

This Agreement and any documents incorporated by reference herein constitute the entire agreement between the Parties. It sets forth all intended rights and obligations and supersedes any and all previous agreements correspondence and understandings between them with respect to the subject matter hereof. In the event of any inconsistency between the provisions of any Appendix and the provisions of this document, the provisions of this document shall prevail. This Agreement may be modified only as provided in Section 43. Should the terms or conditions of any Purchase Order mutually agreed in accordance with this Agreement conflict with the terms or conditions of this Agreement, the terms of the Purchase Order shall govern. All Purchase Orders issued under this Agreement must be signed by the Executive Director/CEO of the SFMTA and the President or Corporate Counsel of Contractor.

48. Compliance with Laws

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

49. English Required.

All data, documents, descriptions, diagrams, instructions and correspondence shall be in the English language.

50. Severability

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

51. Protection of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Protection of Private Information Ordinance"), including the remedies provided. The provisions of the Protection of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Protection of Private Information Ordinance. Consistent with the requirements of the Protection of Private Information Ordinance, Contractor agrees to all of the following:

(a) Neither Contractor nor any of its subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other subcontractor, person, or other entity, unless one of the following is true:

- (1) The disclosure is authorized by this Agreement;
- (2) The Contractor received advance written approval from the Contracting Department to disclose the information; or
- (3) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

52. Federal Contract Requirements.

Procurement of goods and services under this Agreement is subject to the federal contracting requirements set out in Appendices A and C, which are incorporated by reference as if fully set out here. Should any provision in this Agreement or a subsequent Purchase Order issued under this Agreement conflict with the federal contracting requirements set out in Appendix A or C, the federal contracting requirements shall govern.

53. Food Service Waste Reduction Requirements

Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

54. Force Majeure

a. Neither Party shall by reason of Force Majeure, be entitled to terminate this Agreement nor shall either Party have any claim for damages against the other for any non performance or delay under the Agreement as a result of such Force Majeure. If the performance in whole or part of any obligation under this Agreement is delayed by reason of any such event of Force Majeure for a period exceeding three (3) months, the Parties shall discuss and review in good faith the desirability and conditions of terminating this Agreement.

b. The prevented Party shall, as soon as it becomes aware of an event of Force Majeure, immediately inform the other Party of the nature and the beginning and the end of the Force Majeure circumstances preventing the performance of the Agreement.

55. Signature, Counterparts

This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument and either of the Parties may execute this Agreement by signing any such counterpart. Delivery may be completed by the Party concerned transmitting to the other Party a facsimile copy of the counterpart signed by such Party. Any Party delivering any executed counterpart of this Agreement as provided herein shall confirm execution by delivering by courier an original of such executed counterpart to the other Party.

56. Included Appendices

The Appendices listed below are hereby incorporated by reference into the Agreement as if fully set out therein:

- A. FTA Requirements for Procurement Contracts
- B. Model Form of Purchase Order
- C. Sample Invoice
- D. Small Business Enterprise Requirements
- E. HRC Progress Payment Form

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

<p>San Francisco Municipal Transportation Agency</p> <p>APPROVED:</p> <p>_____</p> <p>NATHANIEL P. FORD, SR. Executive Director/CEO</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney</p> <p>Approved:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS Resolution No. _____</p> <p>Adopted: _____</p> <p>Attest:</p> <p>_____ Secretary, MTA Board</p>	<p>Thales Transport & Security, Inc.</p> <p>By signing this Agreement, Contractor certifies that it complies with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>Contractor has read and understood paragraph 35, the City’s statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>_____ JOHN BROHM President Thales Transport & Security, Inc. 5700 Corporate Drive, Suite 750, Pittsburgh, PA 15237 Fax No. 412-366-8817</p> <p>City vendor number: _____</p>
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APPENDIX A

FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS FOR PROCUREMENT CONTRACTS

I. DEFINITIONS

- A. Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- B. Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.
- C. Cooperative Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.
- D. Federal Transit Administration (FTA)** is an operating administration of the U.S. DOT.
- E. FTA Directive** includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.
- F. Grant Agreement** means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.
- G. Government** means the United States of America and any executive department or agency thereof.
- H. Project** means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.
- I. Recipient** means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.
- J. Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.

- K. Third Party Contract** means a contract or purchase order awarded by the Recipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.
- L. Third Party Subcontract** means a subcontract at any tier entered into by Contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.
- M. U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

- A.** The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.
- B.** The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C.** The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

IV. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

By executing this Agreement, Contractor certifies the following to the best of its knowledge and belief, that it and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement,

theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in subparagraph (b) of this certification; and
- d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

- A.** The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B.** The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

VI. CIVIL RIGHTS

- A.** **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 41 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B.** **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the underlying contract:

- 1. Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action

shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

C. The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

VII. CONTRACT WORK HOURS AND SAFETY STANDARDS (*applicable to non-construction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

A. Overtime requirements - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause set forth in paragraph A of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this section.

C. Withholding for unpaid wages and liquidated damages - The City and County of San Francisco shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- D. Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

VIII. ENERGY CONSERVATION REQUIREMENTS

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

IX. CLEAN WATER REQUIREMENTS

- A.** The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.
- B.** The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

X. CLEAN AIR

- A.** Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B.** The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

XI. PRIVACY

If Contractor or its employees administer any system of records on behalf of the Federal Government, Contractor and its employees agree to comply with the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a (the Privacy Act). Specifically, Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Government. Contractor acknowledges that the requirements of the Privacy Act, including the civil and criminal penalties for violations of the Privacy Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of this Agreement. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XII. DRUG AND ALCOHOL TESTING

To the extent Contractor, its subcontractors or their employees perform a safety-sensitive function under the Agreement, Contractor agrees to comply with, and assure compliance of its subcontractors, and their employees, with 49 U.S.C. § 5331, and FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR Part 655.

XIII. TERMINATION FOR CONVENIENCE OF CITY (required for all contracts in excess of \$10,000)

See Agreement Terms and Conditions.

XIV. TERMINATION FOR DEFAULT

See Agreement Terms and Conditions.

XV. BUY AMERICA

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include microcomputer equipment, software, and small purchases (\$100,000 or less) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock not subject to a general waiver must be manufactured in the United States and have a 60 percent domestic content.

XVI. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

The Contractor agrees: (a) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying Agreement to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described above to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the Contractor in the case of a subcontractor's bill-of-lading.); and (c) to include these requirements in all subcontracts issued pursuant to this Agreement when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

XVII. RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not

limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XVIII. PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS

To the extent applicable, Contractor agrees to comply with the requirements of 49 U.S.C. § 5323(l) and FTA implementing regulations at 49 CFR Part 663, and to submit the following certifications:

- A. Buy America Requirements:** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.
- B. Solicitation Specification Requirements:** The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.
- C. Federal Motor Vehicle Safety Standards (FMVSS):** The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

XIX. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

- A.** The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B.** The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.
- C.** The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XX. FLY AMERICA

The Contractor agrees to comply with 49 U.S.C. 40118 (the “Fly America” Act) in accordance with the General Services Administration’s regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

XXI. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

APPENDIX B
MODEL FORM OF PURCHASE ORDER

PURCHASE ORDER FOR ACQUISITION OF EQUIPMENT, SOFTWARE AND SERVICES FOR THE SFMTA ADAVANCED TRAIN CONTROL SYSTEM

CONTRACT No. 1226 – PURCHASE ORDER No. [form]_____

This Purchase Order is issued by the San Francisco Municipal Transportation Agency ("SFMTA" or "City") under the Advanced Train Control System Improvement Professional Services and Equipment Purchases Agreement between the San Francisco Municipal Transportation Agency and Thales Transport & Security, Inc., Contract No. 1226 ("Purchase Order Agreement"), dated April 21, 2009, for the Municipal Transportation Agency's acquisition of the equipment, software, and/or services described herein. Said Agreement is incorporated by reference as if fully set out herein. All Appendices listed below are incorporated by reference as if fully set out herein.

RECITALS

- 1.
- 2.
- 3.

Now, therefore, in consideration of the facts recited above, the premises and the mutual undertakings of the Parties herein contained, the Parties agree as follows:

1. Effective Date: This Purchase Order will become effective when executed by the SFMTA and Contractor in accordance with the Purchase Order Agreement.
2. Scope: See Appendix 1 for a description of the scope of work and/or services to be rendered under this Purchase Order.
3. Price: The total price payable by the City in respect of this Purchase Order for the work and/or services rendered hereunder is _____ United States Dollars (\$_____ U.S.).
4. Retention:
5. Warranty:
6. Subcontractors: Contractor shall use the following subcontractor(s) to accomplish the work described in Appendix A of this Purchase Order, which subcontractor(s) is/are hereby acknowledged and approved by the SFMTA. Contractor shall not substitute a subcontractor without written approval from the SFMTA, which approval shall not be unreasonably withheld or delayed.

Thales Rail Signalling Solutions Inc.
1235 Ormont Drive
Weston, Ontario

7. Authorization: By their signatures below, this Purchase Order is authorized by the SFMTA's Executive Director/CEO and the President or Corporate Counsel of Contractor.

Authorized:

NATHANIEL P. FORD, SR.
Executive Director/CEO
Municipal Transportation Agency
City and County of San Francisco

Date: _____

Authorized:

JOHN BROHM
President
Thales Transport & Security, Inc.
5700 Corporate Drive, Suite 750,
Pittsburgh, PA 15237

Date: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

Robert K. Stone
Deputy City Attorney

APPENDIX 1 TO PURCHASE ORDER No. ____ [form]

DESCRIPTION OF SERVICES

APPENDIX C
SAMPLE INVOICE

APPENDIX D
SMALL BUSINESS ENTERPRISE REQUIREMENTS

APPENDIX E
HRC PROGRESS PAYMENT FORM

THIS PRINT COVERS CALENDAR ITEM NO. : 10.7

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Authorizing acceptance of San Francisco Municipal Transportation Agency Contract No. MR-1034R, Procurement and Installation of an Advanced Train Control System, with Thales Transport & Security, Inc. in the final amount of \$48,713,397.00, and authorizing closeout of the Contract.

SUMMARY:

- Thales Transport & Security Inc. (formerly Thales Rail Signalling Solutions (US) Inc., and prior to that, Alcatel Transport Automation (US) Inc.) has supplied an Advanced Train Control System (“ATCS”) to the Municipal Railway under Contract No. MR-1034R, which received Notice to Proceed in August 1992.
- Six Amendments to MR-1034R revised and expanded Contract work scope, settled claims, and extended the contract schedule. The ATCS has been in revenue service since 1998.
- The closeout scope of work under MR-1034R has been completed, with all hardware and software installed and in service, delivery of all required system documentation, successful completion of a four-week Availability Demonstration, execution of a Software Escrow Agreement, and execution of a Software and Maintenance Support Services Agreement. The final invoice was processed in December 2008.
- The Contract Compliance Office has determined that Thales met the 15% DBE participation goal established for the Contact.

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:

_____ Gigi Pabros _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

The Advanced Train Control System (ATCS) project goal is to provide a state-of-the art fully automated train control system, to replace the old track-circuit based system installed in the 1970s, and to signalize new subway track areas.

GOAL

The ATCS contract contributes to the following Strategic Goals:

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: Customer Focus: To get customers where they want to go, when they want to be there

Objective 2.1 Transit Reliability: Improve on-time performance to 85%

Objective 2.4 Reduce congestion through major corridors

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

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

DESCRIPTION

In August 1992, the City, through its Public Utilities Commission, awarded Contract No. MR-1034R with Alcatel to provide an Advanced Train Control System (ATCS) to the Municipal Railway. The ATCS has been in revenue service since 1998.

The ATCS controls light rail vehicles operating within the Metro subway. The ATCS enhances light rail system performance and safety by controlling train speed, braking, routing and headways (the time between trains), more efficiently and accurately than can be accomplished by manual operator control. The ATCS controls trains operating in the subway at a rate of up to 60 vehicles-per-hour in each direction, which is an increase of 130 percent over the 26 vehicles-per-hour pre-ATCS limitation. The ATCS transmits train arrival information to platform level information systems, both visual and audio, through the SFMTA's legacy Platform Display System (PDS) and Public Address (PA) System. The ATCS also provides real-time train location data to the NextMuni arrival prediction system (supplied by NextBus) for those trains which are in the subway and outside the range of Global Positioning Satellite ("GPS") vehicle tracking devices.

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On April 26, 1994, the Public Utilities Commission authorized execution of an agreement to assign Contract No. MR-1034R from Alcatel Canada, Inc. to Alcatel Transport Automation (US) Inc. With the execution of that agreement, Alcatel Canada, Inc. became a subcontractor to Alcatel Transport Automation (US) for the purposes of Contract No. MR-1034R.

Amendments No. 1 in 1994 and No. 2 in 1996 revised and expanded the Contract work scope, settled claims, and extended the contract schedule. Amendment No. 2 included a settlement of claims relating to change orders, changed requirements and delays in the amount of \$2,100,000.

Amendment No. 3, approved on September 6, 2005, addressed outstanding delay and performance claims, and clarified remaining work, delivery schedule, payment and liquidated damages, and requirements for contract closeout.

In January 2007, ownership of Alcatel Transport Automation (US) and Alcatel Canada, Inc transferred to Thales Rail Signalling Solutions (US) Inc. and Thales Rail Signalling Solutions Inc., respectively. Amendment No. 4, approved on February 20, 2007, replaced subcontractor Alcatel Canada Inc. with Thales Rail Signalling Solutions Inc., with no change in cost or duration of the Contract.

Amendment No. 5, approved on August 30, 2007, extended the Contract Term to September 6, 2008. Amendment No. 6, approved on August 19, 2008, extended the Contract Term to March 6, 2009.

Closeout work for Contract MR-1034R is fully complete and has been accepted. All hardware and software installations are complete, commissioned and in service. All documentation deliverables have been submitted and accepted by the SFMTA. A 4-week Availability Demonstration was successfully completed to verify that the close-out work has not reduced ATCS performance since the close-out work defined under Amendment #3 commenced in 2005. The final invoice was processed in December 2008. A three-party Software Escrow Agreement has been executed with Thales and Iron Mountain Intellectual Property, Inc., which protects the SFMTA's access to software source code in the event Thales goes out of business or no longer supports the ATCS product, while protecting Thales' proprietary interest in their intellectual property. A Maintenance Support Services Agreement has been negotiated between SFMTA and Thales Transport & Security, Inc. and is the subject of a companion calendar item for the Board's approval.

The Contract Compliance Office reviewed and accepted Thales' good faith effort on this Contract, finding that the contractor met the 15% DBE goal.

The City Attorney has reviewed this calendar item.

FUNDING IMPACT

None.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

Staff recommend that the SFMTA Board accept Contract No. MR-1034R, for the Procurement and Installation of an Advanced Train Control System (ATCS), with Thales Transport & Security, Inc. in the final amount of \$48,713,397.00, and authorize closeout of the Contract.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On June 9, 1992, the Public Utilities Commission approved execution of Municipal Railway Contract MR-1034R with Alcatel Canada, Inc. for Procurement and Installation of an Advanced Train Control System ("ATCS"); and,

WHEREAS, On April 26, 1994, the Public Utilities Commission approved execution of an agreement to reassign Contract MR-1034R from Alcatel Canada, Inc. to Alcatel Transport Automation (US) Inc. ("Alcatel"), effective July 1, 1994; and,

WHEREAS, Six Amendments to Contract MR-1034R revised, expanded and clarified Contract work scope, settled claims, and extended the contract schedule; and,

WHEREAS, The ATCS has been in revenue service since 1998; and,

WHEREAS, Alcatel was acquired by Thales Transport & Security, Inc. ("Thales") in 2007, and Thales assumed Alcatel's obligations under Contract No. 1034R; and,

WHEREAS, Thales has completed closeout scope of work under MR-1034R , with all hardware and software installed and in service, all required system documentation delivered, a four-week ATCS Availability Demonstration successfully completed, Software Escrow Agreement and a Software and Maintenance Support Services Agreement executed; and,

WHEREAS, The final invoice for MR-1034R was processed in December 2008; and,

WHEREAS, The Contract Compliance Office has determined that Thales achieved a DBE participation goal of 15%; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency accepts the work under Contract No. MR-1034R as having been fully and satisfactorily completed in accordance with plans and specifications for Procurement and Installation of an Advanced Train Control System; and be it further,

RESOLVED, That except for those obligations specifically noted in Contract No. MR-1034R as surviving the termination or expiration of that agreement, all other obligations of Thales under that agreement have been satisfied and Thales is hereby released as to those obligations that do not survive; and be further,

RESOLVED, That the closeout of the Contract MR-1034R with Thales Transport & Security, Inc. is approved.

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

MR-1034R ADVANCED TRAIN CONTROL SYSTEM PROJECT

Project Budget and Financial Plan

PROJECT BUDGET

Category	Budget
Contract	\$48,713,397
Amendment #2 Settlement (1996)	\$2,100,000
MTA Support	\$10,746,753
Consultant – Engineering	\$12,340,641
Consultant – Safety (CS-105)	\$4,289,359
Sales Tax	\$2,450,000
Contingency	0
TOTAL	\$80,640,150

FUNDING SOURCES

Source	Amount
Federal	\$31,679,717
State	\$16,769,644
Local	\$21,140,389
MMT Capital Funds	\$1,897,280
LRV Capital Funds	\$8,691,252
Muni Operating Funds	\$461,868
TOTAL	\$80,640,150

THIS PRINT COVERS CALENDAR ITEM NO. :

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance & Information Technology

BRIEF DESCRIPTION:

Financial stability is of the utmost importance to the San Francisco Municipal Transportation Agency (“SFMTA”) as well as transparency of charges and changes in charges to users of the transportation system. Therefore, it is the SFMTA Board of Directors' desire to implement an Automatic Indexing Implementation Plan (“AIIP”) to increase charges which are not otherwise governed by law beginning Fiscal Year 2011.

SUMMARY:

- On April 15, 2008, the SFMTA Board of Directors approved for Fiscal Year 2011 and going forward, a policy of indexing charges that are not otherwise governed by law and directed the SFMTA to prepare and present an Automatic Indexing Implementation Plan (“AIIP”) for approval by the SFMTA Board of Directors.
- On August 5, 2008, the SFMTA Board of Directors received a presentation which included several models for automatic increases.
- Of the four models presented, the Board approved a blended formula which included a combination of the Bay Area CPI and a cost driver with specific impact to the SFMTA.
- The Board requested that several cost drivers be explored including labor and fuel as well as others. This information was presented to the Board on November 4, 2008.
- On November 4, 2008, the Board agreed that the index should be based on a blended formula, half on the Bay Area CPI and half on changes in SFMTA labor costs, in the two year operating budget as required by the Charter.
- At this meeting, the Board of Directors is asked to formally adopt an Automatic Indexing Implementation Plan (“AIIP”).

ENCLOSURES:

1. Automatic Indexing Implementation Plan (“AIIP”)
2. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION BE RETURNED TO: Sonali Bose, 1 So. Van Ness Ave., 8th flr.

ASSIGNED SFMTAB CALENDAR DATE: _____

Purpose

To establish a more predictable and transparent mechanism for setting charges which are not otherwise governed by law as part of the two-year Operating Budget process required in the Charter.

Goal

Approval of the proposed resolution will support:

- Goal 4 of the SFMTA's Strategic Plan, "Financial Capacity," which is to ensure financial stability and effective resource allocation; and
- Goal 3 of the SFMTA's Strategic Plan, "External Affairs/Community Relations," which is to improve the customer experience, community value and enhance the image of the SFMTA.

Description

In a 2007 November study entitled "*Fare Policy Regarding Regular and/or Inflation related ("Programmed") Price Increases*" by the NYU Wagner Rudin Center for Transportation Policy & Management¹, the following is stated:

This approach, referred to in this report as "programmed fare increases," appears to offer benefits to both transit agencies and their customers. Customers experience smaller fare increases which, though more frequent, are more predictable and therefore more acceptable. Agencies appear to experience less of an impact on ridership and the predictability of these regular increases facilitates capital programs, service improvements, and financial planning [...]

The SFMTA Board discussed the implementation of a similar policy during the FY 2009 and 2010 Operating Budget process and on April 15, 2008, approved, in concept, an Automatic Indexing Implementation Plan ("AIIP") to increase charges which are not otherwise governed by law beginning Fiscal Year 2011 and requested discussion of a formal AIIP at a future Board meeting.

On August 5, 2008, the SFMTA Board discussed four different methodologies for the calculation of the index and agreed to use a Blended Formula in the AIIP. The Blended Formula proposed included a combination of the Bay Area CPI and labor costs, defined as salaries and benefits, as follows:

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¹ <http://wagner.nyu.edu/rudincenter/farepolicy.pdf>

Assume Bay Area CPI = 3.0% and Assume Labor Cost Increase = 3.5% then
Annual Automatic Inflation = $3.0\% \div 2 + 3.5\% \div 2 = 1.50\% + 1.75\% = 3.25\%$

The rationale for proposing the use of labor costs in the formula was based on the following: 1) over 60% of operating costs are labor; 2) the floor for labor increases for operators is set by the City Charter and tied to the average of the two highest operator wage schedules for comparable transit agencies in the country; 3) the SFMTA has the authority to negotiate and approve labor agreements; 4) labor costs are the least volatile of all the expenditure line items; and 5) it is an expenditure line item with the most information available during the budget process.

At the August 5, 2008 meeting, the Board requested that several cost drivers be explored including labor and fuel as well as others. This information was presented to the Board on November 4, 2008.

On November 4, 2008, the Board agreed that the index should be based on the Blended Formula as proposed on August 5, 2008, and requested an AIP for implementation in Fiscal Year 2011 be presented at a future Board meeting for approval.

The Blended Formula shall be applied to transit fares, parking citations, parking garage rates, and all other charges consistent with applicable law and any statutory maximums. Any applicable increase shall round up to the nearest \$0.25, \$0.50 or \$1.00 depending on the base charge and the rounding impact does not result in more than a 10% increase.

To the extent that application of the AIP results in an increase in transit fares, such an increase must be submitted to the San Francisco Board of Supervisors as part of the SFMTA's budget or as a budget amendment pursuant to Charter section 8A.108(a).

Alternatives Considered

The SFMTA Board considered various methodologies and cost drivers as discussed above.

Funding Impact

No funds required to approve the AIP but approval will result in stability of funding sources for the Operating Budget beginning in FY 2011.

Recommendation

Based on the above, it is recommended that the SFMTA Board of Directors authorize the use of the Blended Formula in the AIP and apply the AIP every two years concurrently with the SFMTA Budget. Furthermore, it is recommended that the SFMTA use the California

Department of Finance's Bay Area CPI-U forecast.² Finally, it is recommended that the Board approve the following Blended Formula:

$$\text{Automatic Inflator} = [\text{Bay Area CPI-U} \div 2] + [2\text{-year Operating Budget Labor Cost Change} \div 2]$$

and round up the Automatic Inflator to the nearest \$0.25, \$0.50 or \$1.00 depending on which is appropriate given the base charge and ensure that the rounding impact does not result in more than a 10% increase.

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

² http://www.dof.ca.gov/HTML/FS_DATA/LatestEconData/FS_Forecasts.htm

Automatic Indexing Implementation Plan (“AIIP”)

Financial stability is of the utmost importance to the San Francisco Municipal Transportation Agency (“SFMTA”). It is the SFMTA Board of Directors' desire to create a more predictable and transparent mechanism for setting charges which are not otherwise governed by law.

PURPOSE

To establish a more predictable and transparent mechanism for setting charges which are not otherwise governed by law as part of the two-year Operating Budget process required in the Charter.

POLICY

It is the policy of the SFMTA Board of Directors:

- To create a more predictable and transparent mechanism for setting charges which are not otherwise governed by law.
- To apply the following methodology for indexing charges:
 - Automatic Inflator = [Bay Area CPI-U ÷ 2] + [2-year Operating Budget Labor Cost Change ÷ 2] where the Bay Area CPI-U forecast used will be from the California Department of Finance; and
 - Round up the Automatic Inflator to the nearest \$0.25, \$0.50 or \$1.00 depending on which is appropriate given the base charge and ensure that the rounding impact does not result in more than a 10% increase
- To re-evaluate, during the SFMTA Budget process, the adequacy of the Automatic Inflator
- Conduct a public hearing or public notification during the SFMTA Budget process to inform the public about the proposed Automatic Inflator
- To set the Automatic Inflator for a two-year period concurrently with the two-year SFMTA Operating Budget
- To reserve the right to forego an Automatic Inflator if the SFMTA Budget projections allow
- To reserve the right to set a higher Automatic Inflator if required or to set a different Automatic Inflator for each of the two years in the Operating Budget depending on the Operating Budget projections
- To the extent that application of the AIIP results in an increase in transit fares, such an increase must be submitted to the San Francisco Board of Supervisors as part of the SFMTA's budget or as a budget amendment pursuant to Charter section 8A.108(a).

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (“SFMTA”) Board of Directors is responsible for approving a two-year budget pursuant to the City's Charter; and

WHEREAS, The Board of Directors now determines it is in the best interest of the SFMTA and the users of the transportation system to establish an Automatic Indexing Implementation Plan (AIIP) for setting charges which are not otherwise governed by law to create a more predictable and transparent mechanism for setting these charges;

WHEREAS, These funds are part of the Municipal Transportation Fund as designated in Section 8A.105 of the City's Charter; and

WHEREAS, The AIIP shall be applied to transit fares, parking citation fines, parking garage rates, and all other charges consistent with applicable law and any statutory maximums; and

WHEREAS, The resulting charge shall be rounded to the nearest \$0.25, \$0.50 or \$1.00 depending on which is appropriate given the base charge; and

WHEREAS, To the extent that application of the AIIP results in an increase in transit fares, such an increase must be submitted to the San Francisco Board of Supervisors as part of the SFMTA's budget or as a budget amendment pursuant to Charter section 8A.108(a); and

WHEREAS, These charges will be budgeted in the two-year operating budget and a public hearing will be held in compliance with Charter section 16.112 and the SFMTA Board’s Rules of Order informing the public regarding possible changes to charges; and

WHEREAS, The Board of Directors, during the SFMTA Budget process, will review the adequacy of the Automatic Inflator; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves the following methodology for indexing charges not otherwise governed by State law: Automatic Inflator = [Bay Area CPI-U ÷ 2] + [2-year Operating Budget Labor Cost Change ÷ 2] by using the California Department of Finance's Bay Area CPI-U forecast to be applied to transit fares, parking citation fines, parking garage rates, and other relevant charges and rounding up the Automatic Inflator to the nearest \$0.25, \$0.50 or \$1.00 depending on which is appropriate and subject to any statutory maximums.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 14

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Taxis and Accessible Services

BRIEF DESCRIPTION:

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

SUMMARY:

- California Government Code § 53075.7-53075.9 authorize the SFMTA to adopt criteria that, if shown, would be sufficient to warrant initiating an investigation against an illegal taxi service provider (one without a permit issued by the SFMTA or predecessor agency).
- This resolution lists such criteria for adoption by the SFMTA Board.
- In addition, the resolution sets a fine amount of \$5,000 if, following a hearing, it is established that the person or corporation was illegally providing taxi service, and allows the SFMTA to also assess the costs of the investigation and interest on any delinquent payments of the fine or assessments.
- The resolution establishes that any fines, interest or assessments that are collected may only be used for the purpose of enforcement against operators of illegal taxi businesses and vehicles.

ENCLOSURES:

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

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Chris Hayashi

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

To adopt criteria that would allow initiation of investigations against taxi business and vehicle operators, a fine amount and authority to assess investigation costs against any person or corporation found to be illegally operating such business or vehicle.

GOAL

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

Objective 1.1: Improve safety and security across all modes of transportation

This item will further these goals and objectives by improving the safety of taxi customers by reducing the probability that they will use illegal taxi services that do not guarantee driver training or mandate background checks and which may not be properly insured.

DESCRIPTION

This item establishes criteria that, if contained in a complaint made against a taxi business or person operating a taxi vehicle, would be sufficient for the initiation of an investigation against the person or business. California Government Code §§ 53075.7-53075.9 authorize a local taxi regulator to establish such criteria for the purpose of commencing enforcement against persons or corporations who illegally hold out taxi services to the public without a permit issued by the SFMTA or predecessor agency.

If the SFMTA determines that the investigation supports a hearing, this resolution authorizes the Executive Director/CEO or his or her designee, to issue a citation and set the date and time for a hearing. If, following a hearing, the person or business is determined to have illegally operated a taxi service, the fine is set at \$5,000, the maximum allowed by state law. Additionally, this resolution authorizes the SFMTA in its discretion to assess investigations costs against the person or business, and interest if payments are delinquent.

In accordance with state law, this resolution specifies that all proceeds from fines assessments or interest must be used for enforcement against operators of illegal taxi services.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

The only alternative to adopting these criteria and the fine amount is to not adopt them, which would prevent SFMTA of taking advantage of the provisions of California Government Code §§ 53075.7-53075.9. The result would be to allow illegal taxi business and vehicle operators to

PAGE 3.

continue to solicit customers from the unsuspecting public.

FUNDING IMPACT

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

The start-up operations are covered by the enforcement funding of the Division of Taxis and Accessible Services, which are in turn paid through taxi industry permit fees.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

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

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, There are 1500 licensed taxicab vehicles in San Francisco, and several thousand licensed drivers; and,

WHEREAS, Legitimate San Francisco taxi drivers have to compete for fares with unlicensed operators, and legitimate taxi businesses lose customers who call for service to illegal entities that are listed in the Yellow Pages; and,

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

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

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

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

RESOLVED, That if, in the judgment of the Executive Director/CEO or his or her designee the investigation shows that the criteria above are true, the Executive Director/CEO or his or her designee may issue a citation notifying the person or corporation of the time, date and location of a hearing to establish whether the person or corporation is operating an illegal taxi business or vehicle; and, be it further

RESOLVED, That if, following a hearing, it is established that a business or vehicle operator is illegally holding out to the public to perform taxi services, the fine amount shall be \$5,000.00 for each violation; and, be it further

RESOLVED, That SFMTA may additionally elect to assess the costs of the investigation, as well as interest on any delinquent payment of the fine or assessment, against any person or corporation found to have illegally performed taxi services; and, be it further

RESOLVED, That all fines, interest and assessments collected pursuant to Government Code §§ 53075.7-53075.9 shall be used for enforcement against illegal taxi businesses and vehicles in San Francisco.

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

GOVERNMENT CODE

Sec. 53075.7.

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

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

(b) For purposes of this section:

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

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

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

(2) For purposes of this section, a telephone corporation or telegraph corporation, or a corporation that holds a controlling interest in the telephone or telegraph corporation, or any

business that is a subsidiary or affiliate of the telephone or telegraph corporation, that has the name and address of the subscriber to a telephone number being used by a unauthorized taxicab operator shall provide the local agency, or an authorized officer or employee of the local agency, upon demand, and the order of a magistrate, access to this information. A magistrate may only issue an order for the purposes of this subdivision, if the magistrate has made the findings required by paragraph (2) of subdivision (f).

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

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

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

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

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

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

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

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

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

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

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

(1) "Authorized officer or employee of the local agency" includes any employee of the local agency designated by the local agency's governing body.

(2) "Local agency" has the same meaning as specified in subdivision (b) of Section 53075.7.

(3) "Telegraph corporation" has the same meaning as specified in Section 236 of the Public Utilities Code.

(4) "Telephone corporation" has the same meaning as specified in Section 234 of the Public Utilities Code.

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

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

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

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

THIS PRINT COVERS CALENDAR ITEM NO. : _____

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Taxis and Accessible Services

BRIEF DESCRIPTION:

Requesting that the San Francisco Municipal Transportation Agency Board of Directors approve the applications of specified Taxi Medallion Holders to change affiliation from one Color Scheme to another Color Scheme.

SUMMARY:

- The SFMTA Board adopted procedural regulations governing Motor Vehicles for Hire on February 3, 2009 in anticipation of the merger with the Taxi Commission. Pursuant to Board Resolution 09-023, adopted February 3, 2009, any regulation of the former Taxi Commission and any provision of San Francisco Police Code Article 16 governing Motor Vehicles for Hire that is not expressly superceded by SFMTA-adopted regulations remains in force.
- Police Code Section 1125(a) provides that a Taxi Medallion Holder’s decision to move from one color scheme to a different color scheme is subject to the approval of the Taxi Commission, “which approval shall be given except when it clearly would not be in the public interest to do so.”
- Staff has drafted proposed regulations to change procedures so that changes in Color Scheme affiliations could be approved administratively by the Division of Taxis and Accessible Services (DTAS) instead of requiring SFMTA Board of Directors’ approval, but those proposed regulations will not be considered by the SFMTA Board until its meeting of May 5, 2009, and would not become effective until June 5, 2009, 30 days following their adoption.
- DTAS has been approached by several Taxi Medallion Holders who desire to change their affiliation from one Color Scheme to another Color Scheme, and do not want to wait until June 5 to do so. Accordingly, staff presents these applications to change Color Scheme affiliations to the Board for consideration and recommends their approval.

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Christiane Hayashi

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

To authorize specified Taxi Medallion Holders to change affiliation from one Color Scheme to another Color Scheme with the required approval of the SFMTA Board of Directors.

GOAL

Goal 3: External Affairs/Community Relations:

To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry

Objectives:

- 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups
- 3.4 - Enhance proactive participation and cooperatively strive for improved regional transportation.

Approval of the attached resolution would allow members of the taxi industry to affiliate with the Color Scheme of their choice without waiting an additional six weeks for new procedures for change of Color Scheme affiliation to be adopted by the SFMTA Board.

DESCRIPTION¹

The SFMTA assumed regulatory jurisdiction over San Francisco's Motor Vehicle for Hire industry as of March 1, 2009. In anticipation of that transition, the SFMTA Board adopted procedural regulations governing Motor Vehicles for Hire on February 3, 2009, and requested the Executive Director/CEO to bring the additional regulations back to the Board within 90 days, corresponding to the Board's meeting of May 5, 2009.

Pursuant to Board Resolution 09-023, adopted February 3, 2009, until such time as the SFMTA Board of Directors adopts new Motor Vehicle for Hire regulations to replace the laws and regulations contained in San Francisco Police Code Article 16 or that were adopted by the former Taxi Commission, those laws and regulations remain in force.

The regulations adopted by the SFMTA Board on February 3, 2009, did not include procedures for processing applications by a Taxi Medallion Holder to change the Color Scheme affiliation of their Medallion from one Color Scheme to another Color Scheme. Accordingly, such a change of affiliation by a Medallion Holder continues to be governed by Police Code Section 1125(a), which provides that a Taxi Medallion Holder's decision to move the Medallion from one Color Scheme to a different Color Scheme is subject to the approval of the Taxi Commission, "which approval shall be given except when it clearly would not be in the public interest to do so."

Staff of the Division of Taxis and Accessible Services (DTAS) had anticipated waiting until regulations were considered on May 5 before processing requests from Medallion Holders to change affiliation with Color Schemes. The proposed regulations that will be presented at the May 5 meeting provide that such requests will be subject to the administrative approval of

¹ Capitalized terms in this report are defined in Transportation Code Division II, Article 1100.

DTAS, instead of requiring the approval of the SFMTA Board of Directors. However, there are **PAGE 3.**

several Medallion Holders who urgently requested SFMTA approval of their change of affiliation before June 5, 2009, when any regulations adopted at the May 5 meeting would become effective.

Accordingly, staff presents the following applications from Medallion Holders to change Color Scheme affiliation to the Board for consideration and recommends their approval, because there is no evidence that such approval would not be in the public interest.

Name of Applicant	Current Color Scheme Affiliation	Requested Color Scheme Affiliation	Medallion Number(s)
William Q. Saw	Bay Cab	Vina Cab	1288
David A. Wong	San Francisco Taxicab	Vina Cab	1343
Lu Quang Lam	Bay Cab	Vina Cab	879
Kam Yain Wong	San Francisco Taxicab	Vina Cab	1372
Raymond James Larkin	Bay Cab	Vina Cab	235
Michelle Levin	Arrow Cab	Royal Taxi	19, 20, 21
Sandy Howell	Arrow Cab	Royal Taxi	13, 14, 15
Barry Alhadeff	Arrow Cab	Royal Taxi	18
Larry Alhadeff	Arrow Cab	Royal Taxi	16, 17, 23, 24
Frank Sinkovich	DeSoto Cab	Yellow Cab	391
Kurt Schumacher	Luxor Cab	Yellow Cab	1292
Tesfaldet Joseph	DeSoto Cab	Yellow Cab	303

ALTERNATIVES CONSIDERED

The alternative to approval of this resolution is to require these Taxi Medallion Holders to wait an additional six weeks to implement their choice of business partners, and would prevent them from investing in the measures needed to change Color Schemes, such as painting their vehicles, until their application is actually approved. Such approval could not occur until June 5, 2009 at the earliest if proposed regulations are adopted by the SFMTA Board at its meeting of May 5, 2009.

FUNDING IMPACT

The proposed resolution has no financial impact to the SFMTA.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

Staff recommends that these applications for change of affiliation of Color Scheme be approved by the SFMTA Board, because there is no evidence that such approval would not be in the public interest.

The City Attorney's Office has reviewed this item.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA Board of Directors adopted procedural regulations governing Motor Vehicles for Hire on February 3, 2009 in anticipation of the merger with the Taxi Commission; and

WHEREAS, SFMTA Board Resolution 09-023, adopted February 3, 2009, provides that any regulation of the former Taxi Commission and any provision of San Francisco Police Code Article 16 governing Motor Vehicles for Hire that is not expressly superceded by SFMTA-adopted regulations remains in force; and

WHEREAS, San Francisco Police Code Section 1125(a) provides that a Taxi Medallion Holder's decision to change affiliation from one Color Scheme to a different Color Scheme is subject to the approval of the Taxi Commission, and requires that such approval shall be given except when it clearly would not be in the public interest to do so; and

WHEREAS, Regulations governing procedures for change of affiliation of Color Scheme by a Medallion Holder will not be considered by the SFMTA Board until its meeting of May 5, 2009, and would not become effective until June 5, 2009, 30 days following their adoption; and

WHEREAS, SFMTA has been approached by several Taxi Medallion Holders who desire to change their affiliation from one Color Scheme to another Color Scheme, and do not want to wait until June 5 to do so; and

WHEREAS, Completed applications for such changes of Color Scheme affiliation have been received by the Division of Taxis and Accessible Services; now therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors finds no evidence that approval of such applications for change of Color Scheme affiliation would not be in the public interest; and, be it further

RESOLVED, That the SFMTA Board approves requested changes of Color Scheme affiliation from the following medallion holders:

Name of Applicant	Current Color Scheme Affiliation	Requested Color Scheme Affiliation	Medallion Number(s)
William Q. Saw	Bay Cab	Vina Cab	1288
David A. Wong	San Francisco Taxicab	Vina Cab	1343
Lu Quang Lam	Bay Cab	Vina Cab	879
Kam Yain Wong	San Francisco Taxicab	Vina Cab	1372
Raymond James Larkin	Bay Cab	Vina Cab	235
Michelle Levin	Arrow Cab	Royal Taxi	19, 20, 21
Sandy Howell	Arrow Cab	Royal Taxi	13, 14, 15
Barry Alhadeff	Arrow Cab	Royal Taxi	18

Name of Applicant	Current Color Scheme Affiliation	Requested Color Scheme Affiliation	Medallion Number(s)
Larry Alhadeff	Arrow Cab	Royal Taxi	16, 17, 23, 24
Frank Sinkovich	DeSoto Cab	Yellow Cab	391
Kurt Schumacher	Luxor Cab	Yellow Cab	1292
Tesfaldet Joseph	DeSoto Cab	Yellow Cab	303

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