THIS PRINT COVERS CALENDAR ITEM NO. : 10.2

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:
Authorizing the Executive Director/CEO to enter into Contract No. SFMTA-2009/10-59 with Verrus Mobile Technologies, Inc. for Parking Meter Pay-by-Phone Services at no cost to the SFMTA for a three-year term with two one-year extension options.

SUMMARY:

- From 2007 to 2009, the SFMTA conducted a pilot program with three different vendors for Pay-by-Phone service, enabling customers to pay for parking with their cell phones.
- Following completion of the pilot program, the SFMTA Board of Directors authorized staff to issue a Request for Proposals (RFP) for Pay-by-Phone service; Verrus Mobile Technologies, Inc. ("Contractor"), a pilot program participant, was the highest-ranked proposer, and has negotiated a contract with SFMTA.
- The Pay-by-Phone program will encompass all metered parking spaces in San Francisco (both SF*park* and non-SF*park)* controlled by the SFMTA and the Port of San Francisco.
- The Contractor will not charge the SFMTA for this service and will remit 100% of the parking amount purchased to the SFMTA. Customers will pay a convenience fee to the Contractor to use the service.
- The Contractor will be responsible for integrating its system with other software and hardware systems, SF*park* databases and handheld devices used by Parking Control Officers to permit the Pay-by-Phone service to function effectively.
- Pay-by-Phone service is expected to begin during summer 2011.

ENCLOSURES:
1. SFMTAB Resolution
2. Agreement with Verrus Mobile Technologies, Inc.

APPROVALS: **DATE**
DIRECTOR OF DIVISION
PREPARING ITEM _____ _____

FINANCE _____ _____

EXECUTIVE DIRECTOR/CEO _____ _____

SECRETARY _____ _____

ADOPTED RESOLUTION
BE RETURNED TO____Jason Lee_____

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

This item requests authorization for the Executive Director/CEO to enter into Contract No. SFMTA-2009/10-59 with Verrus Mobile Technologies, Inc. of Vancouver, Canada for Parking Meter Pay-by-Phone Services at no cost to the SFMTA for a three-year term with two one-year extension options.

GOALS

The Pay-by-Phone Program shall assist the SFMTA in achieving the following of its strategic goals:

Goal 2 – Customer Focus: To get customers where they want to go, when they want to be there
Objective 2.5: Manage parking supply to align with SFMTA and community goals

Goal 3 – External Affairs – Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry
Objective 3.2: Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits

Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization
Objective 4.1: Increase revenue by 20% or more by 2012 by improving collections and identifying new sources
Objective 4.2: Ensure efficient and effective use of resources

Goal 6 – Information Technology: To improve service and efficiency, the SFMTA must leverage technology
Objective 6.1: Information and Technology Leadership: Identify, develop and deliver the enhanced systems and technologies required to support SFMTA's 2012 goals

DESCRIPTION

Beginning in 2007, the San Francisco Municipal Transportation Agency (SFMTA) began exploring alternative credit card payment options for its parking meters. At about the same time, multiple pay-by-phone vendors contacted the SFMTA to discuss potential trials of their service in San Francisco. In September 2007, the SFMTA began a pilot program, conducting a trial of Pay-by- Phone technologies using three firms in three different areas of the City. The participating vendors included Zipidy Inc. in the Marina District, Verrus Mobile Technologies, Inc. in the Richmond District, and New Parking, Inc. in the West Portal/Lakeside Village area. The pilot locations were busy neighborhood commercial districts with a mixture of restaurants, service and retail businesses.

The pilot program assessed driver usage and response, revenues and costs, and enforcement and maintenance, the results of which were summarized in an April 1, 2009 memorandum presented to the Board of Directors. On June 2, 2009, the SFMTA's CFO/Director of Finance & Information Technology, Director of Security and Enforcement, and Director of Parking and Traffic sent a memorandum to the Board of Directors outlining the challenges of Pay-By-Phone technology and the SFMTA's proposed solutions to those challenges. Those identified issues and their resolutions are presented later in this Board item.

Contractor Selection Process

In mid-2009, the SFMTA decided to move forward with the Pay-by-Phone program based on the results of the pilot program. On August 4, 2009, the SFMTA Board authorized the Executive Director/CEO to issue a Request for Proposals for Pay-By-Phone services. The RFP was published on August 5, 2009. In response to the RFP, four firms submitted proposals:

- ParkMagic Mobile Technology, Inc.
- Parkmobile North America, Inc.
- Verrus Mobile Technologies, Inc.
- Zipidy, Inc.

An RFP selection panel of seven members of diverse gender and ethnicity with expertise in various aspects of the proposed services met on October 21, 2009 to discuss the proposals' strengths and weaknesses and score each proposal under the following criteria and weight:

- Approach and Fee Proposal 40 pts.
- Firm Qualifications 30 pts.

In addition, all proposers had been notified in advance to plan for and participate in an oral interview on October 22, 2009. Each proposer was allotted a block of time to make a presentation to the selection panelists followed by the panelists' questions to each. The interview was weighted at 30 points.

Verrus Mobile Technologies, Inc. received the highest total score and was selected as the most qualified firm among the four proposers. The Contractor was one of the three participants in the Pay-by-Phone trial and has implemented successful Pay-by-Phone programs in the United States, Canada, United Kingdom, Australia, and France with cities that include London, Vancouver, Miami and others.

Pay-by-Phone Program Highlights

The SFMTA's Pay-by-Phone program will enable customers to:

- Pay by credit card instead of coins using any phone by calling a toll free number or via the internet using a compatible smartphone browser
- Extend time up to the time limit for that meter using their phone without having to return to their vehicle
- Get receipts online for all meter transactions
- Enjoy a safer and more accessible parking experience by paying from within the car

The Pay-by-Phone program will integrate with the SF*park* program and the adoption of new handheld devices by the SFMTA's Parking Control Officers. These handheld devices will permit real-time verification of Pay-by-Phone payments. The SFMTA and the Contractor have conducted extensive testing with multiple handheld devices and cellular communication providers to ensure that the Pay-by-Phone Program is compatible with efficient, accurate and expeditious parking enforcement.

The SFMTA and the Contractor have negotiated an Agreement that will provide Pay-by-Phone services at no cost to the City. All Pay-by-Phone operating expenses, including credit card fees, are included in a convenience fee that a parking customer pays in addition to the parking rate itself.

The Contract includes the following major provisions:

Term

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

Conditions

- The Contractor is authorized to charge up to a 45-cent convenience fee to users of the service, with fee adjustments permitted if credit card transaction fees or cellular communications charges for Parking Control Officer handheld devices increase.
- The fee is inclusive of all credit card processing costs that the SFMTA would otherwise pay if payment were made at credit card enabled meters or pay stations.

Costs and revenues

- The SFMTA will receive 100% of the revenue it is owed when parking is purchased by service users; e.g. if a user purchases $3.00 of parking time, the SFMTA will receive $3.00 from the Contractor.
- Expenditures required to support the service will be borne by the Contractor, including but not limited to:
    - Credit card transaction fees
    - Integration required with other software and hardware systems, SF*park* databases and Parking Control Officer handheld devices to permit the Pay-by-Phone service to function effectively
    - Installation, cleaning and maintenance of Pay-by-Phone decal and signage; in order to accomplish these tasks, the Contractor is to reimburse the SFMTA for the salary and benefits of a full-time position equivalent (FTE) of a Parking Meter Repairer (City job classification #7444), to the extent that that labor is used to support the program
- Because the communications service will support both the Pay-by-Phone program and other SFMTA requirements, the SFMTA and the Contractor will share data communications costs for Parking Control Officer handheld devices.

Major Performance Requirements

The SFMTA has negotiated performance requirements with the Contractor to ensure that the Pay-by-Phone service operates efficiently and effectively, with an emphasis on customer convenience and effective enforcement.

The proposed contract specifies standards for Pay-by-Phone service availability, customer service and SFMTA staff inquiries, parking confirmation to customers, enforcing minimum purchase requirements and time limits, announcements and fee notifications to customers, pay-by-phone status responses, acceptance of and accuracy in implementing variable parking rates, processing of transactions in real time, settling funds and reporting. The SFMTA may impose liquidated damages for failure to comply with these performance requirements. The attached contract details the specific conditions related to the calculation, liability cap and collection of liquidated damages.

In addition to the City's standard provisions governing default and termination, the Contractor is in immediate default and subject to termination if:

- The Contractor divulges personal information of Pay-by-Phone customers without express permission from the customer.
- Calculated liquidated damages exceed $40,000 in any single calendar month or $20,000 during any two calendar months over a rolling six-month period.
- The Pay-by-Phone service is unavailable due to wireless carrier coverage for 10% or more of SFMTA-managed on-street and off-street metered parking spaces, and this condition remains for a period exceeding 60 days.
- Data transmission times between the issuance of a parking space transaction status request from a Parking Control Officer's handheld device and the response exceed 10 seconds for more than 2% of requests, or 30 seconds for more than 1% of requests, and this condition remains for a period exceeding 60 days.

The City may also terminate the contract for convenience after 18 months following 30 days notice to the Contractor.

Local Business Enterprise (LBE) Goal

The Contract Compliance Office has determined that Verrus Mobile Technologies, Inc. has demonstrated its commitment to attain the 16% LBE participation goal for this project.

Pay-by-Phone Program Issues

On June 2, 2009, the SFMTA's CFO/Director of Finance & Information Technology, Director of Security and Enforcement, and Director of Parking and Traffic, sent a memorandum to the Board outlining the challenges of Pay-By-Phone technology and the SFMTA's proposed solutions to those challenges. The following table summarizes these issues and their resolution:

Pay-by-Phone Program Issues

Issue	Description	Resolution
Implementation Costs & User Fees	Implementation of the Pay-by-Phone system has operations, software, credit card and other associated costs.	Under the proposed agreement, all fees are covered by the Contractor.
Wireless Communication Costs	Enforcement of the Pay-by-Phone service requires new handheld devices used by the SFMTA's Parking Control Officers (PCOs) to have wireless internet access.	Because the wireless internet access will support handheld communications needs for both the Pay-by-Phone service and other requirements, the SFMTA and the Contractor have agreed to share wireless usage costs. All wireless usage costs related to the service are covered by the Contractor.
Dead Zones	Insufficient wireless coverage inhibiting communication with meters and enforcement handheld devices can prevent the Pay-by-Phone program from functioning effectively. The resulting "dead zones" have the potential to frustrate customers and inhibit program usage.	The proposed contract requires the Contractor to ensure that the Pay by Phone program is available at a minimum of 90 percent of SFMTA-managed metered on-street and off-street parking spaces. (The Contractor is not responsible for the cell phone performance of individual customers). The Contractor must also retain an independent third party to survey coverage prior to system startup. If customers attempt to park at locations that cannot be enforced due to a dead zone, a message will be played communicating that Pay By Phone parking is not available at this location.
Pay-by-Phone Technology & Parking Control Officer (PCO) Efficiency	Because they do not have wireless capability, non-SF*park* meters are unable to display the status of pay-by-phone transactions. Thus, SFMTA's PCOs must verify parking status using their handhelds prior to issuing a citation. This process may take extra time and reduce PCO efficiency.	The proposed contract requires mutual agreement on a wireless provider and software integration with PCO handheld units prior to system startup. Testing has shown minimal delay when verifying Pay-by-Phone payment status. Additionally, the SFMTA may terminate the Agreement if the payment status verification response times are excessive.

(continued)

Pay-by-Phone Program Issues (continued)

Issue	Description	Resolution
Use of Pay-by-Phone Technology to Avoid Paying for Parking	A Pay-by-Phone service may allow people who have not paid for parking to more easily avoid citations. Since drivers can use their cell phones from remote locations, they may, for example, wait in their offices and dial-in to the service only upon sight of a Parking Control Officer.	The Contractor's experience with other installations has shown that attempting to avoid citations through last-second call-ins is not a significant problem. In the event that a problem does arise related to avoidance of parking payment, the SFMTA at its discretion, may implement a minimum purchase requirement. The time of payment and citation issuance are also recorded in order to verify whether a citation is valid.
Cancelling Transactions	A Pay-by-Phone system has the technical ability to allow customers to cancel unused time. However, other payment methods such as credit cards, parking cards and coins that are used at SFMTA-managed parking meters do not permit the cancellation of unused time.	Implementing transaction cancellation requires delaying charging the parking fee until the transaction is completed. Completion is triggered either automatically or explicitly by the user who calls in to stop early. This method of payment exposes the SFMTA and the Contractor to significant lost revenue due to the use of invalid credit cards (as much as 10-20% or revenue). The Contractor no longer has any parking operators using this method and therefore the SFMTA will not enable transaction cancellation at this time.
Meter Feeding	Current policy does not allow drivers to exceed the post time limit at a parking space even if they pay ("feed the meter").	The Pay-by-Phone system will comply with all SFMTA parking regulations, including those related to meter feeding.

Timeline

The SFMTA and the Contractor expect to initiate the Pay-by-Phone service during summer 2011. Some lead time will be necessary to facilitate software integration, install Pay-by-Phone decals and signage, and to market the service. The contract provides for a 180-day implementation period before the SFMTA may assess liquidated damages for failure to start the service.

Public Notice

Charter Section 16.112 requires published notice and a public hearing before the SFMTA may institute or change any fee, schedule of rates, charge or fare which affects the public. Article 4, Section 10 of the SFMTA Board's Rules of Order requires that the advertisement run for at least five days and not less than fifteen days prior to the public hearing regarding any increase to any rate, charge, fare, fee, or fine. In compliance with this requirement, an advertisement ran regarding the proposed convenience fee in the San Francisco Chronicle for a five-day period beginning on March 9, 2011.

FUNDING IMPACT

This contract is at no cost to the SFMTA. The Contractor is responsible for all costs associated with starting, operating, enforcing, and maintain the service. The Contractor must also remit all parking revenues collected in full to the SFMTA.

ALTERNATIVES CONSIDERED

The alternative to not implementing a Pay-by-Phone system would be to continue existing parking payment options for customers, including coins, parking cards and, at SF*park* locations, credit cards. However, the Pay-by-Phone service will provide customers with additional convenience.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed this Calendar Item.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize the Executive Director/CEO to enter into Contract No. SFMTA-2009/10-59 with Verrus Mobile Technologies, Inc. for Parking Meter Pay-by-Phone Services at no cost to the SFMTA for a three-year term with two one-year extension options.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) conducted a successful pilot program of Pay-by-Phone technologies from 2007 to 2009 to enable customers to pay for parking at meters with their cell phones; and,

WHEREAS, Following completion of this pilot program, SFMTA issued a Request for Proposals (RFP) to operate a Pay-By-Phone service at no cost to the SFMTA for a term of three years, with two one-year options to extend the contract; and,

WHEREAS, Verrus Mobile Technologies of Vancouver, Canada (Contractor) was the most highest-ranked proposer among the four firms that submitted bids; and,

WHEREAS, Contractor and SFMTA staff have negotiated an agreement under which the Contractor will provide drivers with a Pay-By-Phone payment option for metered on-street and off-street parking under the jurisdiction of the SFMTA and the Port of San Francisco for a convenience fee; and,

WHEREAS, The Contractor will not charge the SFMTA for this service and will remit 100 percent of the parking amount purchased to the SFMTA; and,

WHEREAS, The SFMTA and the Contractor expect to initiate Pay-by-Phone service during summer 2011 after completing necessary integration with other systems, installing decals and other signage to promote the service, and marketing; and,

WHEREAS, San Francisco City Charter Section 16.112 and Article 4, Section 10 of the SFMTA Rules of Order require that published notice be given and a public hearing be held before any fee or any schedule of rates, charges or fares which affects the public is instituted or changed; and,

WHEREAS, The SFMTA has published notice pursuant to Article 4, Section 10 of the SFMTA Rules of Order and Charter Section 16.112 for a five-day period beginning on March 9, 2011 to inform the public of the convenience fee that would be charged to drivers choosing to use the Pay-by-Phone service under the terms of the agreement; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to enter into Contract No. SFMTA-2009/10-59 with Verrus Mobile Technologies, Inc. for Parking Meter Pay-by-Phone Services at no cost to the SFMTA for a three-year term with two one-year extension options.

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

_____
Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

Agreement between the City and County of San Francisco and Verrus Mobile Technologies, Inc. for Parking Meter Pay-by-Phone Services

Contract No. SFMTA-2009/10-59

This Agreement is made this _____ day of _____, 2011, in the City and County of San Francisco, State of California, by and between: Verrus Mobile Technologies, Inc., #201 – 1028 Hamilton Street, Vancouver, British Columbia, Canada ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

A. The SFMTA wishes to make available to its customers a "pay-by-phone" service ("Service") to pay for parking at metered parking spaces on City streets and in off-street metered lots owned by the City using a mobile or touch-tone dial-in phone**.**

B. A Request for Proposals ("RFP") was issued on August 5, 2009, and the City selected Contractor as the highest ranked proposer.

C. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.

Now, THEREFORE, the parties agree as follows:

1. Term of the Agreement. The term of this Agreement shall commence upon its execution by all parties and shall continue for three years**,** unless sooner terminated or extended as provided herein. The SFMTA in its sole and absolute discretion shall have the option to extend this Agreement by providing written notice to Contractor not less than 90 days prior to the termination date. Such extension shall be on the same terms and conditions as this Agreement. A single extension shall be for a term of one year, and total extensions cannot exceed two years.

2. Effective Date of Agreement. This Agreement shall become effective upon execution by all parties.

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

4. Compensation and Payments by Contractor.

a. Contractor shall receive no compensation whatsoever from the SFMTA for Contractor's performance of Services under this Agreement. Contractor may charge a fee not to exceed forty-five cents ($0.45) per transaction to customers using the Service as set forth in Appendix A. This fee may only be adjusted as set forth in Appendix A.

b. Contractor shall be responsible for reimbursing SFMTA within 90 days of receiving an invoice from SFMTA for all costs incurred by SFMTA for any integration software or hardware requirements required to implement the services performed under this Agreement as set forth in Section 1.I.10 of Appendix A.

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 the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code, is available on the web at The text of Section 21.35, along with the entire San Francisco Administrative Code, is available on the web at http://www.municode.com/Library/clientCodePage.aspx?clientID=4201. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

6. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

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

required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

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

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

7. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

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

9. Independent Contractor; Payment of Taxes and Other Expenses

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

b. Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the

amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

10. Insurance

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

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

(2) Commercial General Liability Insurance with limits not less than $2,000,000 each occurrence, $2,000,000 aggregate for bodily injury, Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

(4) Evidence of Crime Insurance with an Employee Dishonesty limit of not less than $1,000,000. The City and County of San Francisco shall be named as a loss payee by endorsement.

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

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

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

c. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which

any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

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

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

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

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

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

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

11. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to

be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

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

13. Liquidated Damages.

a. By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 3 herein, are not in compliance with the Performance Standards set forth in Appendix B, City will suffer actual damages, and that there will be a loss of benefit to the public that will be impractical or extremely difficult to determine. Contractor further agrees that the liquidated damages set forth in Section B of Appendix B for non-compliance with the Performance Standards may be assessed to Contractor under this Agreement. Contractor agrees that the amount of liquidated damages are not penalties, but are reasonable estimates of the loss of benefit to the public and damages the City will incur, in light of the circumstances existing at the time this Agreement was approved by the parties, due to failure of the Service to meet the Performance Standards. Contractor agrees that such liquidated damages shall be due and payable to the City within 30 Calendar Days after assessment of these liquidated damages. Nonpayment after 30 Calendar Days shall be considered an Event of Default.

b. Contractor agrees that if it fails to remit liquidated damages imposed by City under this Section 13 or under any other section of this Agreement, City may deduct such damages from Contractor's Security Fund provided under Section 53(b) below. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's default failure to perform this Agreement in compliance with specified performance criteria.

c. Notwithstanding anything in this Agreement to the contrary, the determination of whether the Services, as provided under Section 3 herein, are not in compliance with the Performance Standards set forth in Appendix B, shall be made by City acting reasonably after consultations with Contractor.

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

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

5. Submitting false claims	25. Assignment
6. Taxes	32. Drug-free workplace policy,
10. Insurance	46. Compliance with laws
18. Proprietary or confidential information of City	49. Protection of private information
	50. Graffiti removal

(2) Contractor is in violation of any of the following conditions or performance criteria:

(A) Personal Customer Information – Contractor sells, leases, distributes, publishes, or otherwise shares any personal information of Service Customers to any third party, without express permission from Customer, except as required by law, provided that Contractor shall be permitted to use such information to enable Customers with Service accounts for SFMTA-managed on-street parking spaces to use their accounts to pay for services provided by Contractor to other entities, and vice versa. Notwithstanding any other provisions of this section to the contrary, Contractor's violation of this restriction shall be immediate grounds for default, with no opportunity to cure.

(B) Excessive Calculated Liquidated Damages – The Calculated Liquidated Damages as defined in Appendix B of this Agreement incurred by Contractor exceed $40,000 in any single calendar month, or $20,000 during any two calendar months during a rolling six-month period. Notwithstanding any other provisions of this section to the contrary, Contractor's violation of this restriction shall be immediate grounds for default, with no opportunity to cure.

(C) Parking Space Coverage – The Service provided by Contractor as defined in Appendix B of this Agreement fails to be available at a minimum of 90 percent of SFMTA-managed metered on-street and off-street parking spaces in any 30 day period during the Term of the Agreement. (Note that Contractor is not responsible for the cell phone performance of individual Customers.) Notwithstanding any other provisions of this section to the contrary, Contractor shall have 60 days from the date Contractor is notified of this condition to effect a cure, whereupon the measurement of Parking Space Coverage will recommence, before being found in default.

(D) Pay-by-Phone Status Responses (Including Third-Party Data Transmission Times) – The total response time, including data transmission times through a third-party cellular provider, between the issuance of a Pay-by-Phone payment status request from a PCO's Handheld Device and the receipt of the payment status information from the Service back to the Handheld Device exceeds 10 seconds for 2 percent or more of requests or exceeds 30 seconds for 1 percent or more of requests within any calendar month. Notwithstanding any other provisions

of this section to the contrary, Contractor shall have 60 days from the date Contractor is notified of this condition to effect a cure before being found in default.

(3) Contractor 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 ten days after written notice thereof from City to Contractor.

(4) 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.

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

On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, subject to Contractor's prior right to cure an Event of Default where an opportunity to cure is authorized under this Agreement, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, up to a maximum of $200,000, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. City may waive any Event of Default in its sole and absolute discretion.

15. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time after 18 months from the time of Agreement commencement during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written

notice of termination. The notice shall specify the date on which termination shall become effective which date shall be no less than 30 days from the date such written notice is given.

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

16. Rights and Duties upon Termination or Expiration. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

5. Submitting false claims
6. Taxes

8. Responsibility for equipment
9. Independent Contractor; Payment of Taxes and Other Expenses
10. Insurance
11. Indemnification
12. Incidental and Consequential Damages
18. Proprietary or confidential information of City
20. Ownership of Results
21. Works for Hire
23. Audit and Inspection of Records
41. Modification of Agreement.
42. Administrative Remedy for Agreement Interpretation.
43. Agreement Made in California; Venue
44. Construction
45. Entire Agreement
48. Severability
49. Protection of private information

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 1, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

17. 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.

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

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

To City: Project Manager for Pay-by-Phone Parking Services
Division of Finance & Information Technology
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
USA

E-mail: Jason.Lee@sfmta.com

To Contractor: Account Manager for San Francisco Pay-by-Phone Services
David Spittel
Verrus Mobile Technologies, Inc.
#201 – 1028 Hamilton Street
Vancouver, BC V6B2R9
Canada

E-mail: dspittel@paybyphone.com (cc: cmah@paybyphone.com)

Any notice of default must be sent by registered mail.

20. Ownership of Results and Data.

(a) The Contractor or its Subcontractors may deliver to City certain drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement (the "Results"). Contractor acknowledges that City shall be entitled to use these physical documents in accordance with the express provisions of this Agreement, and that Contractor may retain and use copies for reference and as documentation of its experience and capabilities. Ownership of Intellectual Property Rights in and to the Results shall be allocated as per the provisions of Section 20(b) below.

(b)(i) Contractor recognizes that the data (with the exception of personal data) that is developed, generated, stored, processed, archived, transmitted, reported and manipulated, including but not limited to the time, date, meter location, amount charged, time purchased and frequency of transactions is the property of the SFMTA, as set out in the provisions of Appendix A, Section E (Data Requirements), without reservation of rights or other restriction of any kind. Such data, unless otherwise exempt from disclosure, may constitute public records under state and local law and be subject to public disclosure.

(ii) City recognizes that the Service as defined in Appendix A to this Agreement and related software provided or developed by Contractor are Contractor's proprietary systems, and that all right, title and interest in the Intellectual Property Rights in such proprietary systems and the Results (excluding the data described in 20(b)(i) above] shall be the property of Contractor, without reservation of rights or other restrictions of any kind. The City's access to any Intellectual Property of Contractor or its Subcontractors shall be limited to the express provisions of this Agreement.

(iii) City and Contractor agree to do all things necessary, including executing any documents, to give effect to this clause. "Intellectual Property Rights" means any and all intellectual and industrial property rights throughout the world including rights in respect of or in connection with any Intellectual Property and includes any right to apply for the registration of such rights and includes all renewals and extensions. "Intellectual Property" means any Confidential Information; copyright (including future copyright and rights in the nature of or analogous to copyright); moral rights, inventions (including patents); trade marks, service marks, domain names; designs; and circuit layouts whether or not now existing and whether or not registered.

21. (Deleted by Agreement of the Parties)

22. SFMTA Trademarks and Service Marks. Contractor shall not use the City and County of San Francisco or the SFMTA as a reference, or use the City and County of San Francisco or the SFMTA or SF*park* logos or names, without written permission from both the Chief Financial Officer and the Director of Sustainable Streets of the SFMTA. Further, Contractor shall not issue press releases or other official communications that refer to the SFMTA, SF*park*, or other San Francisco parking programs, including pilot programs, without written permission from both of the aforementioned officials.

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

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

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

26. 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.

27. Earned Income Credit (EIC) Forms. Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code. Neither Contractor, nor any of its subcontractors, shall be required to provide EIC Forms to employees who are located outside the United States and not subject to United States income tax.

28. Local Business Enterprise Utilization; Liquidated Damages

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

b. Compliance and Enforcement

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

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

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(2) Subcontracting Goals. The LBE subcontracting participation goal for this contract is **16**% of the total labor value of the services to be provided. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(3) Subcontract Language Requirements. Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal,

unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(4) Payment of Subcontractors. Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

29. Nondiscrimination; Penalties

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

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

c. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified

above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

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

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

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

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

37. Requiring Minimum Compensation for Covered Employees.

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

Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

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

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

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

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

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

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

right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

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

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

38. Requiring Health Benefits for Covered Employees. Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

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

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify the SFMTA when it enters into such a Subcontract and shall certify to the SFMTA that it has notified the

Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

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

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

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract. Notwithstanding the preceding sentence, neither the Contractor, nor any of its subcontractors, shall be required to maintain the employee and payroll records specified in the preceding sentence with respect to their employees located outside of the United States of America.

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

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

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

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

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

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

39. 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.

40. 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.

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

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

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

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

45. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 41, "Modification of Agreement."

46. 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.

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

48. 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.

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

50. Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove, or cause to be removed, all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty-eight (48) hours of the earlier of Contractor's (a) discovery

or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. Notwithstanding anything else in this section, Contractor and City acknowledge and agree that Contractor has no obligation to remove graffiti from the decals and signage described in Section 1(B)(8) of Appendix A. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

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

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

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

53. Security Deposits; Requirement to Provide Financial Guarantees. Upon the Effective Date of this Agreement, Contractor shall provide, and shall maintain for the time periods specified herein a Security Fund (defined in Section 53(b)), and by the date specified in

section 53(a), Contractor shall provide to the City either a Letter of Credit, or one or more Bonds (both as defined in Section 53(a)), all of which shall be as security to ensure Contractor's performance of all terms and conditions of this Agreement and to compensate for any damage to City property and/or other actual costs to City for Contractor's violation of the terms of this Agreement, as further described below.

a. Letter of Credit or Bond(s)

(i) Requirements. No later than the earlier of (A) 90 days following the commencement date of this Agreement or (B) 30 days prior to the date that the Pay-by-Phone program is ready to be activated, Contractor shall provide to City and shall maintain, throughout the term of this Agreement and for 90 days after the expiration or termination of this Agreement or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs later, (A) a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation (a "Letter of Credit"), and/or (B) a blanket fidelity bond and/or a performance bond or other appropriate type of bond as deemed required in the sole discretion of the SFMTA (each a "Bond"), in the aggregate amount of not less than (1) one-hundred fifty thousand dollars ($150,000) plus (2) an amount not less than three times the average daily parking revenues collected by Contractor as measured over the previous 20 Business Days (as defined in Appendix A). The Letter of Credit or Bond(s), as the case may be, must have an original term of one year, with automatic renewals no later than July 1 of each Fiscal Year in the same amount throughout the term of the Agreement. If Contractor fails to deliver the Letter of Credit or Bond(s) as required, City may deem Contractor to be in default in the performance of its obligations hereunder. In such event, City, in addition to all other available remedies, may terminate the Agreement. The Letter of Credit or Bond(s), as the case may be, must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the financial institution signed by the Director of Transportation of the San Francisco Municipal Transportation Agency on behalf of the City and County of San Francisco. Starting 90 days after the initial date of the Letter of Credit or Bonds(s) required under this Agreement, and each 90 days thereafter throughout the term of this Agreement, Contractor shall evaluate the average daily parking revenues and if necessary, increase the amount of the Letter of Credit or Bond(s), as the case may be, to ensure that it is no less than the amount described above. The parties may mutually agree in writing to alter the schedule for review of the amount of the Letter of Credit or Bond(s), as the case may be, and Contractor shall have 30 days from the deadlines above in order to make the revenue calculations and obtain any increased coverage. The Bond(s), if any, provided under this paragraph shall cover all officers and employees of Contractor who have access to, control over, or responsibility for, any parking revenues received or processed by Contractor in the performance of the Service under this Agreement, and Contractor shall provide an endorsement to the Bond(s), if any, naming the City and County of San Francisco as an additional loss payee to ensure that loss of any funds belonging to the City and County of San Francisco shall be payable to the City and County of San Francisco.

(ii) Financial Institution. The Letter of Credit or Bond(s), as the case may be, must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion,

which financial institution must (a) be a bank, trust company or insurance company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least $25,000,000, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating.

(iii) Demand on Letter of Credit or Security Bond. The Letter of Credit or Bond(s), as the case may be, will constitute a security deposit guaranteeing faithful performance by Contractor of the following terms, covenants, and conditions of this Agreement, including all monetary obligations set forth in such terms: (a) failure to transmit all parking revenues collected by Contractor; (b) failure to replenish the Security Fund under Section 53(b); and (c) termination of this Agreement due to the default of the Contractor, in which case the City shall be entitled to the full amount of any unpaid damages as specified in Appendix B and any outstanding unpaid parking revenues from the Letter of Credit or the Bond(s), as the case may be. Under any of the above circumstances, SFMTA may make a demand under the Letter of Credit or the Bond(s), as the case may be, for all or any portion of the Letter of Credit or the Bond(s), as the case may be, to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty; provided, however, that City will present its written demand to said financial institution for payment under said Letter of Credit or Bond(s), as the case may be, only after City first has made its demand for payment directly to Contractor, and five full days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the Letter of Credit or Bond(s), as the case may be, those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the Letter of Credit or Bond(s), as the case may be, is so used or applied by City, Contractor, within 10 Business Days (as defined in Appendix A) after written demand by City, shall reinstate the Letter of Credit or Bond(s), as the case may be, to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

(iv) Expiration or Termination of Letter of Credit or Bond(s). The Letter of Credit or Bond(s), as the case may be, must provide for 60 days' notice to City in the event of non-extension of the Letter of Credit or Bond(s), as the case may be; in that event, Contractor shall replace the Letter of Credit or Bond(s), as the case may be, at least 10 Business Days (as defined in Appendix A) prior to its expiration. In the event the City receives notice from the issuer of the Letter of Credit or Bond(s), as the case may be, that the Letter of Credit or Bond(s), as the case may be, will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement Letter of Credit or Bond(s), as the case may be, (either of which shall be in a form and issued by a financial institution acceptable to the City) within 10 days following the City's receipt of such notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement),

the City shall be entitled to draw down the entire amount of the Letter of Credit or Bond(s), as the case may be, (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the Letter of Credit or Bond(s), as the case may be, is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 days of the termination date, including interest accrued through the termination date.

(v) Return of Letter of Credit or Bond(s). The Letter of Credit or Bond(s), as the case may be, will be returned within 90 days after the end of the term of this Agreement, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 25, City will return or release the Letter of Credit or Bond(s), as the case may be, not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent Letter of Credit or Bond(s), as the case may be, as determined by City.

(vi) Excessive Demand. If City receives any payments from the aforementioned financial institution under the Letter of Credit or Bond(s), as the case may be, by reason of having made a wrongful or excessive demand for payment, City will return to Contractor the amount by which City's total receipts from Contractor and from the financial institution under the Letter of Credit or Bond(s), exceeds the amount to which City is rightfully entitled, together with interest thereon at the legal rate of interest, but City will not otherwise be liable to Contractor for any damages or penalties.

b. Security Fund. Contractor shall deposit into a City-controlled account the amount of twenty-thousand dollars ($20,000) to guarantee the performance of its obligations under the Agreement not secured by the Letter of Credit or Bond(s), as the case may be, under Section 53(a) (the "Security Fund"). These obligations shall include, but not be limited to, failure to pay liquidated damages as provided in Section 13. Prior to withdrawal of any amounts from the Security Fund, SFMTA shall notify Contractor of its intent to withdraw and the circumstances requiring such withdrawal. After any withdrawal by City of amounts from the Security Fund, Contractor shall restore the Security Fund to its full amount within five Business Days (as defined in Appendix A). City shall return any amounts remaining in the Security Fund within 60 days of the expiration or termination of this Agreement, or correction of any audit deficiencies after completion of a final audit, whichever is later.

55. Accuracy of Parking Rates. In the event that the Contractor's Management System is unable to apply the correct parking rate data for parking transactions in accordance with the performance standards specified in Appendix A, Section 1.D.4, over any rolling 30 day period, and the actual amount charged to customers is lower than the correct amount, Contractor agrees

to reimburse the SFMTA with the difference between the correct amount and the actual amount charged for all transactions occurring up to 30 minutes after being notified of the problem by SFMTA, up to $1,000, with such notice being provided by phone to the Emergency Phone Number as described in Appendix A, paragraph 1.B.4. Contractor agrees to reimburse the SFMTA with the difference between the correct amount and the actual amount charged for all transactions occurring 31 minutes or more after being notified of the undercharges by the SFMTA. Such reimbursement shall be due to the SFMTA within 30 days of notice to Contractor of the undercharges.

Under any circumstances, if the actual amount charged to a Customer is higher than the correct amount for any parking transaction, Contractor shall refund the difference to the Customer within 15 days of notice of the overcharge from the SFMTA.

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

CITY	**CONTRACTOR**
San Francisco **Municipal Transportation Agency** _____ Nathaniel P. Ford, Sr. Executive Director/CEO Approved as to Form: Dennis J. Herrera City Attorney By: _____ David A. Greenburg Deputy City Attorney AUTHORIZED BY: MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS Resolution No: _____ Adopted: _____ Attest: _____ SFMTA Board of Directors	**Verrus Mobile Technologies, Inc.** By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off. I have read and understood paragraph 30, 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. _____ David Spittel Executive Vice President #201 – 1028 Hamilton Street Vancouver, BC V6B2R9 Canada City vendor number: **74640**

Appendices

A: Services Provided by Contractor and Performance Standards

B: Liquidated Damages

Contractor: Verrus Mobile Technologies, Inc.

Appendix A
Services Provided by Contractor and Performance Standards

1. Description of Services

Contractor shall provide to the City and County of San Francisco's Municipal Transportation Agency (the "SFMTA") a citywide pay-by-phone Service to enable Customers to pay for metered parking spaces at all metered parking spaces in the City and County of San Francisco. These metered parking spaces shall include, but not be limited to, approximately 26,000 on- and off-street metered parking spaces under the jurisdiction of the SFMTA, and approximately 1,000 on- and off-street metered spaces under the jurisdiction of the Port of San Francisco (the "Port"). The SFMTA shall be responsible for the accurate transmission of meter rates to Contractor at least 72 hours prior to said rates taking effect and for enforcement of parking regulations. Contractor shall be responsible for collecting revenue from Customers consistent with the posted meter rate which shall be transmitted to the SFMTA in its entirety. The fee that Contractor is authorized to charge under Section 4 of the Agreement shall not be taken out of this revenue.

Contractor agrees to perform the following services:

A. Definitions

The following is a summary of terms to be used within this document:

"Agreement" shall mean the agreement entered between Verrus Mobile Technologies, Inc and the SFMTA.

"Business Days" shall mean Monday through Friday, excluding City-observed holidays (New Year's Day, Dr. Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and the day after, and Christmas Day). See http://www6.sfgov.org/index.aspx?page=143 for listing of official City holidays.

"Calendar Quarter" shall mean any one of the following three-month periods: January to March; April to June; July to September; and October to December.

"Contractor" shall mean Verrus Mobile Technologies, Inc.

"Contractor's Management System" shall mean the Contractor's database system used to store Customer's account information and all information relating to System

transactions.

"Customer" shall mean a person using the pay-by-phone service that is the subject of the Agreement to pay for parking.

"Data Warehouse" shall mean the database server used by SFMTA's SF*park* program to store information about parking space occupancy, payment, turnover rates and other data.

"Days" shall mean calendar days.

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

"Handheld Device" shall mean the handheld device used by SFMTA Parking Control Officers (PCOs) to verify the payment status of parking spaces and issue parking citations.

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

"PCO" shall mean an SFMTA employee in the Parking Control Officer classification, or manager/supervisor over that classification, who is authorized to issue citations for parking violations.

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

"Performance Standards" shall mean the minimum standards acceptable for functioning of the Service.

"Real Time" shall mean a time period of five (5) seconds or less in order to process a transaction as set forth herein.

"Service" shall mean the Pay-by-Phone service including the IVR, wireless network, servers, operating software, etc.

"SF*park*" shall mean the SFMTA's parking management program featuring variable demand-based pricing, initially including several pilot areas totaling approximately 5,000 spaces and later, potentially expanding to additional spaces throughout the City of San Francisco.

"SFPM" shall mean the SFMTA's San Francisco Parking Meter Management System,

which tracks parking meter events and provides financial reporting.

B. Customer and Service Interface Requirements

Contractor shall provide seamless integration between its Service, Customers, PCOs' Handheld Devices, SFMTA meters, and SFMTA-managed databases (e.g., Data Warehouse, SFPM database, Meter Management Systems) as provided under the SFMTA's third-party agreement(s).

1. Parking Space Coverage – During any given 30 day period, Contractor shall ensure that the Service is available at a minimum of 90 percent of SFMTA-managed on-street parking spaces. No more than 10 percent of said spaces may be excluded from the Service due to inadequate wireless coverage to support the system. Contractor shall not be responsible for the cell phone performance of individual Customers. To measure performance under this standard, Contractor shall provide a report outlining active locations available for use through the Service and shall make this report available upon request from the SFMTA. The SFMTA reserves the right to seek independent third party verification of the report. Prior to commencing service, Contractor shall ensure that a comprehensive survey of SFMTA-managed on-street parking spaces is completed once at Contractor's expense to determine which spaces are included and excluded from the Service. Thereafter, spaces may be added or subtracted from the Service due to changes in wireless coverage as directed by the SFMTA or recommended by Contractor.

2. Service Availability – Contractor shall ensure that the Service is available to Customers during the hours that the SFMTA has paid parking in force, which may include any time between 4 a.m. to 12 midnight, seven days per week, including holidays. Unless a system outage is agreed to in advance by Contractor and the SFMTA, Service must be available for 99.5 percent of operating hours during any given seven day period, and must not have any continuous outage in excess of 15 minutes. Where the Service is unavailable, Contractor must inform Customers that they are still required to pay for parking through another means. To measure performance under this standard, Contractor shall maintain application tracking logs and shall make such logs available upon request from the SFMTA. The SFMTA reserves the right to seek independent third party verification of this performance. The following features must be active for the Service to be considered "available":

   (a) Customer must be able to call a toll-free telephone number provided by Contractor to initiate a parking payment. The toll-free number shall be transferred to the SFMTA or any third party as designated by the SFMTA upon completion of the Agreement at no additional cost to the agency.
   (b) Contractor's Interactive Voice Response ("IVR") system must be available to receive the call and process the transaction at the requested location.
   (c) Contractor's system must record the payment and parking session correctly.

(d) Contractor's Management System is available to respond to queries from Handheld Units used by SFMTA's Parking Control Officers.

3. Customer Service Inquiries – Contractor's IVR system will be capable of customization according to specifications agreed to by the SFMTA and Contractor. Contractor shall work with the SFMTA to streamline IVR menus to improve customer experience, including options to provide translations in other languages mutually agreed to by the SFMTA and Contractor, or required by City law, at no cost to the SFMTA, and voice recognition capability in English if required by the SFMTA and implementable without high error rates. The IVR system shall permit customers (a) to create an account and (b) to speak with a live customer service agent to modify an account in a manner consistent with Level One Payment Card Industry (PCI) Data Security Standard (https://www.pcisecuritystandards.org/index.shtml) and Contractor's internal security standards, ask questions about the Service, and track and resolve payment processing issues (including acceptance, reversal, duplicate and fraudulent charges, etc.). The IVR system shall also incorporate any other functions as mutually agreed to by the SFMTA and Contractor. During any given three-month period, Contractor shall provide a live customer service agent for 98 percent of the time from 6 a.m. to 6 p.m. on business days. To measure performance under this standard, Contractor shall engage an Independent Third Party to make random calls from a landline phone to Contractor's IVR system upon request from the SFMTA. A minimum sample size shall consist of 300 calls over 30 days, with at least 10 calls per day spaced out a minimum of five minutes apart.

4. Responses to SFMTA Staff Inquiries – Contractor shall provide a separate phone number for SFMTA staff to communicate Service-related issues from 8 a.m. to 5 p.m. on business days (the "Customer Service Number") and a second phone number for emergency issues ("the "Emergency Phone Number"). During any given 180 day period, Contractor shall respond to 90 percent of priority calls directed to the Emergency Phone Number related to enforcement, payments or data transmission within 15 minutes, and 100 percent of said calls within 2 hours. During any given 180 day period, Contractor shall respond to 90 percent of all other calls directed to the Customer Service Phone Number within 1 business day and 100 percent of calls within 2 business days. To measure performance under this standard, Contractor shall maintain a sys911 team log to track phone calls and a minimum sample size of 30 calls shall be required to determine compliance. Contractor shall make such log available upon request from the SFMTA. The SFMTA reserves the right to seek independent third party verification of this performance.

5. Online Account – Customers shall be able to create and view an account, and change account details online. Customers shall also be able to review previous parking transactions and parking payments, adjustments, and modify credit card details online.

6. Parking Confirmation – Customers shall receive confirmation upon successful payment via the means through which they initiated the transaction. Customers who fail to

complete the payment process will be sent an SMS indicating that they are not successfully parked. Customers shall have the option to receive an email receipt provided they add their email address to their account profile. The email receipt will indicate, for each transaction, the location of parking, duration and amount charged. Customers shall also have the option to receive a reminder via SMS before the parking meter expires, and shall have the ability to remotely extend a parking session within the applicable time limit for the parking meter. The process to extend the time shall be the same as the initial purchase. Contractor must send failure to complete transaction messages within no less than 10 seconds of transaction attempt for at least 98 percent of applicable transactions. Contractor must send reminder messages within no less than thirty seconds of parking session expiration for at least 98 percent of applicable transactions where customers have opted in for reminders. To measure performance under this standard, Contractor shall maintain a message log and shall make such log available upon request from the SFMTA. The SFMTA reserves the right to seek independent third party verification of this performance.

7. Minimum purchase – The SFMTA may institute a minimum parking time and associated purchase requirement for customers using the Pay-by-Phone program. In the event that the SFMTA institutes this requirement, Contractor shall ensure that a minimum of 98 percent of all parking transactions adhere to the requirement. To measure performance under this standard, Contractor shall maintain payment records and shall make such records available upon request from the SFMTA. The SFMTA reserves the right to seek independent third party verification of this performance.

8. Decals and Signage – Contractor shall pay for the design and production of all meter decals for all SFMTA-managed meters in the City and on Port property (approximately 26,000), signage and initial associated installation costs. In the event that the SFMTA retains an Independent Third Party to design the decals and signage for the Service, Contractor shall work with the Third Party to implement changes necessary for deploying these graphics. Contractor must obtain the SFMTA's written approval of all decal and signage graphics prior to production. The SFMTA shall have the right to limit signage as appropriate.

   Contractor's installation and maintenance obligation shall include reimbursing the SFMTA for the salary and benefits costs for a full-time position equivalent (FTE) for City job classification #7444 (Parking Meter Repairer) for the full term of the contract. This position shall be responsible for installing, cleaning and/or replacing decal and signage damage including damage caused by intentional acts such as vandalism or graffiti. Salary and benefits for this position shall be as set forth in the current Compensation Manual and Memorandum of Understanding with Teamsters Local 786, as posted on the San Francisco Department of Human Resources website www.sfdhr.org. Salary and benefits shall also be consistent with the City's Charter. Salary and benefits shall be re-adjusted every fiscal year (July 1) to reflect changes in said documents. Contractor shall reimburse the SFMTA for these costs on a monthly basis, with payment due to the SFMTA not later than 30 days after the end of the

month.

Notwithstanding anything to the contrary in this section, Contractor's obligation to reimburse the SFMTA for the costs of one FTE Parking Meter Repairer as set forth above shall be subject to the following conditions: (1) sufficient work solely related to the Service under this Agreement is available to warrant one FTE Parking Meter Repairer on a full time basis; (2) Contractor, in consultation with SFMTA staff, shall be able to direct the work of the Parking Meter Repairer(s), provided that such directions shall not cause Contractor to be considered the employer of the Parking Meter Repairer(s); (3) where Parking Meter Repairers are performing work in accordance with this provision, such persons shall provide monthly written reports to Contractor describing the work completed and status of decals and locations throughout the City; and (4) if there is not sufficient work solely related to the Service available to justify one FTE Parking Meter Repairer on a full time basis, Contractor shall only be obligated to reimburse the SFMTA for that portion of the salary and benefits which are proportional to the amount of time actually spent by Parking Meter Repairer(s) on the Service under this Agreement. All meter decals must be resistant to the environmental conditions found in the City, including but not limited to wind blown grime, rain, sun, fog, salt air, and vibrations, in a temperature range of -20 deg. F to +185 deg. F, and be clearly visible in low light situations, bright sunlight, snow, rain, fog, and day/night lighting transitions. As the SFMTA installs additional meters in the City, Contractor shall pay for the design and production of any additional signage and decals.

9. Public Awareness and Advertisements – Contractor must submit a public awareness and advertisement plan to notify the general public of the Service, at the Contractor's expense. Contractor shall pay for all public relations and social media activities as well as any online advertisements, radio and television advertisements, local print advertisements, banners, posters and leaflets/pamphlets that may be used to promote usage of the Service (the "Advertisements") provided that Contractor shall not be obligated to pay for costs incurred by City or SFMTA for Advertisements unless Contractor has provided its prior written approval of such Advertisements. As part of the Service implementation process Contractor shall also include a proposed set of activities and timeline for the plan.

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

10. Web Content – Contractor shall provide web content for the SFMTA and SF*park* websites. The content shall include detailed instructions on how to set up a new account, how to use the system, pictorial examples of the decals and signage identifying those meters included in the program, and provide Contractor's contact information for help in using the Service.

11. Announcement – At the request of the SFMTA, Contractor shall record and provide to Customers an announcement not to exceed 30 seconds at the beginning of the call to the Service. The content of the announcement shall be determined by the SFMTA at any time. During any given 30 day period, the announcement shall be included in a minimum of 98 percent of transactions for which SFMTA has specified the announcement. This announcement may include advertising by the SFMTA or third parties unrelated to the Service. Any revenues associated with the announcement shall belong to the SFMTA. To measure performance under this standard, Contractor shall engage an Independent Third Party to make random calls from a landline phone to Contractor's IVR system upon request from the SFMTA. A minimum sample size shall consist of 300 calls over 30 days, with at least 10 calls per day spaced out a minimum of five minutes apart.

    Implementation of an announcement shall be subject to the following conditions:
    (a) Prior to Pay-by-Phone transactions reaching 250,000 per month for three consecutive months, the SFMTA shall only require an announcement upon mutual agreement with Contractor.
    (b) Once usage reaches 250,000 transactions per month for three consecutive months, the SFMTA shall have the sole discretion to determine whether to implement an announcement.
    (c) If, after implementing an announcement, the call abandonment rate (customers terminating a phone call before a transaction has been completed) increases by 5 percentage points or more over the previous month, all announcements shall be automatically suspended for 90 days unless the SFMTA and Contractor mutually determine whether to recommence playing an announcement during this period.

12. Meter feeding/Time Limits – The Service shall block Customers from adding any additional time once the maximum time limit for the meter has been reached. At a minimum, Contractor shall meet this requirement for 98 percent of all transactions during any given 30 day period. In addition, instances in which the Service enables customers to exceed the maximum time limit by more than 30 minutes shall not exceed 0.5 percent of transactions during any 30 day period. Moreover, Customers shall be prevented from purchasing any additional time at any metered space on the same block in accordance with SFMTA parking regulations. To measure performance under this standard, Contractor shall maintain reporting logs and shall make such logs available upon request from the SFMTA. The SFMTA reserves the right to seek independent third party verification of this performance.

13. Erroneous Citation Issuance – Occasionally, problems with Contractor's Service may result in an incorrectly-issued citation to a Customer. Where Contractor becomes aware of such a problem, Contractor shall notify the SFMTA of the nature, time and duration of the problem and maintain a list of all parking transactions using the Service that occurred during that period. The SFMTA shall provide Contractor with a list of citations issued during that period. Based on these two lists, Contractor shall notify the

SFMTA of citations that were issued for apparent violations that were actually valid parking transactions using the Service.

14. Error handling – The Service shall be able to address errors including, but not limited to, the following:

    a. A Customer enters in an invalid parking space number; or
    b. A Customer enters a valid parking space number, which is incorrect for the Customer-occupied parking space, whether the error is detected during or after the phone call; or
    c. A Customer enters an invalid amount of meter time for the Customer-occupied parking space.

C. Pricing Requirements

1. Pricing – Contractor shall be permitted to charge Customers using the Service a single flat convenience fee per-transaction for each use of the Service as set forth in Section 4 ("Compensation") of the Agreement. Contractor may charge this fee at the time a customer initiates a transaction to pay for parking at a space, and each time thereafter that a customer extends the time for that space, until the maximum time limit for the metered space has been reached. Contractor may not charge a fee if, for any reason, the pay-by-phone transaction does not result in the successful purchase of time for parking at the selected metered space.

2. Convenience Fee Modifications – No increase to the convenience fee shall be allowed except by modification of the Agreement in accordance with Section 41 of the Agreement and subject to following conditions:
    a) Every 180 days, Contractor is permitted to adjust the convenience fee if the average parking transaction value (excluding the convenience fee itself) exceeds $4.00 and has increased by 10 percent or more over the previous 180 day period, or if payment card processing costs increase and cause a net increase in costs of 1 cent or more on average. Contractor may increase the fee upward by multiplying the variable credit card processing fee rate (excluding any fixed credit card processing fees) by the incremental average parking transaction value (excluding the convenience fee). For example, if the average parking transaction value increased from $4.00 to $4.67 and the variable credit card processing fee is 3%, Contractor would be permitted to increase the transaction fee by $0.02.
    b) In the event that Contractor is unable to meet the data communications requirements set forth in this Appendix A, Contractor may choose to use an alternative data communications provider with the concurrence of the SFMTA. In the event that Contractor's alternative data communications provider results in a substantial cost increase to Contractor, or if costs associated with the existing provider increase substantially, Contractor may request that the SFMTA permit a transaction fee increase. Such a request shall include Contractor's financial analysis to support its claim. In addition, SFMTA shall have the right to audit and inspect Contractor's records in accordance with the terms of the Agreement. This

transaction fee increase may be granted at the sole discretion of the SFMTA through a modification to the Agreement as set forth in Section 41.

D. System Requirements

1. Data communications – Data communications from the Contractor's Management System including payment authorizations and transaction data details shall be in Real Time following the initial transmission of data. The SFMTA will work to accommodate Contractor's preferred data communications provider, but this provider is subject to the written approval of the SFMTA. In the event that Contractor is unable to meet the data communications requirements of this Agreement as set forth herein, Contractor may identify an alternative data communications provider. The SFMTA cannot guarantee that it will approve Contractor's preferred data communications provider.

2. Meter Location Number – The Service shall accommodate the current unique eight-digit number assigned to each metered parking space and additionally, allow for expansion to ten numeric identifiers in the event that the SFMTA increases the number of numeric identifiers assigned to its meters.

3. Processing of Parking Rate Data - Contractor shall process rate data for metered spaces that are part of the SF*park* Pilot Project (approximately 6,000 spaces) via an XML "Price Schedule" feed. Prices for metered spaces in the pilot may vary according to location, time of day, day of week, and/or length of stay. The SFMTA has currently fixed the price schedule for a term of at least 30 days and will not vary the amount by time of month (e.g. Monday the 2nd will be the same as Monday the 9th, Monday the 16th, Monday the 23rd, and every Monday thereafter until the next price schedule change). The SFMTA will transmit the new Price Schedule to the Contractor at least 72 hours prior to the effective date of the Price Schedule. During any 180 day period, Contractor shall implement 98 percent of the price schedule changes prior to the effective date of the Price Schedule and 100 percent of the price schedule no later than two business days after the effective date of the Price Schedule. The SFMTA reserves the right to submit new Price Schedules more frequently than once every 30 days. The final required format for the XML feed shall be as set forth herein, which the SFMTA may modify at its sole discretion. The SFMTA reserves the right to expand the areas included in SF*park* to include any other metered space in the City.

Format for XML Feed for Rate Changes

<price_schedule>

<City_ID>**ID number assigned by Contractor to SFMTA**</City_ID>
<Effective_Date> **Date and time the effective date in standard Oracle format to the second** </ Effective_Date >

<transmission_datetime>**Date and time of transmission from City in**

standard Oracle format to the second </transmission_datetime>

<metered_space>
<Parking_Space_ID>**SFMTA assigned parking space number**</Parking_Space _ID>
<Start_DOW>**First Day of the Week this price is effective**</Start_DOW>
<End_DOW>**Last Day of the Week this price is effective**</End_DOW>
<Price_Start_time>**Start time for price in standard Oracle format to the second** </Price_Start_time>
<Price_End_time>**End time for price in standard Oracle format to the second** </Price_end_time>
<Legnth_of_stay_schedule>
<Hour>**Hour in whole numbers**</Hour>
<Price_Premium_pct>**Price premium percentage**</Price_Premium_pct>
….
</Legnth_of_stay_schedule>
<Price>Decimal value of the price in dollars</price>

</metered_space>

</price_schedule>

XML Code:	Shall Be:
City_ID	Assigned by Vendor to SFMTA
Effective Date	Date and time the this price schedule will be effective
transmission_datetime	Given by SFMTA
metered_space	
Parking_Space_ID	Shall be a unique identifier for the metered parking space assigned by SFMTA
Start DOW	Given by SFMTA, it represents the first day of the week this price is valid
End_DOW	Given by SFMTA, it represents the last day of the week this price is valid
Price_Start_Time	Given by SFMTA, it represents the beginning of the time period for this price
Price_End_Time	Given by SFMTA, it represents the end of the time period for this price
Length-Of_Stay_Schedule	

XML Code:	Shall Be:
Hour	1 is the hour after the first full hour a driver is parked. 2 is the second hour after the first full hour a driver is parked.
Price_Premium_Percentage	Percentage premium over the regular price
Price	This is the regular price per hour in dollars

Examples:

<price_schedule>

<City_ID>1001</City_ID>
<Effective_Date>2009/05/04:12:00:00AM</Effective_Date>
<Transmission_datetime>2009/04/15:12:00:00AM</Transmission_datetime>

<metered_space>
<Parking_Space_ID>**111-11111**</Parking_Space _ID>
<Start_DOW>**Monday**</Start_DOW>
<End_DOW>**Friday**</End_DOW>
<Price_Start_time>**09:00 a.m.**</Price_Start_time>
<Price_End_time>**05:00 p.m.**</Price_end_time>
<Max_Time>**4**</Max_Time>
<Legnth_of_stay_schedule>
<Hour>**1**</Hour><Price_Premium_pct>**50**</Price_Premium_pct>
<Hour>**2**</Hour><Price_Premium_pct>**100**</Price_Premium_pct
>
<Hour>**3**</Hour><Price_Premium_pct>**150**</Price_Premium_pct
>
</Legnth_of_stay_schedule>
<Price>**3.25**</price>
</metered_space>

<metered_space>
<Parking_Space_ID>**111-11111**</Parking_Space _ID>
<Start_DOW>**Monday**</Start_DOW>
<End_DOW>**Friday**</End_DOW>
<Price_Start_time>**05:00 p.m.**</Price_Start_time>
<Price_End_time>**10:00 p.m.**</Price_end_time>
<Max_Time>**5**</Max_Time>
<Price>**2.00**</price>
</metered_space>

<metered_space>
<Parking_Space_ID>**111-11111**</Parking_Space _ID>
<Start_DOW>**Saturday**</Start_DOW>
<End_DOW>**Saturday**</End_DOW>
<Price_Start_time>**09:00 a.m.**</Price_Start_time>
<Price_End_time>**10:00 p.m.**</Price_end_time>
<Max_Time>**12**</Max_Time>
<Price>**1.00**</price>
</metered_space>

</Price_schedule>

4. Accuracy of Parking Rates –Contractor shall process the correct parking rates for a minimum of 99 percent of parking transactions measured over a 30 day period. Contractor is not responsible for errors in XML rate feed files but shall work in good faith to detect potential errors and notify the SFMTA accordingly. To measure performance under this standard, Contractor shall maintain transaction logs and shall make such logs available upon request from the SFMTA for comparison with SFMTA XML rate feeds. The SFMTA reserves the right to seek independent third party verification of this performance.

5. Real Time Transaction Feed – Contractor shall provide for transmission of parking payment event data for each pay by phone transaction, be it an initial transaction or an add time transaction, to the SFMTA's Data Warehouse, the San Francisco Parking Meter Management System (SFPM), and any thirty-party Meter Management System as designated by the SFMTA. This event data shall be a "pushed" continuous Real Time XML data transmission, i.e., the Contractor's server shall send the XML transmission to the SFMTA server with any request from the SFMTA server. Contractor must transmit at least 98 percent of all recorded events in Real Time, and at least 99 percent of all recorded events within 10 seconds after occurrence, to the SFMTA and associated parking databases. The final required format for the XML feed shall be as set forth herein, which the SFMTA may modify at its sole discretion.

Format for XML Feed for Transaction Data

The following XML is the format in which the Contractor shall deliver Real Time parking information:

<payment>

<vendor_ID>**ID number assigned to each vendor by SFMTA**</vendor_ID>
<transmission_ID>**Transaction number generated by vendor for this message**</transmission_ID>

<transmission_datetime>**Date and time of transmission from vendor in standard Oracle format to the second** </transmission_datetime>

<event_type>**NEW_SESSION,ADD_TIME**</event_type>

<metered_space>

<Parking_Space_ID>**Parking Space Number**</Parking_Space _ID>
<session_ID>**unique_ID_number**</session_ID>
<amount_paid_by_driver>**price in dollars**</amount_paid_by_driver>
<amount_received_by_SFMTA>**price in dollars**</amount_received_by_SFMTA >

</metered_space>

<start_time>**time in standard Oracle format to the second.**</start_time>
<end_time>**time in standard Oracle format to the second.**</end_time>

</payment>

Descriptions:

XML Code:	Shall Be:
Vendor_ID	Assigned by SFMTA to a pay by phone company, parking meter companies, etc.
Transmission_ID	Unique and generated by Vendor
transmission_datetime	Given by Vendor
event_type	Given by Vendor NEW_SESSION: A customer initiates a new session ADD_TIME: A customer adds time to an existing session
metered_space	
Parking_Space_ID	Shall be a unique identifier for the metered parking space assigned by SFMTA

XML Code:	Shall Be:
Session_ID	Generated by Vendor. A new session_ID shall be generated for each new NEW_SESSION event. If a customer adds time to a session that same session_ID will be sent along with any ADD_TIME event(s).
Amount_paid_by_driver	The total amount paid by the customer including any fees.
Amount_received_by_SFMTA	The total amount owed the SFMTA.
start_time	Given by Vendor. For the NEW_SESSION event, the initial start time for the parking session. For the ADD_TIME event, the new start time for the parking session.
end_time	Given by Vendor. For a NEW_SESSION event, the initial end time for the parking session. For the ADD_TIME event, the new end time for the parking session.

6. Data Warehouse Transmission Failures – In the event that the SFMTA's Data Warehouse is unable to accept transmissions, Service messages shall be stored and sent as soon as the SFMTA's Data Warehouse comes online. This data shall be part of the SFMTA unified enforcement platform and combined with data from single-space and multi-space meter vendors to provide a single enforcement view for Parking Control Officers. The data may also eventually be pushed out to single- or multi-space meters that provide for visual enforcement.

7. Financial Reporting – Contractor shall provide a daily feed to the SFPM to assist with financial reporting. This feed shall include the following data for each parking transaction: unique parking space identification number, amount owed the SFMTA, Contractor's convenience fee charged to the customer, amount of purchased time and the start time of transaction. Format for this feed shall be determined by the SFMTA.

8. Hosting – Contractor shall provide secure hosting and support for all payment processing functions at its own hosting facilities ensuring availability through phone or other wireless devices. Contractor shall own its servers. Contractor shall provide redundant connectivity and a fully redundant hosting environment with automatic fail-over to the redundant system in the event of failure. Contractor shall develop full business continuity and recovery plans, and shall obtain the SFMTA's approval on such plans prior to their adoption.

9. Service Levels – Except for scheduled maintenance, Contractor's goal shall be to ensure that the Service is operational, available and reliable during the hours that the SFMTA has paid parking in force.

10. Security – Contractor shall implement highly secure systems to manage its data for the Service. Contractor's security for the Service and all connections thereto shall conform to the most current National Institute of Standards and Technology's (NIST) Security Content Automation Protocol (SCAP) (internet: http://scap.nist.gov/revision/index.html). Contractor's conformance to SCAP shall include, but not be limited to: restricting and securing administrative access to its data with login IDs and passwords; restricting physical access to Contractor's computer and data storage facilities to authorized persons; use of secure "firewalls" to protect the Service and its databases from unauthorized access; and restricting of access to, and exchange of, sensitive data to Virtual Private Networks (VPNs).

11. Time Synchronization – Contractor shall synchronize its server clock no less than one time per day to the NTP.org time protocol (internet: www.ntp.org). During any given 30 day period, the server time shall deviate no more than two seconds from the NTP source for 98 percent of the time and shall not deviate more than 30 seconds from the NTP source at any time. To measure performance under this standard, Contractor shall engage an Independent Third Party to make random checks upon request from the SFMTA. A minimum sample size shall consist of 300 calls over 30 days, with at least 10 calls per day spaced out a minimum of five minutes apart.

E. Data Requirements

1. Data Privacy – Contractor shall encrypt all Customer data to the most current NIST SCAP (internet: http://scap.nist.gov/revision/index.html), and shall work with the SFMTA to minimize the collection of personal information. Contractor shall safeguard and protect the confidentiality of all data, and in no event share data collected with any third party except as required by law, except to the extent that a customer chooses to "opt-in" on their online account to authorize sharing of specific data with third parties. Customers shall have the opportunity to "opt-out" at any time. Contractor is expressly forbidden from selling, leasing, distributing, publishing, or otherwise sharing any personal information collected from Customers, including, but not limited to, transaction history, address, email address, phone number, and credit card information, Notwithstanding the preceding restrictions, Contractor shall be permitted to use such information to enable Customers with Service accounts for SFMTA-managed on-street parking spaces to use their accounts to pay for services provided by Contractor to other entities, and vice versa.

2. Data Ownership – The SFMTA shall be the exclusive owner of all data and rights to the data generated from the Service, regardless of whether the data is direct or derived, calculated or modeled. The SFMTA shall not own, nor be held responsible for,

safeguarding any personal data, including, but not limited to, names, addresses, email addresses, phone numbers, or credit card information. Contractor shall be expressly prohibited from transmitting any credit card data (other than the last 4 digits of the account number) to the SFMTA.

3. Archived Data - Contractor shall archive all transaction data during the term of the Agreement and for a minimum of five years after the termination of the Agreement. Contractor shall deliver copies of all system data upon request of the SFMTA and the termination of the Agreement. The SFMTA shall have the option to receive copies of all archived data stored in a mutually-acceptable medium such as DVD+R or Blu-ray Disc (BD-R). During any 180 day period, Contractor shall deliver a minimum of 80 percent of SFMTA data requests for archived data within 3 business days of the request and deliver all SFMTA data requests within 10 business days of the request. Contractor shall be responsible for providing transaction data during the term of this Agreement and during the five year archive period in a format that is readable by SFMTA using commonly available commercial off-the-shelf software.

F. Payment Processing Requirements

1. Registration – Contractor shall collect such pieces of information from each Customer required to complete a transaction successfully, which include, but are not limited to:
    a. Credit Card Number
    b. Telephone Number
    c. Credit card expiration date

    The Service must reject any attempts by a Customer to use the Service if these required pieces of information are not collected and verified.

2. Fee Notification – During a payment transaction, any associated fees to the cardholder must be clearly stated prior to confirming the transaction and allow the cardholder to discontinue and cancel the transaction. This statement must be made for a minimum of 98 percent of all transactions,

3. Customer Payment – Over a 30- day measurement period, a minimum of 98 percent of all payments shall process in 5 seconds or less and a minimum of 99% of payments shall process within 20 seconds once confirmed by a Customer. The payment processing time is defined as the time during which the system determines if sufficient funds are available to allow the Customer to park, excluding communication time by any Independent Third Party. No more than 1 percent of valid credit cards may be incorrectly rejected. No Customer shall be allowed to park without assurance that sufficient funds have been authorized for the time requested. To measure performance under this standard, Contractor shall maintain payment records and shall make such records available upon request from the SFMTA. The SFMTA reserves the right to seek independent third party verification of this performance.

4. Payment Processing Standards – Contractor shall be capable of processing transactions for Visa, MasterCard, Discover and American Express. Credit card data transmission shall meet the Level One Payment Card Industry (PCI) Data Security Standard (https://www.pcisecuritystandards.org/index.shtml) and comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs. As the PCI Data Security Standard evolves, the Contractor shall be responsible for maintaining compliance with that standard at Contractor's sole expense.

5. Credit Card Security – Contractor shall be solely responsible and shall indemnify the SFMTA against any claim arising from lost or stolen personal information including but not limited to credit card information.

6. Rejected Credit Cards – Contractor's payment processing system shall detect and reject invalid credit cards. Measured over a 30 day period, the payment system shall authorize at least 98 percent of valid credit card transactions in Real Time and at least 99 percent of valid credit card transactions within 20 seconds. Customers shall be provided a second opportunity to use a different credit card. No parking transaction shall be allowed for rejected credit cards. Contractor shall not be responsible for mistakes in the status of credit card transaction validity provided by Contractor's gateway company or acquiring bank. To measure performance under this standard, Contractor shall engage an Independent Third Party to make random checks upon request from the SFMTA. A minimum sample size shall consist of 300 transactions over 30 days, with at least 10 calls per day spaced out a minimum of five minutes apart.

7. Processing Fees – Contractor shall pay for all associated payment processing fees including, but not limited to, gateway company fees, card issuing bank fees, card association dues and assessments, and Contractor's merchant account bank fees. All such fees shall be in addition to the payment of the meter rate. For example, if a Customer purchases $3.00 worth of parking Contractor will owe the SFMTA $3.00, regardless of additional fees.

8. Settlement of Funds – Contractor shall transmit by electronic means all transactions to designated processing centers as the transactions occur and deposit the parking revenues collected to the SFMTA's designated bank accounts. In any trailing 30 day period, Contractor shall settle 95 percent of the collected funds in the SFMTA's bank no later than two business days after receipt of said funds from Contractor's acquiring bank. Notwithstanding any delays by Contractor or Independent Third Parties including but not limited to banks or payment card companies, Contractor shall settle 100 percent of the collected funds within ten business days of the occurrence of the transactions. To measure performance, Contractor shall make available third party wire transfer logs upon request from the SFMTA. The SFMTA reserves the right to seek independent third party verification of this performance. Settlement shall be via Automated Check Handling or Automated Clearing House ("ACH") transfer to bank accounts designated by SFMTA. Revenues from some metered spaces may be deposited into different

accounts as determined by the SFMTA. For example, revenue from the spaces at the Port may be deposited directly into a Port account.

G. Project Management Requirements

1. Methodologies – Contractor shall adopt disciplined project management, development, and change management methodologies to ensure the successful operation of the Service. Contractor shall provide the SFMTA with documentation explaining the adopted methodologies.

2. Issue Resolution – Contractor shall provide and implement a process for tracking and reporting on issues and/or change requests reported by Customers or SFMTA employees.

3. Testing – The SFMTA will test and accept the Service before it is made available to the public.

H. Reporting Requirements

1. Daily Reporting – Contractor shall transmit electronically, in Comma Separated Value (CSV) file format files the following daily transaction detail and summary reports to the SFMTA, both a) via e-mail and b) made available for the SFMTA to download. The SFMTA will specify the data required in the report. During any given calendar month, 80 percent of said daily reports shall be transmitted no later than 5 A.M. PST or PDT the next business day after a credit card transaction and 99.5 percent of said daily reports shall be transmitted no later than 96 hours (excluding non-business days) after a credit card transaction. To measure performance under this standard, Contractor shall maintain reporting logs and make such logs available upon request from the SFMTA. The SFMTA reserves the right to seek independent third party verification of this performance. In the event reports are not available, Contractor must send an error message to SFMTA via e-mail at or before the deadline.

    a. Daily Detailed Credit Card Transactions Report - Daily transaction log certifying all credit card transactions per meter number including the start date and time, the end date and time, the SFMTA space identifier, credit card type, receipt number, rate charged per hour, transaction amount, convenience fee, total charged, and date of deposit.
    b. Daily Summary Credit Card Transactions Report – Daily credit card summary totaling the number of transactions, transaction amount, and convenience fees for all transactions per day.
    c. Daily Customer Service Report – Customer service log detailing number and types of customer calls.
    d. Daily Revenue Report – Daily deposit report showing the total amount deposited into the SFMTA bank account per day. This report shall include

Service revenues collected by hour (e.g., $300 collected from 7 A.M. to 7:59 A.M., $400 collected from 8:00 A.M. to 8:59 A.M., etc.).

2. Monthly Reporting – Contractor shall transmit electronically, in Comma Separated Value (CSV) file format files the following summary reports to the SFMTA, both a) via e-mail and b) made available for the SFMTA to download. During any rolling 180 day period, Contractor shall submit 80 percent of said monthly reports no later than twenty-one (21) days following the end of each month and all reports no later than thirty (30) days following the end of each month. To measure performance under this standard, Contractor shall maintain reporting logs and make such logs available upon request from the SFMTA. The SFMTA reserves the right to seek independent third party verification of this performance.
    a. Pay-by-Phone Payment Status Response Time Report – This report shall include, but not be limited to: (a) the total number of pay-by-phone payment status requests from all Parking Control Officers' Handheld Devices (excluding payment status requests for spaces in Dead Zones that are excluded from the Pay-by-Phone program); (b) the average response time for said requests, excluding data transmission times by a third-party cellular provider; (c) the average response time for said requests, including data transmission times through the cellular provider; (d) the percentage and volume of said requests that exceed five seconds, excluding data transmission times through the cellular provider; and (e) the percentage and volume of said requests that exceed ten seconds, including data transmission times through the cellular provider.
    b. Monthly Cellular Dead Zone Report – Although Contractor is not required to conduct a carrier coverage survey each month, Contractor shall, at its discretion or at the direction of the SFMTA, identify spaces where changes in cellular coverage may preclude or enable Service availability. Based on this information, Contractor shall produce a monthly report that shall include, but not be limited to: (a) the total number and percentage of metered parking spaces where the Pay-by-Phone program is not available due to poor cellular communication; and (b) the general locations on a map of said parking spaces.
    c. Monthly Meter Service Report – This report shall show the exact minutes per day each meter is unable to service a Pay-by-Phone request with explanation, such as IVR down or network down.
    d. Monthly Revenue Report – Report showing the total amount deposited into the SFMTA bank account during the calendar month. This report shall include average Service revenues collected by hour and day type (weekday, Saturday, Sunday or holiday) (e.g., $300 collected from 7 A.M. to 7:59 A.M. weekdays, $400 collected from 8:00 A.M. to 8:59 A.M. weekdays, $250 collected from 10 A.M. to 10:59 A.M. Saturdays, etc.) as well as the average Service revenue collected per transaction.

The SFMTA reserves the right to use its own and third-party auditing systems and reporting to verify the Contractor's performance.

3. Reports Website – Contractor shall make all reports available on a secure website that can be accessed by designated SFMTA staff.

4. Citation Adjudication – Contractor shall provide a simple web-based query system which delivers transaction searches by day and meter number for citation adjudication purposes. All transaction data will be maintained and made available to an unlimited number of SFMTA employees for not less than five years after the date of the transaction. Prior to the expiration or termination of this Agreement, Contractor shall provide the SFMTA with a data file containing all parking transactions subject to this five-year requirement.

5. Records – Contractor shall maintain and make available to the SFMTA during regular business hours, accurate paper and electronic books and accounting records relating to the Service.

6. Agency level reporting – All metered spaces will be assigned an agency code and all reports shall be able to be run for each agency code separately or summed up. There shall be no limit to the number of agency codes. However, the SFMTA expects that less than 100 codes will be created. Currently there are only two agency codes, the SFMTA and the Port.

I. Integration Requirements

Enforcement Handheld Upgrade – Contractor shall assist the SFMTA and its third-party vendor with the selection and testing of new Handheld Devices to be purchased by the SFMTA. In no event shall Contractor deploy enforcement approaches that rely on smart phones or on any wireless device other than the SFMTA's Handheld Devices.

Monthly Data Communications Cost – The SFMTA and Contractor shall jointly select a data communications provider to establish Real-Time communications between SFMTA's Handheld Devices and Contractor's database(s) and to support other communications needs required by the Handheld Devices. Because the communications service will support both the Pay-by-Phone program and other requirements, unless otherwise agreed to Contractor and City, Contractor shall be responsible for the lesser of (i) 50 percent of the monthly data communications cost for all Handheld Devices during the term of the Agreement; or (ii) The cost of a standalone 10 Megabyte per Handheld Device monthly data communications plan necessary to support the Service, or next higher data tier available necessary to cover usage requirements.

Currently the SFMTA has 272 Handheld Devices; however, the SFMTA reserves the right to put up to 350 total Handheld Devices into service. The current cost is approximately $25 per device per month for an unlimited wireless plan. However, this cost is subject to change by the data communications provider.

The Contractor shall ensure that any subcontract with a data communications provider can be terminated at no cost to the SFMTA if Contractor's services are terminated or at the conclusion of this contract as stipulated in Section One of the Agreement.

1. Website Access Restrictions – Contractor shall cooperate fully with the third-party Citations Issuance software vendor to configure the Handheld Devices to limit the websites visible on the device and to program any toggle keys for movement between Contractor's software and Citations Issuance software programs, as required by the SFMTA.

2. Citations Issuance System – Contractor shall reimburse the SFMTA for all costs of, and be responsible for, the integration of the Contractor's pay-by-phone enforcement system with the SFMTA's existing citations issuance system. The citations issuance system software is licensed to the SFMTA by the SFMTA's Citation Processing Contractor and the Contractor will be responsible for contracting directly with the SFMTA's Citation Processing Contractor for the creation of the necessary interface and securing additional licenses as required to facilitate service integration. The main purpose of the interface is to provide for seamless enforcement of parking violations on a wireless Handheld Device through one software program. The Contractor shall be solely responsible for specifying and contracting for this interface directly with the SFMTA's Citation Processing Contractor to ensure that no additional license or maintenance fees shall be payable by the SFMTA to the SFMTA's Citation Processing Contractor in connection with the Contractor's use or the SFMTA's indirect use of the interface.

3. New Parking Technologies – Contractor shall reimburse the SFMTA for all reasonable costs of, and be responsible for, the seamless integration of the Pay-by-Phone program with the SF*park* system, provided that (a) the SFMTA provides Contractor with 30 days prior written notice of the need to commence planning for such integration; and (b) such integration shall be managed by the SFMTA in consultation with Contractor. This will enable combined enforcement with other new parking technologies such as multi-space meters and single-space meters with credit card capabilities.

4. Dead zones – Contractor shall provide a detailed plan for conducting a survey of each metered space in the City to verify adequate cellular coverage for both drivers and SFMTA Enforcement. This survey plan must be executed prior to the Service being accepted by the SFMTA. Those metered spaces found to be in areas of little or no cellular coverage shall be excluded from the Service. Contractor shall identify excluded spaces with a sticker explaining that particular space is excluded from the Service due to poor cellular coverage.

5. Pay-by-Phone Status Requests – Contractor's Management System shall be able to receive pay-by-phone payment status requests from any SFMTA Parking Control

Officer's Handheld Device. The status requests will include both a query identification number and the time the request was issued from the Handheld Device. Contractor's Management System shall store both the query identification number and the time of the request.

6. Pay-by-Phone Status Responses (Excluding Third-Party Data Transmission Times) – Contractor's Management System shall be able to send correct pay-by-phone payment status confirmation (affirmative or negative) to any SFMTA Parking Control Officer's Handheld Device within Real Time of the receipt of the request for 98 percent of requests during any given 30 day period. Response times shall be within 15 seconds for 99 percent of requests during any given 30 day period.

7. Pay-by-Phone Status Responses (Including Third-Party Data Transmission Times) – The total response time, including data transmission times through a third-party cellular provider, between the issuance of a Pay-by-Phone payment status request from a PCO's Handheld Device and the receipt of the payment status information from the Service back to the Handheld Device shall not exceed 10 seconds for 98 percent of requests within any 30 day period. Response times shall be within 30 seconds for 99 percent of requests during any given calendar month.

8. Confirmation of Status Request Response – Upon receipt of the payment status confirmation from the Contractor's Management System, the Handheld Device will return a confirmation message to the Contractor's Management System with a query identification number and the time the payment status confirmation response was received by the Handheld Device. The Contractor's Management System shall record both the request issuance and receipt time for each query identification number. This information shall be used to calculate the total response time for payment status query requests and used for reporting purposes to the SFMTA as detailed above in Section H (Reporting Requirements).

9. Confirmation of Status Request Format – The data format of the Pay-by-Phone payment status confirmation shall be compatible with the parking citation issuance software used by SFMTA's vendor (currently Affiliated Computer Services (ACS) Pocket PEO software) on the Handheld Devices.

10. Integration with Third-Party software and hardware – Contractor shall work in good faith with third-party vendors to integrate Pay-by-Phone software, hardware and transaction data. The database systems of these vendors include, but are not limited to, the SFMTA Data Warehouse, Meter Management System, parking meter manufacturers and operators, and the parking issuance software vendor (currently Affiliated Computer Services (ACS)). Contractor shall be responsible for reimbursing the SFMTA within 90 days from the date of notification from SFMTA for all costs of any integration software and hardware requirements relating to implementation of the Pay-by-Phone System. The SFMTA shall make all reasonable efforts to involve Contractor in the development of the integration work

scope to ensure that reimbursement rates accurately reflect the cost of work required for third-party vendors to incorporate the Pay-by-Phone system into their respective database systems.

J. SYSTEM START-UP

Contractor shall ensure that the Pay-by-Phone Program is ready to be activated within 180 calendar days of the commencement of this Contract, unless a delay results from the actions of the SFMTA or a third party not under subcontract to Contractor.

K. ADDITIONAL TECHNOLOGIES

During the term of this contract, additional technologies may become available that will enhance the Pay-by-Phone program and/or facilitate the use of the program by Customers. An example would be a new software application to allow a Customer to pay for a parking space on a Personal Digital Assistant (PDA) device. Upon mutual agreement between Contractor and the SFMTA, Contractor may elect to implement such technologies. Any Customer convenience fees associated with the new technologies shall be determined by mutual agreement between Contractor and the SFMTA.

L. Staff Training Requirements

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

2. Contractor's Proposal Incorporated by Reference; Priority of Documents

Contractor's proposal titled *Verrus Mobile Payment / Response to SFMTA Parking Meter Pay-By-Phone Services RFP (SFMTA 2009/10-59)*, dated September 7, 2009 is incorporated by reference as though fully set forth herein. In the event of any conflict, the documents making up the Agreement between the parties shall govern in the following order of precedence: 1) the Agreement and its appendices, 2) the Request for Proposals dated August 5, 2009, and 3) Contractor's Proposal, dated September 7, 2009.

3. SFMTA Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be Jason Lee, or his designee.

Appendix B
Liquidated Damages

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

"Agreement" shall mean the agreement entered between Verrus Mobile Technologies, Inc and the SFMTA.

"Business Days" shall mean Monday through Friday, excluding City-observed holidays (New Year's Day, Dr. Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day and the day after, and Christmas Day) see http://www6.sfgov.org/index.aspx?page=143.

"Calculated Liquidated Damages" shall mean the sum of each liquidated damages assessment for each Incident. .

"Calendar Quarter" shall mean any one of the following three-month periods: January to March; April to June; July to September; and October to December.

"Contractor" shall mean Verrus Mobile Technologies, Inc.

"Contractor's Management System" shall mean the Contractor's database system used to store Customer's account information and all information relating to System transactions.

"Customer" shall mean a person using the pay-by-phone service that is the subject of the Agreement to pay for parking.

"Data Warehouse" shall mean the database server used by SFMTA's SF*park* program to store information about parking space occupancy, payment, turnover rates and other data.

"Days" shall mean calendar days.

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

"Handheld Device" shall mean the handheld device used by SFMTA Parking Control Officers (PCOs) to verify the payment status of parking spaces and issue parking

citations.

"Independent Third Party" shall mean any firm or entity whom Contractor has hired and/or pays to provide services under this Agreement but over whom Contractor does not and is unable to exercise any direct control over concerning the service provided, including but not limited to wireless carriers, messaging and internet service providers, financial institutions and payment processors, hardware manufacturers supplying Handheld Devices for SFMTA Parking Control Officers, firms providing citation issuance software for Handheld Devices, and firms with a contractual relationship with the SFMTA that provide software and/or hardware to support SFMTA's SF*park* system.

"Incident" shall mean an event where Contractor fails to meet the specified performance standards. An Incident may trigger the assessment of a liquidated damage or an Event of Default,

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

"Meter Management System" shall mean any database system operated by a third-party meter vendor that tracks meter transactions and transmits data to meters.

"PCO" shall mean an SFMTA employee in the Parking Control Officer classification, or manager/supervisor over that classification, who is authorized to issue citations for parking violations.

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

"Performance Standards" shall mean the minimum standards acceptable for functioning of the Service.

"Real Time" shall mean a time period of five (5) seconds or less in order to process a transaction as set forth herein.

"Service" shall mean the Pay-by-Phone service including the IVR, wireless network, servers, operating software, etc.

"SF*park*" shall mean the SFMTA's parking management program featuring variable demand-based pricing, initially including several pilot areas totaling approximately 5,000

spaces and later potentially expanding to remaining spaces throughout the City of San Francisco depending on the program's outcome.

"SFPM" shall mean the SFMTA's San Francisco Parking Meter Management System, which tracks parking meter events and provides financial reporting.

B. Liquidated Damages

As set forth in Section 13 of the Agreement the SFMTA may, acting reasonably, exercise its authority to collect liquidated damages from Contractor up to the maximum amounts provided herein for each instance of Contractor's failure to comply with the requirements set forth in Appendix A of this Agreement.

Contractor shall not be subject to liquidated damages where the failure to meet the Performance Standard is due to the conduct of an Independent Third Party. However, Contractor shall be subject to liquidated damages where the failure to meet the Performance Standard is due to the conduct of other third parties who are under Contractor's control. An example of such a third party would be a subcontracted software developer reporting to Contractor.

The SFMTA may assess liquidated damages each time Contractor fails to meet the performance standards enumerated in this section (an Incident). Following notification from the SFMTA, Contractor shall have a limited cure period to remedy the noncompliance before a subsequent Incident is triggered. The SFMTA may assess further liquidated damages for a second or subsequent Incidents if non-performance continues after the specified cure period. Additionally, in the event that it is no longer possible for Contractor to meet the performance standards during any measurement period, even before the end of the measurement period has been reached, an Incident shall be immediately triggered.

Notwithstanding anything else in this Agreement, if the SFMTA provides notification to Contractor of noncompliance with a Performance Standard which has triggered an Incident resulting in potential liability for liquidated damages, and Contractor cures such noncompliance within the applicable time period after receipt of such notification from the SFMTA, then a second or subsequent Incident related to such Performance Standard will not be triggered (and the City may not assess further liquidated damages related to such Performance Standard) until (a) the applicable time period for measuring compliance with such Performance Standard has expired after having been restarted on the day such cure became effective, or (b) it is no longer possible for Contractor to meet the Performance Standard prior to the end of a measurement period having been restarted on the day such cure became effective, whichever is earlier.

The following provisions shall apply to each of the liquidated damages provisions in this section:

(a) During any calendar month, Contractor's liability for payment of liquidated damages shall not exceed the average of $20,000 and one-month trailing net revenue, where net revenue equals total revenue less direct costs, even if the Calculated Liquidated Damages for the month exceed that amount.

(b) If an Incident triggers multiple liquidated damages, only the provision imposing the largest amount of liquidated damages will apply.

(c) Calculated Liquidated Damages shall include the sum of liquidated damages assessed in accordance with provision (b) for all incidents. As described in Section 14 of the Agreement, excessive Calculated Liquidated Damages shall be an Event of Default.

Incidents Triggering Liquidated Damages

1. Service Availability – In the event that the Service is not available in accordance with the performance standards specified in as specified in Appendix A. Section 1.B.2, (a) for at least 99.5 percent of operating hours during the hours that the SFMTA has paid parking in force during any given seven day period, or (b) is not available for any continuous period of 15 minutes or more during operating hours, SFMTA may impose liquidated damages of $1,000 unless the outages are agreed to in advance by the SFMTA and Contractor. An additional $1,000 in liquidated damages may be assessed to compensate for potential uncaptured citation revenue as a result of the system outage; however, this assessment will be waived if Contractor maintains a back-up database that tracks potential citations during the outage and verifies transaction payment status when the Service resumes operations. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have two hours to cure the cause of the noncompliance before another Incident is triggered.

2. Customer Service Inquiries - In the event that Contractor fails to respond to customer service inquiries in accordance with the performance standards specified in Appendix A, Section 1.B.3, the SFMTA may impose liquidated damages of $100. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

3. Responses to SFMTA Staff Inquiries – In the event that the Contractor is unable to respond to SFMTA Staff Inquiries in accordance with the performance standards specified in Appendix A, Section 1.B.4, the SFMTA may impose liquidated damages of $100. Following notice from SFMTA that an Incident as described in this paragraph has

occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

4. Parking Confirmation – In the event that Contractor fails to provide confirmation of a parking transaction in accordance with the performance standards specified in Appendix A, Section 1.B.6 during any given 30 day period, SFMTA may impose liquidated damages of $100. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

5. Minimum purchase – In the event that the SFMTA establishes a minimum purchase requirement and Contractor fails to enforce this policy in accordance with the performance standards specified in Appendix A, Section 1.B.7 during any given 30 day period, SFMTA may impose liquidated damages of $500. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

6. Announcement – In the event that Contractor fails to provide an announcement to customers in accordance with the performance standards specified in Appendix A, Section 1.B.11 during any given 30 day period, SFMTA may impose liquidated damages of $100. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

7. Meter feeding/Time Limits – In the event that Contractor fails to prevent Customers from purchasing more than the maximum parking time permitted in accordance with the performance standards specified in Appendix A, Section 1.B.12 during any given 30 day period, SFMTA may impose liquidated damages of $500. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

8. Pay-by-Phone Status Responses (Excluding Third-Party Data Transmission Times) – In the event that the Contractor's Management System is unable to meet the performance standards for pay-by-phone payment status confirmation during any 30 day period as specified in Appendix A, Section 1.I.7, SFMTA may impose liquidated damages of $500. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

9. Acceptance of Parking Rate Data – In the event that the Contractor's Management System is unable to process rate data for metered parking spaces prior to the effective date of a new Price Schedule in accordance with the performance standards specified in Appendix A, Section 1.D.3, during any rolling 180 day period, SFMTA may impose liquidated damages of $500. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

10. Real Time Transaction Feed – In the event that the Contractor's Management System is unable to provide for transmission of parking payment events in Real Time in accordance with the performance standards related to transmission of parking payment event data to the SFMTA and associated parking databases during any 30 day period as specified in Appendix A, Section 1.D.4, SFMTA may impose liquidated damages of $500. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one hour to cure the cause of the noncompliance before another Incident is triggered.

11. Time Synchronization – In the event that Contractor fails to synchronize its server clock to the NIST's Network Time Protocol or NTP (RFC-1305) in accordance with the performance standards specified in Appendix A, Section 1.D.11 during any given 30 day period, SFMTA may impose liquidated damages of $250. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

12. System Start-Up – In the event that the Pay-by-Phone Program is not ready to be activated within 180 calendar days of the commencement date of this Agreement, SFMTA may impose liquidated damages of $500. This assessment will be waived if a delay results from the actions of the SFMTA or an Independent Third Party. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

13. Archived Data Requests - In the event that Contractor fails to deliver archived data requested by the SFMTA in accordance with the performance standards specified in Appendix A, Section 1.E.3 during any rolling 180 day period, SFMTA may impose liquidated damages of $500. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have three business days to cure the cause of the noncompliance before another Incident is triggered.

14. Fee Notification - In the event that Contractor fails to notify Customers of fees prior to transaction completion in accordance with the performance standards specified in

Appendix A, Section 1.F.2 during any given 30 day period, SFMTA may impose liquidated damages of $100. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

15. Customer Payment – In the event that Contractor fails to process valid credit card transactions in accordance with the performance standards specified in Appendix A, Section 1.F.3 during any given 30 day period, SFMTA may impose liquidated damages of $500. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

16. Settlement of Funds – In the event that Contractor fails to settle funds expeditiously in accordance with the performance standards specified in Appendix A, Section 1.F.8 during any given 30 day period, SFMTA may impose liquidated damages of $500 plus 18 percent annualized interest compounded daily on the value of the unsettled transactions. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

17. Daily Reports - In the event that Contractor fails to deliver daily reports in accordance with the performance standards specified in Appendix A, Section 1.H.1 during any given 30 day period, SFMTA may impose liquidated damages of $100. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have two business days to cure the cause of the noncompliance before another Incident is triggered.

18. Monthly Reports - In the event that Contractor fails to deliver monthly reports in accordance with the performance standards in Appendix A, Section 1.H.2 during any rolling 180 day period, SFMTA may impose liquidated damages of $100. Following notice from SFMTA that an Incident as described in this paragraph has occurred, Contractor shall have one business day to cure the cause of the noncompliance before another Incident is triggered.

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Sustainable Streets Division

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute the Second Amendment to the Agreement with PBS&J for the Glen Park Community Plan EIR/EA and Transportation Feasibility Report (Contract CS-148), to extend the contract from March 3, 2011 through December 31, 2011, with no change to the contract amount.

SUMMARY:

- On November 18, 2008, the SFMTA Board of Directors adopted Resolution No. 08-085, approving an agreement with PBS&J ("Agreement") to conduct the Glen Park Community Plan EIR and Transportation Feasibility Report for a term of 24 months, ending on March 2, 2011.
- Amendment One to the Agreement, signed by the Executive Director/CEO, was issued on October 19, 2010 for additional scenario analyses and a second administrative draft of the transportation technical study.
- The consultant requires an additional nine months to complete the work due to the complexity of the environmental review, which has included additional analysis and evaluation of some of the tasks in the scope of work.
- Staff recommends approval of the Second Amendment to the Agreement, which will extend the term of the Agreement to December 31, 2011.

ENCLOSURES:

1. SFMTAB Resolution
2. Amendment Two to Agreement

APPROVALS: **DATE**

DIRECTOR OF DIVISION
PREPARING ITEM _____ _____

FINANCE _____ _____

EXECUTIVE DIRECTOR/CEO _____ _____

SECRETARY _____ _____

ADOPTED RESOLUTION
BE RETURNED TO Kim E. Walton

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

To authorize the Executive Director/CEO to execute the Second Amendment to the Agreement with PBS&J, to extend the term of the contract from March 3, 2011 through December 31, 2011.

GOAL

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

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

Goal 1: Customer Focus – To provide safe, accessible, reliable, clean and environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.
Objective 1.5: Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

Goal 2: System Performance – To get customers where they want to go, when they want to be there.
Objective 2.2: Ensure efficient transit connectivity and space of service
Objective 2.3: Fulfill bicycle and pedestrian network connectivity
Objective 2.4: Reduce congestion through major corridors.

DESCRIPTION

The draft Glen Park Community Plan, published in 2003 by the San Francisco Planning Department, establishes a vision for land use, transit connections, pedestrian and bicycle improvements, and open space in the Glen Park neighborhood. Over the past five years, this plan has received extensive community review and input. Endorsed by the San Francisco Planning Commission in April 2004, the environmental review was unable to proceed due to a lack of funding. The Planning Department's general fund grant and the SFMTA's award of an FTA 5309 Bus and Bus Facility grant provided the necessary funds to undertake the required environmental review.

On November 18, 2008, the SFMTA Board of Directors adopted Resolution No. 08-085, approving an agreement with PBS&J ("Agreement") to conduct the Glen Park Community Plan EIR and Transportation Feasibility Report for a term of 24 months, ending on March 2, 2011. The consultant has been charged with conducting an environmental review under the California Environmental Quality Act (CEQA) and an environmental assessment under the National Environmental Policy Act (NEPA). In addition, the consultant has conducted a feasibility analysis of key transportation aspects within the Glen Park community. Some of the items covered in the transportation feasibility analysis include:

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

Amendment One to the Agreement, executed by the Executive Director/CEO, was issued on October 19, 2010 to include additional scenario analyses and a second administrative draft of the transportation technical study. The consultant requires an additional nine months to complete the work due to the complexity of the environmental review, which has included additional analysis and evaluation of some of the tasks in the scope of work. There will be no change in the amount of the Agreement as a result of this extension to the term.

The Contract Compliance Office has determined that the prime consultant has submitted documentation indicating its commitment to maintain the 25 percent Small Business Enterprise (SBE) participation goal established for the contract.

ALTERNATIVES CONSIDERED

Without the completion of this study, the Glen Park Community Plan cannot be adopted by the SF Planning Commission or approved by the San Francisco Board of Supervisors. In addition, the FTA 5309 Bus and Bus Facility grant of $3.4 million dollars, which was made possible by the efforts of former Supervisor Bevan Dufty and the late Senator Tom Lantos, would have to be returned. The failure to complete the environmental assessment would also jeopardize the SFMTA's ability to secure future Federal grants.

FUNDING IMPACT

Funding for this effort comes from three sources: a $3.4 million dollar multi-year SAFETEA-LU grant (FTA Section 5309 Bus and Bus Facilities), which covers multiple phases of the Project's implementation over several years; a $416,000 grant received from the City's general fund to conduct the environmental review of the draft Glen Park Community Plan, and $450,000 in Prop K funds programmed to provide match to the federal grant. The SFMTA has received $2,509,473 to date, with the remaining earmark of $947,898 to be applied for in March 2011.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Civil Service Commission approved these services on May 21, 2009, PSCNo.4157-06/07. This approval was later extended to April 2010. Staff has requested further approval from the Civil Service Commission to cover the extended term of the Agreement, which will be scheduled at the Commission's April 4, 2011 meeting.

The City Attorney has reviewed this report.

RECOMMENDATION

The SFMTA requests that the SFMTA Board of Directors authorizes the Executive Director/CEO to execute the Second Amendment to the Agreement, to extend the contract for an additional ten months from March 2, 2011 through December 31, 2011. The approval of the amendment will be subject to Civil Service approval.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On November 18, 2008, the SFMTA Board of Directors adopted Resolution No. 08-085, approving an agreement with PBS&J ("Agreement") to conduct the Glen Park Community Plan EIR and Transportation Feasibility Report for a term of 24 months, ending on March 2, 2011; and,

WHEREAS, Amendment One to the Agreement, executed by the Executive Director/CEO, was issued on October 19, 2010, to include additional scenario analyses and a second administrative draft of the transportation technical study; and,

WHEREAS, The consultant requires an additional nine months to complete the work due to the complexity of the environmental review, which has included additional analysis and evaluation of some of the tasks in the scope of work; and,

WHEREAS, The environmental review will assist the SFMTA in the implementation of transportation projects in and around the Glen Park Community; now therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute Amendment Two to Contract CS-148, Glen Park Community Plan Environmental Impact Analysis and Transportation Feasibility Study, with PBS&J, to extend the contract from March 3, 2011 through December 31, 2011, with no change to the contract amount; and be it

FURTHER RESOLVED, That approval of Amendment Two is subject to approval of the contract by the Civil Service Commission.

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

_____
Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

Amendment Two to Agreement between the City and County of San Francisco and PBS&J

CS 148 -Glen Park Community Plan Environmental Impact Analysis and Transportation Feasibility Study

This Amendment is made this _____day of _____, 2011 in the City and County of San Francisco, State of California, by and between: PBS&J 475 Sansome Street, Suite 2000, San Francisco, CA 94111 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA") (collectively, the "Parties").

Recitals

A. On or about December 3, 2008, City and Contractor entered into Contract No. CS-148 to conduct the Glen Park Community Plan Environmental Impact Analysis and Transportation Feasibility Report ("Agreement").

B. The Agreement was amended on October 19, 2010 to include additional scenario analyses and a second administrative draft of the transportation technical study as part of the scope of work.

C. The Parties wish to extend the Agreement by ten months due to the necessity for additional analysis and review of some of the tasks.

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

1. Section 2 (Term of the Agreement) of the Agreement is amended to read as follows:

Term of the Agreement

2. Subject to Section 1, the term of this Agreement shall be two (2) years and ten (10) months from the Effective Date of the Agreement.

3. Effective Date. The modification set forth above shall be effective on and after the date of this Amendment.

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

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

CITY	CONTRACTOR
Municipal Transportation Agency _____ Nathaniel P. Ford Sr. Executive Director/CEO Approved as to Form: Dennis J. Herrera City Attorney By _____ Robin M. Reitzes Deputy City Attorney SFMTA Board of Directors Resolution No. _____ Dated: _____ Attest: _____ Secretary, SFMTA Board of Directors	PBS&J _____ Thomas Biggs PBS&J Vice President, California Transportation 475 Sansome Street, Suite 2000 San Francisco, CA 94111 City vendor number: 57282

THIS PRINT COVERS CALENDAR ITEM NO. : 10.4

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute the Second Amendment to the Management Agreement with Five Star Parking for Management of the Golden Gateway Garage to extend the term of the existing month-to-month Agreement through February 29, 2012, with no change to the contract amount, and approving and authorizing the Executive Director/CEO to execute the Assignment and Assumption Agreement assigning Five Star Parking's rights, duties and obligations under the Management Agreement, as amended, to Ampco System Parking.

SUMMARY:

- The City entered into a management agreement ("the Agreement"), commencing on March 1, 2002, for a term of six years, with Five Star Parking/Elite Parking for the operation of the Golden Gateway Garage ("the Garage").
- The parties entered into a First Amendment to the Agreement dated July 1, 2007, which, among other revisions, exercised SFMTA's option to extend the term of the Agreement through February 29, 2009.
- Subsequently, Five Star Parking continued to operate the Garage on a month-to-month basis until November, 2010, at which time Five Star was acquired by Ampco System Parking. Ampco is currently operating the Garage.
- Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to execute the Second Amendment to the Agreement, which would extend its term through February 29, 2012, on a month-to-month basis, and approve and authorize the Executive Director to execute the Assignment and Assumption Agreement that would assign Five Star's rights, duties and obligations under the Agreement to Ampco System Parking.

ENCLOSURES:
1. SFMTAB Resolution
2. Second Amendment to Management Agreement
3. Assignment and Assumption Agreement

APPROVALS: **DATE**

DIRECTOR OF DIVISION
PREPARING ITEM _____ _____

FINANCE _____ _____

EXECUTIVE DIRECTOR/CEO _____ _____

SECRETARY _____ _____

ADOPTED RESOLUTION
BE RETURNED TO____Amit M. Kothari_____

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

This item requests that the Board of Directors authorize the Executive Director/CEO to execute the Second Amendment to the Management Agreement with Five Star Parking ("Five Star") for the management of the Golden Gateway Garage, and approve and authorize the Executive Director/CEO to execute the Assignment and Assumption Agreement assigning Five Star's rights, duties and obligations under the Management Agreement to Ampco System Parking.

GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

Goal 2: System Performance – To get customers where they want to go, when they want to be there
Objective 2.5: Manage parking supply to align with SFMTA and community goals

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

DESCRIPTION

The Golden Gateway Garage is located at 250 Clay Street and includes approximately 1,095 parking spaces. The Garage supports the parking needs of commuters, visitors and residents in the Financial District.

Following a competitive solicitation process, the City awarded a management contract for operation of the Golden Gateway Garage to the joint venture Five Star Parking/Elite Parking. This Agreement had a commencement date of March 1, 2002. The original expiration date for the Agreement was February 29, 2008.

The parties amended the Agreement in 2007 to make a number of changes, including exercising SFMTA's option to extend the term of the Agreement for one year. This First Amendment was dated July 1, 2007 and extended the term of the Agreement through February 28, 2009. The joint venture between Five Star Parking and Elite Parking terminated on November 14, 2007, and Five Star continued on as the sole operator of the Garage. Five Star continued to operate the Garage on a month-to-month basis following the expiration of the Agreement, until November 2010.

In November 2010, Five Star was acquired by Ampco System Parking ("Ampco"). Ampco has executed an efficient transition of management and is now operating the Garage. Ampco has requested that the City consent to the assignment of the Agreement from Five Star to Ampco.

Staff recommends approval of a Second Amendment to the Agreement in order to memorialize the intention of the parties that the terms and conditions of the Agreement be extended through February 29, 2012, on a month-to-month basis.

Under the terms of the existing Agreement, any assignment of the Agreement requires the approval of the SFMTA Board of Directors. Accordingly, staff recommends that the Board of Directors approve, and authorize the Executive Director/CEO to execute, the Assumption and Assignment Agreement approving assignment of the Agreement from Five Star to Ampco. The Assumption and Assignment Agreement assigns Five Star's rights, duties, and obligations under the Agreement as modified by the First and Second Amendments to Ampco, and contains Ampco's acceptance of these terms.

The City Attorney's Office has reviewed this report.

ALTERNATIVES CONSIDERED

Staff considered the alternative of issuing a Request For Proposals (RFP) that would eventually result in a new management agreement for operation of the Garage. However, such a solicitation would take several months to implement, and the SFMTA already has a solicitation underway seeking proposals for management of 13 SFMTA garages (including the Golden Gateway Garage) overseen by Off-Street Parking. Since this process is already underway, pursuing a separate solicitation for only the Golden Gateway Garage was determined to be an inefficient and undesirable option.

FUNDING IMPACT

Approval of this request will assign an existing contract from Five Star Parking to Ampco System Parking. The operational budget of the Garage will not change. Therefore, there is no funding impact on the FY 2010-2011 adopted budget to this item.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Civil Service Commission has approved the proposed Second Amendment to the Agreement. No other approvals are required.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize the Executive Director/CEO to execute the Second Amendment to the Management Agreement with Five Star Parking for management of the Golden Gateway Garage and approve and authorize the Executive Director/CEO to execute the Assignment and Assumption Agreement assigning Five Star's rights duties and obligations under the Agreement to Ampco.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The City entered into a Management Agreement ("the Agreement") commencing on March 1, 2002 with Five Star Parking/Elite Parking for the operation of the Golden Gateway Garage; and

WHEREAS, The parties entered into the First Amendment to the Agreement effective July 1, 2007, which extended the term of the Agreement through February 28, 2009; and

WHEREAS, The joint venture between Five Star Parking and Elite Parking was terminated on November 14, 2007; and

WHEREAS, Subsequent to the expiration of the Agreement as amended, Five Star Parking continued to operate the Garage on a month-to-month basis; and

WHEREAS, Ampco System Parking completed the acquisition of Five Star Parking in November 2010 and now operates the Garage; and

WHEREAS, The San Francisco Municipal Transportation Agency and Ampco System Parking both desire for Ampco to continue to operate the Garage in accordance with the terms of the Agreement as amended; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute the Second Amendment to the Management Agreement with Five Star Parking for management of the Golden Gateway Garage; extending the terms of the existing month-to-month Agreement through February 29, 2012, with no change to the contract amount, and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves, and authorizes the Executive Director/CEO to execute, the Assignment and Assumption Agreement assigning Five Star Parking's rights, duties and obligations under the Management Agreement as amended to Ampco System Parking.

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

_____

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

Second Amendment to Management Agreement Between the City and County of San Francisco and Five Star Parking/Elite Parking for the Management of the Golden Gateway Garage

THIS AMENDMENT (this "Amendment"), is dated for convenience of the parties as of April ___, 2011, in San Francisco, California, by and between Five Star Parking ("Contractor "or "Manager"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

RECITALS

A. City and Contractor have entered into the Agreement (as defined below).

B. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period.

C. The joint venture between Elite Parking and Five Star Parking concerning management of the Golden Gateway Garage was terminated on November 14, 2007.

D. Approval for this Amendment was obtained when the Civil Service Commission approved Contract number PSC 3060-10/11 on March 1, 2011.

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

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

A. Agreement. The term "Agreement" shall mean the Agreement dated for convenience of the parties as August 9, 2001, between Contractor and Elite Parking as a joint venture, and City, as amended by the:

First Amendment, dated July 1, 2007

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

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

A. Section 1.1, "Summary of Terms" is amended in its entirety to read as follows:

1.1. Summary of Terms. The following is a summary of the basic terms of this Management Agreement. Each item below shall be deemed to incorporate all the terms set forth in this Management Agreement pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Management Agreement, the more specific provision shall control.

Reference Date:	August 9, 2001
Manager:	Five Star Parking/Elite Parking
Garage Name and Location:	Golden Gateway Garage 250 Clay Street San Francisco, CA 94111
Term: (Section 4.1)	Commencement Date: March 1, 2002 Expiration Date: February 29, 2012.
Management Fee: (Section 5.1)	$3000 per Month, plus $6,000 annual fee if annual revenue goals met, commencing July 1, 2007.
Security Deposit: (Section 10.3)	$20,000 (Twenty Thousand Dollars)
Subcontracting Goals: (Section 21.17)	The MBE/WBE subcontracting participation goal shall be ten percent (10%).
Notice Address of City: (Section 19.1)	San Francisco Municipal Transportation Agency One South Van Ness Avenue, Seventh Floor San Francisco, California 94103 Attention: Director of Finance
With copy to:	Amit Kothari, P.E. Director of Off Street Parking San Francisco Municipal Transportation Agency One South Van Ness Avenue, Third Floor San Francisco, California 94103
Notice Address of Manager: (Section 19.1)	Five Star Parking 515 S. Flower Street, Suite 3200 Los Angeles, CA 90071
Key Contact for Manager:	Gary Gower Chief Financial Officer Five Star parking Telephone No.: (213) 781-3016 Cell No.: (213) 820-1487
Alternate Contact:	Gary Gower Chief Financial Officer Five Star Parking Telephone No.: (213) 784-3016 Cell No.: (213) 820-1487
Alternate Contact:	John Day, Esq. Telephone No.: (213) 784-3014 Cell No.: (323) 793-6588

B. Section 4. Section 4, "Term of Management Agreement," is hereby amended by amending Section 4.2 to read as follows:

4.2 Extension.

The parties agree that the term of the Agreement shall be extended until February 29, 2012 at 11:59 p.m., unless sooner terminated as provided herein.

C. Submitting False Claims; Monetary Penalties. Section 21.20 is replaced in its entirety to read as follows:

21.20 Submitting False Claims; Monetary Penalties.

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at http://www.municode.com/Library/clientCodePage.aspx?clientID=4201. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

D. Requiring Minimum Compensation for Covered Employees. Section 7.8 is replaced in its entirety to read as follows:

7.8 Requiring Minimum Compensation for Covered Employees.

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is

required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

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

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

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

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

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

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such

breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

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

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

E. Requiring Health Benefits for Covered Employees. Section 7.9 is replaced in its entirety to read as follows:

7.9 Requiring Health Benefits for Covered Employees.

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

F. Notice Requirements. Section 19 is amended as follows to update contact information for Five Star Parking:

MANAGER: Five Star Parking
515 S. Flower Street, Suite 3200
Los Angeles, CA 90071
Attn: Chief Financial Officer & General Counsel

G. First Source Hiring Program. Section 21.21 is replaced in its entirety to read as follows:

21.21 First Source Hiring Program

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

b. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of

the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

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

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

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for

hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

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

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

(6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

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

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

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

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

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

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

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

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

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

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

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after March 1, 2009.

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

5. Approval by Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement may be delivered by telephone facsimile or by PDF delivered by email.

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

CITY	**CONTRACTOR**
San Francisco **Municipal Transportation Agency** _____ Nathaniel P. Ford Sr. Executive Director/CEO Approved as to Form: Dennis J. Herrera City Attorney By: _____ David A. Greenburg Deputy City Attorney SFMTA Board of Directors Resolution No. _____ Dated: _____ _____ Secretary, SFMTA Board	**Five Star Parking** _____ Gary Gower Chief Financial Officer City vendor number: 59696 01

CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT (this "Assignment"), dated for convenience of the parties as April _____, 2011 of the Agreement between the City and County of San Francisco ("City"), acting by and through its Municipal Transportation Agency, and Five Star Parking/Elite Parking for management of the Golden Gateway Garage ("Agreement") is the authorization and consent of the City of the Assignment of the Agreement from Five Star Parking ("Assignor) to Ampco System Parking ("Assignee").

RECITALS

WHEREAS, In or about February 2002, City and Assignor entered into an Agreement for the management of the Golden Gateway Garage, a copy of which is attached at Appendix A; and

WHEREAS, Said Agreement has been previously modified twice and copies of these modifications are attached at Appendix A; and

WHEREAS, The joint venture between Five Star Parking and Elite Parking was terminated on November 14, 2007; and

WHEREAS, Assignor has acquired Assignee; and

WHEREAS, The acquisition of Assignee by Assignor is a cardinal change under the Agreement necessitating a formal assignment of contract from Assignor to Assignee and requiring the City's approval and consent; and

WHEREAS, Assignor is a party to the Agreement (as defined below); and

WHEREAS, Assignor desires to assign the Agreement, and Assignee desires to assume the Agreement, each on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Assignment, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Assignor and Assignee agree as follows:

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

(a) **Agreement**. The term "Agreement" shall mean the Agreement dated August 9, 2001 between Assignor and the City and County of San Francisco, a municipal corporation ("City"). The term "Agreement" shall include any amendments or modifications set forth in Appendix A attached hereto and made a part hereof.

(b) **Effective Date**. "Effective Date" shall mean the date the San Francisco Municipal Transportation Agency Board of Directors and the SFMTA Executive Director/CEO approve this Assignment.

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

2. **Assignment**. Assignor hereby assigns, transfers and conveys to Assignee all of Assignor's right, title and interest in and to the Agreement and all of Assignor's duties and obligations thereunder, to the extent arising on or after the Effective Date.

3. **Assumption**. Assignee hereby accepts the assignment transfer and conveyance set forth in Section 2 and agrees to perform all of Assignor's duties and obligations under the Agreement, to the extent arising on or after the Effective Date.

4. **Mutual Indemnities**

(a) **Assignor**. Assignor shall indemnify, defend and protect Assignee, and hold Assignee harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of (a) any failure of Assignor to convey its interest pursuant to Section 2, free and clear of all third-party liens, claims or encumbrances or (b) any breach by Assignor of the Agreement or any other failure to perform or observe any of the duties or obligations of Assignor thereunder, to the extent such breach or failure arises prior to the Effective Date.

(b) **Assignee**. Assignee shall indemnify, defend and protect Assignor, and hold Assignor harmless from and against, any and all liabilities, losses, damages, claims, costs or expenses (including attorneys' fees) arising out of any breach by Assignee of the Agreement or any other failure to perform or observe any of the duties or obligations thereunder assumed by Assignee pursuant to this Assignment.

5. **Governing Law**. This Assignment shall be governed by the laws of the State of California, without regard to its conflict of laws principles.

6. **Headings**. All section headings and captions contained in this Assignment are for reference only and shall not be considered in construing this Assignment.

7. **Entire Agreement**. This Assignment sets forth the entire agreement between Assignor and Assignee relating to the Agreement and supersedes all other oral or written provisions.

8. **Further Assurances**. From and after the date of this Assignment, Assignor and Assignee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the conveyance contemplated by this Assignment or as may be required by City.

9. **Severability**. Should the application of any provision of this Assignment 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 Assignment 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 Assignor, Assignee and City.

10. **Successors; Third-Party Beneficiaries**. Subject to the terms of the Agreement, this Assignment shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Except as set forth in Section 12, nothing in this Assignment, whether express or implied, shall be construed to give any person or entity (other than City and the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Assignment or any covenants, conditions or provisions contained herein.

11. **Notices**. All notices, consents, directions, approvals, instructions, requests and other communications regarding this Assignment or the Agreement shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below). All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time Assignor, Assignee or City may designate a new address for purposes of this Section by notice to the other signatories to this Assignment.

If to Assignor:

FIVE STAR PARKING,
a California partnership
Gary Gower, Chief Financial Officer
515 S. Flower Street, Suite 3200
Los Angeles, CA 90071

If to Assignee:

AMPCO SYSTEM PARKING,
a California corporation
Mark E. Muglich, President
1459 Hamilton Avenue
Cleveland, Ohio 44114

If to City:

Amit M. Kothari, P.E.
Director of Off-Street Parking
San Francisco Municipal Transportation Agency
San Francisco, CA 94103

12. **Consent of City; No Release of Assignor; Waivers.** Each of Assignor and Assignee acknowledges that the prior written consent of City to this Assignment is required under the terms of the Agreement. City shall be a third party beneficiary of this Assignment (other than Section 4) and shall have the right to enforce this Assignment. Neither this Assignment nor the consent of City set forth below shall release Assignor in whole or in part from any of its obligations or duties under the Agreement if Assignee fails to perform or observe any such obligation or duty. Assignor has entered into this Assignment and obtained such consent of City based solely upon Assignor's independent investigation of Assignee's financial condition and ability to perform under the Agreement, and Assignor assumes full responsibility for obtaining any further information with respect to Assignee or the conduct of its business after the date of this Assignment. Assignor waives any right to require City to (a) proceed against any person or entity including Assignee, (b) proceed against or exhaust any security now or hereafter held in connection with the Agreement, or (c) pursue any other remedy in City's power. Assignor waives any defense arising by reason of any disability or other defense of Assignee or any other person, or by reason of the cessation from any cause whatsoever of the liability of Assignee or any other person. Assignor shall not have and hereby waives any right of subrogation to any of the rights of City against Assignee or any other person and Assignor waives any right to enforce any remedy of Assignor against Assignee (including, without limitation, Section 4(b)) or against any other person unless and until all obligations to City under the Agreement and this Assignment have been paid and satisfied in full. Assignor waives any benefit of any right to participate in any collateral or security whatsoever now or hereafter held by City with respect to the obligations under the Agreement. Assignor authorizes City, without notice or demand and without affecting Assignor's liability hereunder or under the Agreement to: (i) renew, modify or extend the time for performance of any obligation under the Agreement; (ii) take and hold security for the payment of any obligation under the Agreement and exchange, enforce, waive and release such security; and (iii) release or consent to an assignment by Assignee of all or any part of the Agreement.

13. **Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement may be delivered by telephone facsimile or by PDF delivered by email

IN WITNESS WHEREOF, Assignor and Assignee have each duly executed this Assignment as of the date first referenced above.

ASSIGNOR	ASSIGNEE
FIVE STAR PARKING **59696 01**	**AMPCO SYSTEM PARKING** **24010 02**
By _____ Gary Gower Chief Financial Officer	By _____ Rod Howery Regional Vice President _____

Subject to Section 12 of this Assignment, City hereby consents to the assignment and assumption described in Sections 2 and 3 of this Assignment.

CITY

Approved:

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

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
David A. Greenburg
Deputy City Attorney

SFMTA Board of Directors

Resolution No.:_____
Dated:_____

_____
Secretary, SFMTA Board

APPENDIX A

Amendments

1. First Amendment to the Management Agreement for the Golden Gateway Garage, dated July 1, 2007.

2. Second Amendment to the Management Agreement for the Golden Gateway Garage, dated April 2011.

THIS PRINT COVERS CALENDAR ITEM NO. : 10.5

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Approving extensions of the current management agreements between the operators and non-profit corporations for operation of the Fifth & Mission Garage, the Union Square Garage, the Ellis-O'Farrell Garage and the Japan Center Garage on a month-to-month basis.

SUMMARY:

- With oversight by the San Francisco Municipal Transportation Agency (SFMTA), four non-profit garage corporations manage four City-owned parking facilities through direct agreements with private operators. Currently, all four agreements have expired and are on a month-to-month basis.
- The Uptown Parking Corporation is currently reviewing proposals received in response to its Request For Proposals (RFP) for management of the Union Square and Sutter-Stockton garages advertised in October 2010. Each of the remaining three non-profit corporations is in the process of developing an RFP which will result in new management agreements for their respective garages by June 2012. To continue garage operations during the RFP process, all four corporations have requested extensions to their current month-to-month contracts.
- Approval by the SFMTA Board of Directors is necessary to extend any month-to-month contract beyond 12 months from the date of expiration.

ENCLOSURES:
1. SFMTAB Resolution

APPROVALS: **DATE**

DIRECTOR OF DIVISION
PREPARING ITEM _____ _____

FINANCE _____ _____

EXECUTIVE DIRECTOR/CEO _____ _____

SECRETARY _____ _____

ADOPTED RESOLUTION
BE RETURNED TO Amit M. Kothari

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

The purpose of this report is to seek approval from the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors of requests from the Downtown Parking Corporation, the Uptown Parking Corporation, the Ellis-O'Farrell Parking Corporation and the Japan Center Garage Corporation for month-to-month extensions, for up to an additional 12 months, of the existing management agreements between those corporations and the operators of the Fifth & Mission Garage, the Union Square Garage, the Ellis-O'Farrell Garage and the Japan Center Garage, respectively.

GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

Goal 2: System Performance – To get customers where they want to go, when they want to be there
Objective 2.5: Manage parking supply to align with SFMTA and community goals

Goal 3: External Affairs/Community Relations – To improve the customer experience, community value and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry
Objective 3.1: Improve economic vitality by growing relationships with businesses, community, and stakeholder groups

Goal 4: Financial Capacity – To ensure financial stability and effective resource utilization
Objective 4.1: Increase revenue by 20 % or more by 2012 by improving collections and identifying new sources
Objective 4.2: Ensure efficient and effective use of resources

DESCRIPTION

Through direct agreements with private parking operators, four non-profit corporations, the Downtown Parking Corporation, the Uptown Parking Corporation, the Ellis-O'Farrell Parking Corporation and the Japan Center Garage Corporation manage the Fifth & Mission Garage, the Union Square Garage, the Ellis-O'Farrell Garage and the Japan Center Garage, respectively. These corporations have requested approval to continue these contracts on a month-to-month basis for up to an additional 12 months. These extensions will be at the current contract terms without any changes.

In April 2010, the SFMTA released a Request For Proposals (RFP) soliciting proposals from qualified parking operators to manage 13 parking facilities. The RFP is currently on hold and does not include any facilities managed by non-profit corporations. Following the SFMTA's RFP model, the Uptown Parking Corporation advertised an RFP in October 2010 and anticipates awarding a contract to the highest ranking proposer by summer 2011. Each of the remaining three non-profit corporations is in the process of developing an RFP, based on the SFMTA's

RFP. Since current contracts with the operators have expired, all four corporations need to extend their agreements on a month-to-month basis, and under the terms of these agreements, any extensions beyond 12 months from the original expiration date require SFMTA approval.

Additional details are provided in the following sections:

Fifth & Mission Garage
The Downtown Parking Corporation has requested approval of a month-to-month extension of the current agreement with Ampco System Parking for up to an additional 12 months, through May 31, 2012, with no change in the current contract terms. During this extension all terms and conditions remain the same, including the $4,600 monthly management fee. All operating expenses are paid by the operator and reimbursed by the corporation.

Union Square Garage
The Uptown Parking Corporation has requested approval of a month-to-month extension of the current agreement with City Park for up to an additional 12 months, through June 30, 2012, with no change in the current contract terms. During this extension all terms and conditions remain the same, including the $4,166.66 monthly management fee. All operating expenses are paid by the operator and reimbursed by the corporation.

Ellis-O'Farrell Garage
The Ellis-O'Farrell Parking Corporation has requested approval of a month-to-month extension of the current agreement with Parking Concepts, Inc. for up to an additional 12 months, through April 30, 2012, with no change in the current contract terms. During this extension all terms and conditions remain the same, including the $3,333.33 monthly management fee. All operating expenses are paid by the operator and reimbursed by the corporation.

Japan Center Garage
The Japan Center Garage Corporation has requested approval of a month-to-month extension of the current agreement with Parking Concepts, Inc. for up to an additional 12 months, through June 30, 2012, with no change in the current contract terms. During this extension all terms and conditions remain the same, including the $3,000 monthly management fee. All operating expenses are paid by the operator and reimbursed by the corporation.

The non-profit corporations have indicated that their RFP process will be completed and new contracts will be awarded within the one-year extension period. Staff supports the contract extension request from each corporation.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

It is necessary to approve the extension of these contracts to continue operating and managing these parking garages and to continue to meet the parking needs of customers.

FUNDING IMPACT

The requests to extend the current management agreements will allow the corporations to complete the RFP process and to execute new contracts with the selected vendors during FY2011-2012. Adequate funds to conduct the RFP process are included in the corporations' FY2011-2012 Operating Budgets.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required for the extensions requested by the corporations.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors adopt the attached resolution approving extensions by the Downtown Parking Corporation, the Uptown Parking Corporation, the Ellis-O'Farrell Parking Corporation and the Japan Center Garage Corporation of Operating Agreements for the management of the Fifth & Mission Garage, the Union Square Garage, the Ellis-O'Farrell Garage and the Japan Center Garage, respectively, on a month-to-month basis for an additional 12 months.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Downtown Parking Corporation oversees the operation of the Fifth & Mission Garage; the Uptown Parking Corporation oversees the operation of the Union Square Garage; the Ellis-O'Farrell Parking Corporation oversees the operation of the Ellis-O'Farrell Garage; and the Japan Center Garage Corporation oversees the operation of the Japan Center Garage on behalf of the City and County of San Francisco under separate lease agreements with the City; and

WHEREAS, The four corporations manage these garages through direct agreements with individual parking operators; and,

WHEREAS, The current contracts with the operators have expired and are continuing on a month-to-month basis; and,

WHEREAS, Each corporation intends to complete a solicitation process including a Request For Proposals (RFP) that is anticipated to result in new management contracts for each of the respective garages within 12 months; and,

WHEREAS, The existing agreements require, and the corporations have requested, approval from the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors to extend the existing operator contracts on a month-to-month basis for up to an additional 12 months; and,

WHEREAS, Staff supports the extension requests that will allow the corporations to complete the RFP process and to execute new management contracts for the garages; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors approves the extension of the operating agreement between the Downtown Parking Corporation and Ampco System Parking for the management of the Fifth & Mission Garage on a month-to-month basis for up to an additional 12 months, through May 31, 2012; and, be it further

RESOLVED, That the SFMTA Board of Directors approves the extension of the operating agreement between the Uptown Parking Corporation and City Park for the management of the Union Square Garage on a month-to-month basis for up to an additional 12 months, through June 30, 2012; and, be it further

RESOLVED, That the SFMTA Board of Directors approves the extension of the operating agreement between the Ellis-O'Farrell Parking Corporation and Parking Concepts, Inc. for the management of the Ellis-O'Farrell Garage on a month-to-month basis for up to an additional 12 months, through April 30, 2012; and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves the extension of the operating agreement between the Japan Center Garage Corporation and Parking Concepts, Inc. for the management of the Japan Center Garage on a month-to-month basis for up to an additional 12 months, through June 30, 2012.

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

_____
Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.7

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:
Authorizing the Executive Director/CEO to execute the Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District for Payment for Transfer Trips (Feeder Agreement), for the term from July 1, 2009 to June 30, 2010.

SUMMARY:

- The SFMTA and BART provide an integrated transit network in San Francisco. The SFMTA provides extensive transit services to BART stations, allowing customers to use transit to reach locations away from BART stations.
- BART pays a lump sum to the SFMTA for the provision of feeder bus and rail services to BART stations under the Feeder Agreement based on the percentage change in sales tax revenues BART collected during the two previous years.
- If the Feeder Agreement for Fiscal Year 2010 is approved, the payment from BART to the SFMTA would be $2,641,151, a 9 percent decrease from the previous year.
- Between Fiscal Years 2009 and 2011, feeder payments are expected to decrease 18 percent. The Fiscal Year 2011 payment is projected to be less than what it was in fiscal year 2001, despite cumulative inflation of around 30 percent.
- The SFMTA will be proposing a change to the Feeder Agreement methodology in the upcoming year and will attempt to link the methodology to service levels with adjustments for inflation, instead of sales taxes, which have no correlation to service.

ENCLOSURES:
1. SFMTAB Resolution
2. Agreement with the San Francisco Bay Area Rapid Transit District for Payment for Transfer Trips (Feeder Agreement)

APPROVALS: **DATE**
DIRECTOR OF DIVISION
PREPARING ITEM _____ _____

FINANCE _____ _____

EXECUTIVE DIRECTOR/CEO _____ _____

SECRETARY _____ _____

ADOPTED RESOLUTION
BE RETURNED TO____Sonali Bose_____

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

This item requests authorization for the Executive Director/CEO to execute the Feeder Agreement between the City and BART, for the term from July 1, 2009 to June 30, 2010.

GOALS

By providing financial support for connecting Muni transit service to BART stations, the renewal of the Feeder Agreement would assist the SFMTA in meeting the following Strategic Goals:

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

DESCRIPTION

Background

The SFMTA and BART provide an integrated transit network in San Francisco. The SFMTA provides extensive transit services to BART stations in San Francisco and Daly City, allowing customers to use transit to reach locations away from BART stations. The SFMTA and BART have multiple agreements relating to the payment for and provision of services within San Francisco. The two major ones are:

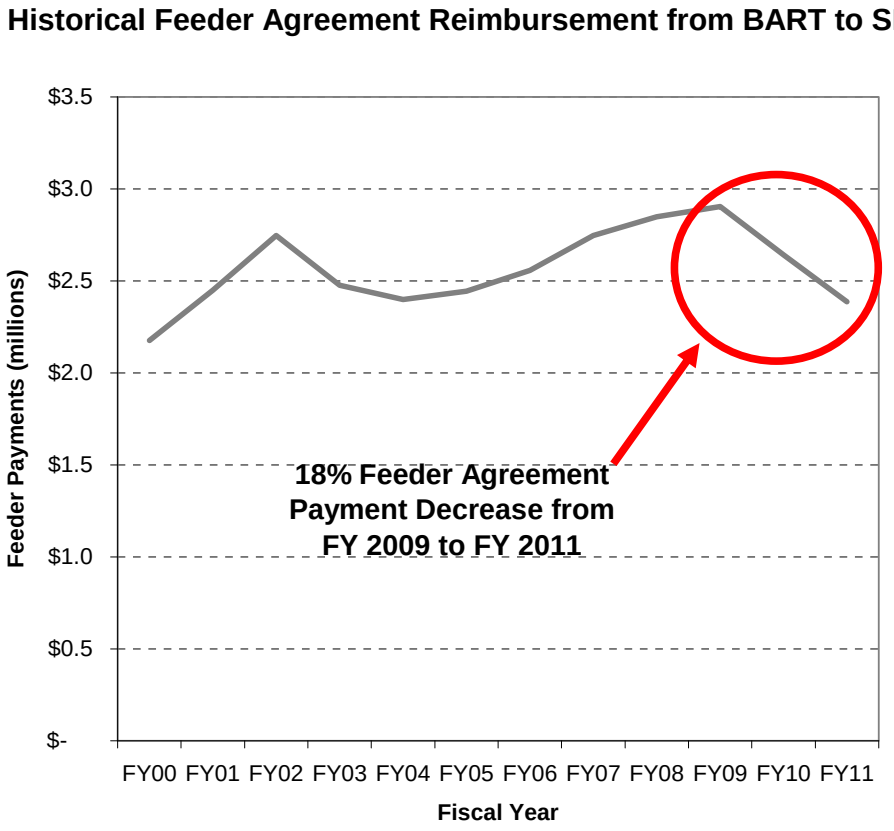
(a) Adult Fast Pass® Agreement – Customers who have purchased a Muni Adult Fast Pass® can ride BART within San Francisco as well as Muni. Currently, the SFMTA reimburses BART $1.02 per trip taken. A new contract pending before the San Francisco Board of Supervisors will raise the reimbursement rate to $1.19 and tie subsequent rate increases to future fare increase policies adopted by the BART Board. The SFMTA expects to pay BART at least $10 million per year under the new contract.
(b) Feeder Agreement – BART pays a lump sum to the SFMTA for the provision of feeder bus and rail services to BART stations under the Feeder Agreement. Currently, this amount is approximately $2.6 million.

BART collects a 0.5% sales tax in the three counties that form the BART District (San Francisco, Alameda and Contra Costa). One-quarter of this amount is divided evenly between the SFMTA and AC Transit, or the equivalent of a 0.0625% sales tax for those two agencies. Based on total BART sales tax revenues of $167 million in fiscal year 2010, the SFMTA and AC Transit each collected approximately $21 million from this revenue source.

Feeder Agreement Formula and Revenues

Historically, BART has paid the SFMTA to offset some of the costs associated with providing Muni feeder service to BART stations. Based on past agreements, BART adjusts its payments annually based upon the percentage change in its sales tax revenues during the previous two years. This formula bears no relationship to ridership or the amount of service provided, nor is there an adjustment for inflation.

Table 1 and the accompanying chart show the historical fluctuation in feeder payments over the past decade. For Fiscal Year 2010, the feeder payment is $2,641,151, a decrease of 9 percent from the previous year and less than the amount from fiscal year 2002. BART projects an additional 10 percent decrease for the Fiscal Year 2011 feeder payment. Thus, under the current formula, payments from BART to the SFMTA will have decreased by 18 percent over two years. In fact, the Fiscal Year 2011 Feeder Agreement payment will be less than that in fiscal year 2001 – despite cumulative inflation of around 30 percent.



(Document accessibility note: Data contained in the chart above is replicated in the following table)

Table 1: Historical Feeder Agreement Reimbursement from BART to SFMTA

Fiscal Year	Feeder Payment	Change from Previous Year
FY00	$2,175,648	5%
FY01	$2,449,471	13%
FY02	$2,746,668	12%
FY03	$2,476,164	-10%
FY04	$2,399,733	-3%
FY05	$2,444,526	2%
FY06	$2,556,678	5%
FY07	$2,747,117	7%
FY08	$2,849,241	4%
FY09	$2,904,092	2%
FY10	**$2,641,151**	**-9%**
FY11 (projected)	$2,386,535	-10%

The methodologies used to calculate both the Feeder Agreement and the Fast Pass Agreement, which the Board recently approved, have been in place for over a decade and do not reflect the appropriate nexus between the level of services and the required payment. Thus, at the beginning of 2010, the SFMTA initiated negotiations with BART on both agreements in an attempt to revise the methodologies. The SFMTA had hoped to renegotiate the Feeder Agreement methodology in conjunction with changes to the Fast Pass Agreement and bring both agreements to the SFMTA Board for approval. However, due to the length of Fast Pass Agreement negotiations process, the SFMTA and BART have been unable to discuss the changes to the methodology of the Feeder Agreement.

Given that FY 2010 has already closed and FY 2011 is nearing completion, the Board is asked to approve the old methodology retroactively for FY 2010 in this Agreement and the same methodology for FY 2011 so that SFMTA can receive payments from BART. The FY 2011 agreement will be presented to the Board at an upcoming meeting.

SFMTA will begin negotiations with BART on revising the Feeder Agreement methodology to more accurately reflect the nexus between the service level and the payments for FY 2012.

ALTERNATIVES CONSIDERED

The alternative to the proposed Agreement would be to initiate new discussions with BART to determine a formula that would more accurately reflect the costs of providing Muni feeder service. However, further negotiations would delay the receipt of $2,641,151 from BART, unless both parties agree to execute this Agreement and then retroactively apply any future formula changes.

FUNDING IMPACT

This contract will provide for a payment of $2,641,151 from BART to the SFMTA to offset some of the costs associated with providing feeder services to BART stations from July 1, 2009 through June 30, 2010.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office and the Contract Compliance Office have reviewed this Calendar Item and contract. This Agreement will also require approval from the San Francisco Board of Supervisors because revenues under the contract exceed $1 million.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize the Executive Director/CEO to execute the Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District for Payment for Transfer Trips (Feeder Agreement), for the term from July 1, 2009 to June 30, 2010.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco Bay Area Rapid Transit District (BART) provide an integrated transit network in San Francisco; and,

WHEREAS, The SFMTA provides extensive transit services to BART stations, allowing customers to use transit to reach locations away from BART stations; and,

WHEREAS, BART pays a lump sum to the SFMTA for the provision of feeder bus and rail services to BART stations under the Feeder Agreement based on the percentage change in sales tax revenues BART collected during the two previous years; and,

WHEREAS, For Fiscal Year 2010 the Feeder Agreement payment from BART to the SFMTA would be $2,641,151, a 9% decrease from the previous year and less than Fiscal Year 2002 levels; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute the Agreement between the City and County of San Francisco and the San Francisco Bay Area Rapid Transit District for Payment of Transfer Trips (Feeder Agreement), for the term from July 1, 2009 to June 30, 2010; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to negotiate future feeder agreements with BART using a methodology that more accurately reflects the costs to the SFMTA of providing the feeder service and is subject to inflationary adjustments; and be it

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

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

_____
Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO

AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

FOR PAYMENT FOR TRANSFER TRIPS (FEEDER AGREEMENT)

This Agreement is entered into this ____day of _____, 2011 (the "Effective Date") by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("the City"), acting by and through its Municipal Transportation Agency ("SFMTA"), and the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("BART") (collectively, the "Parties").

RECITALS

1. The City is a municipal corporation chartered under the Constitution of the State of California and empowered by the Constitution and by its charter, among other matters, to operate the San Francisco Municipal Railway ("Muni") through the SFMTA.

2. BART is a rapid transit district duly created and acting under the laws of the State of California, operating a regional rapid transit system for the San Francisco Bay Area.

3. Both the City and BART operate transit services in San Francisco and pursuant to Section 29142.4(a) of the Public Utilities Code of the State of California are participating members of a council established by the Metropolitan Transportation Commission to coordinate routes, schedules, fares, and transfers within San Francisco.

4. The City and BART participate with the Metropolitan Transportation Commission in developing an annual Regional Financial Plan to which this Agreement is, in part, responsive.

5. BART has determined that a payment for feeder service to the City will facilitate the coordination of transit service, furnish an incentive for providing enhanced feeder service between Muni and BART stations in San Francisco, and therefore encourage transit use and improve the quality of transit service.

6. It is the intention of BART and the City to enter into an Agreement providing for payment by BART to the City for enhanced feeder service between Muni and BART stations in San Francisco.

7. It is the intention of the City and BART that this Agreement specify the terms under which the Fiscal Year 2010 ("FY10") payment will be made.

AGREEMENT

NOW, THEREFORE, the City and BART, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

SECTION I. PAYMENT

1. The manner for establishing the feeder service payment between the City and BART has been determined by the City and BART within the context of the Regional Financial Plan. Under the Regional Financial Plan, the FY10 payment amount will be the Fiscal Year 2009 ("FY09") payment amount adjusted by the percentage change in BART sales tax revenue for the two years prior to FY10 (i.e., the percentage change between FY08 and FY09). BART sales tax revenues for FY09 were 9.05% lower than FY08 sales tax revenues. Therefore, the FY09 payment amount of Two Million, Nine Hundred Four Thousand, Ninety-Two Dollars ($2,904,092).is decreased by 9.05% and the FY10 payment will be Two Million, Six Hundred Forty-One Thousand, One Hundred Fifty-One Dollars ($2,641,151).

2. BART agrees to render payment to the City in the amount of Two Million, Six Hundred Forty-One Thousand, One Hundred Fifty-One Dollars ($2,641,151) within thirty (30) calendar days of the Effective Date.

SECTION II. REPORTING AND INFORMATION REQUIREMENTS

Within thirty (30) calendar days of the date that the City submits Muni's National Transit Database Reports (formerly MUNI's Section 15 Report) for FY09, the City will provide BART with the following data for the periods July 2008 through June 2009:

A. Actual operating cost of local service.
B. Actual passenger revenue for trips on Muni within the City and County of San Francisco.
C. The number of unlinked boardings (National Transit Database Reporting Information).

SECTION III. OTHER COSTS ASSOCIATED WITH AGREEMENT

The City and BART will each bear its own internal costs associated with administration of this Agreement including, without limitation, reporting, billing, accounting, and auditing costs.

SECTION IV. RECORDS AND AUDITS

BART will preserve and maintain, and the City or its authorized representatives will have the right to audit BART's accounts, records, and data regarding BART sales tax revenue and relevant cost accounting data for a period of three (3) years after the final payment under this Agreement. The City will preserve and maintain, and BART or its authorized representatives will have the right to audit the City's accounts, records, and data regarding collection and compilation of transit trip data and relevant cost accounting data for a period of three (3) years after the final payment under this Agreement. These documents will adhere to generally accepted accounting principles as required by the uniform system of accounts and records adopted by the State Controller pursuant to Section 99243 of the Public Utilities Code, and as required by Section 15 of the Urban Mass Transportation Administration Act of 1964, as amended. Pursuant to California Government Code Section 8546.7, the Parties to this Agreement will be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after the final payment under this Agreement. The City will provide BART, upon request, copies of its annual audits and such other reports and data as are routinely maintained, developed, or compiled as relate to transit trips for FY10.

SECTION V. TIME PERIOD AND CONDITION OF AGREEMENT

It is agreed and understood that there is no obligation under this Agreement on the part of BART to make any payment to the City for fiscal years other than FY10.

SECTION VI. GENERAL PROVISIONS

A. Responsibility:

The City will be solely responsible for the maintenance, safety, and operation of vehicles providing connecting feeder service to BART stations and for the training and supervision of all personnel involved in providing connecting feeder service to BART stations. The City will be responsible for the setting of transfer fares and the operation of all of the City's transit services connecting with BART stations. The City will secure any necessary approvals from City or State agencies for the placement of all bus stop signs, benches and shelters.

B. Notices:

All invoices, notices or other communications to either party by the other will be deemed given when made in writing and delivered or mailed to such party at their respective addresses as follows:

To BART:
BART
300 Lakeside Drive
P.O. Box 12688
Oakland, CA 94604-2688

Invoices: Ed Pangilinan
Assistant Controller
300 Lakeside Drive
P.O. Box 12688
Oakland, CA 94604-2688

All Other Notices:
General Manager
300 Lakeside Drive
P.O. Box 12688
Oakland, CA 94604-2688

To the City: Municipal Transportation Agency

One South Van Ness Avenue, Seventh Floor
San Francisco, CA 94103

Invoices: Sonali Bose
Chief Financial Officer
Municipal Transportation Agency
One South Van Ness Avenue, Eighth Floor
San Francisco, CA 94103

All Other Notices:
Nathaniel P. Ford Sr.
Executive Director/CEO
Municipal Transportation Agency
One South Van Ness Avenue, Seventh Floor
San Francisco, CA 94103

C. Indemnity:

The City agrees to indemnify, save harmless and defend BART, its officers, agents, and employees from legal liability of any nature or kind on account of any claim for damages to property or personal injuries to or death of person or persons incurred by reason of any act, or failure to act, of the City, its officers, agents, employees and subcontractors, or any of them, in performing any duties required by this Agreement, unless such claims arise out of the sole negligence of BART, its officers, agents, or employees.

BART agrees to indemnify, save harmless and defend the City, its officers, agents and employees from legal liability of any nature or kind on account of any claim for damages to property or personal injuries to or death of person or persons incurred by reason of any act, or failure to act, of BART, its officers, agents, employees and subcontractors, or any of them, in performing any duties required by this Agreement, unless such claims arise out of the sole negligence of the City, its officers, agents, or employees.

The foregoing provisions regarding indemnification are included pursuant to the provisions of Section 895.4 of the Government Code, and are intended by the parties to modify and supersede the otherwise applicable provisions of Chapter 21, Part 2, Division 3.6, Title I of the Government Code.

D. Compliance with ADA:

BART and the City acknowledge 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. Without limiting any other provision of this Agreement, BART and the City will provide the services specified in this Agreement in a manner that complies with the Americans With Disabilities Act (ADA) Title 24, and any and all other applicable federal, state, and local disability rights legislation. BART and the City agree not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Agreement and further agree that any violation of this prohibition on the part of BART and the City, their employees, agents or assigns will constitute a material breach of this Agreement.

SECTION VII. TERM OF THE AGREEMENT

This Agreement covers the period from July 1, 2009, through June 30, 2010.

SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

By: _____
Dorothy W. Dugger
General Manager

CITY AND COUNTY OF
SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

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

Authorized by MTA Board
Resolution No. 08-66
Dated: April 15, 2008

Attest:

_____
Roberta Boomer
Secretary, MTA Board

Board of Supervisors
Resolution No. _____
Dated: _____

Attest:

_____
Clerk of the Board

APPROVED AS TO FORM:
Office of the General Counsel

By: _____
Amelia Sandoval-Smith
Attorney, Office of the General Counsel

APPROVED AS TO FORM:
Dennis J. Herrera
City Attorney

By: _____
Robin M. Reitzes
Deputy City Attorney

THIS PRINT COVERS CALENDAR ITEM NO. : 10.8

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Office of the Deputy Executive Director

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute a Cooperative Agreement with the Bay Area Rapid Transit District (BART) for the reimbursement of costs incurred by BART related to its activities to accommodate Central Subway work at the BART Market Street tunnel and the BART Powell Street Station, in an amount not to exceed $5,000,000 and for a term not to exceed 10 years.

SUMMARY:

- SFMTA intends to perform activities at the existing BART Market Street Tunnels and Powell Street Station (the BART Facilities) to construct the Central Subway Project (CSP).
- BART has expended and will continue to expend staff time and other resources on CSP activities in and around the BART Facilities during design and construction of the CSP.
- SFMTA staff has negotiated a ten-year agreement with BART for the reimbursement of costs related to CSP design and construction activities. Project costs are estimated at $1,686,465 through Final Design of the CSP. BART project activities related to construction of the CSP will be estimated upon completion of Final Design and prior to start of construction. Costs under the agreement will not exceed $5 million.
- The Agreement sets forth respective duties and responsibilities of the parties during design review and permitting, the types of costs that will be reimbursed, and a process for dispute resolution.

ENCLOSURES:
1. SFMTAB Resolution
2. Central Subway Project Budget and Financial Plan
3. Cooperative Agreement

APPROVALS: **DATE:**

DEPUTY OF DIVISION PREPARING ITEM: _____ _____

FINANCE: _____ _____

EXECUTIVE DIRECTOR/CEO: _____ _____

SECRETARY: _____ _____

ADOPTED RESOLUTION BE RETURNED TO: Jessie Katz

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

The proposed resolution authorizes the Executive Director/CEO to execute an agreement with BART for reimbursement of its costs relating to work by the Central Subway project on BART facilities.

GOAL

The BART Cooperative Agreement is needed for the design and construction of the Project's Union Square/Market Street station and its tunnels. The Project is a critical transportation improvement linking neighborhoods in the southeastern part of San Francisco with the retail and employment centers in downtown and Chinatown, and is consistent with the SFMTA Strategic Plan in the following goals and objectives:

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

- Objective 1.3 Reduce emissions as required by SFMTA Clean Air Plan
- Objective 1.4 Improve accessibility across transit service
- Objective 1.5 Increase percentage of trip using more sustainable modes

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

- Objective 2.2 Ensure efficient transit connectivity and span of service
- Objective 2.4 Reduce congestion through major corridors

Goal 3 – External Affairs/Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry

- Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups
- Objective 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits
- Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life
- Objective 3.4 Enhance proactive participation and cooperatively strive for improved regional transportation

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

- Objective 4.2 Ensure efficient and effective use of resources

DESCRIPTION

Background:

The Project is the second phase of SFMTA's Third Street Light Rail Project, and will add 1.67 miles of light rail track north from the northern end of the new Third Street Light Rail at Fourth and King Streets to a terminal in Chinatown. The Project will serve regional destinations, including Chinatown (the most densely populated area of the country that is not currently served by modern rail transportation), Union Square, Moscone Convention Center, Yerba Buena, SoMa and AT&T Park. The Project will also connect BART and Caltrain (the Bay Area's two largest regional commuter rail services), serve a low auto ownership population of transit customers, increase transit use and reduce travel time, reduce air and noise pollution, and provide congestion relief. The public interest and necessity require the construction and operation of the Project to achieve such benefits.

The Project will include twin bore, subsurface tunnels to connect the Project's three subway stations and provide direct rail service to Union Square and Chinatown. The Project has been planned and located in a manner that will be most compatible with the greatest public good and the least private injury.

A draft Supplemental Environmental Impact Statement, Environmental Impact Report was issued for the Project on October 17, 2007. The San Francisco Planning Commission certified the Final SEIS/SEIR as accurate and in compliance with CEQA, NEPA and Chapter 31 of the San Francisco Administrative Code on August 7, 2008. On August 19, 2008, the SFMTA Board of Directors adopted Resolution No. 08-150, adopting CEQA Findings, a Statement of Overriding Considerations for the Project, and the Mitigation Monitoring and Reporting Plan for the Project. On September 16, 2008, the Board of Supervisors unanimously rejected an appeal of the Planning Commission's certification of the SEIS/SEIR. A notice of determination was filed on September 18, 2008. The Record of Decision was issued by the Federal Transit Administration (FTA) on November 26, 2008. None of the circumstances in which further environmental review would be required under CEQA or NEPA are present.

Current Status of the Project:

The Project has completed the preliminary engineering work. On January 7, 2010, the FTA issued its approval for the Project to enter into Final Design. Project construction is scheduled to begin in 2010, and the start of revenue operation is scheduled for 2018.

Explanation:

The Project benefits BART by providing a direct service link at the Powell Street Station to the subway service operated by BART. The Central Subway will have impacts to BART's Powell Street Station and its tunnel beneath Market Street. BART will spend significant amounts of staff time and resources analyzing these impacts for which they are eligible to be reimbursed.

Impacts include changes to the station entrances, changes to passenger flows as a result of an opening that the Project will construct into the Powell Street Station to connect from the Central Subway's Union Square/Market Street Station. As a result, BART will need to perform project activities, defined in the Agreement as (a) discussion and facilitation of communications on the Project with BART riders, community groups, and other interested parties; (b) negotiation and documentation of any agreements directly related to the Project with SFMTA or any other public or private entity (e.g., Apple Store); (c) activities relating to agreements or other actions for the Project that require approval from the BART Board or any other public agency; (d) performance of engineering, analysis, design, plan check, inspections, oversight and other reviews of the various Project construction activities directly affecting the BART Facilities and operations in the BART Facilities; and (e) attendance at meetings and participation in conference calls related to the BART Facilities and operations in the BART Facilities directly affected by the Project.

The Agreement will be amended to include provisions regarding SFMTA activities affecting BART during construction of the Project after the provisions have been negotiated.

BART has projected that its costs to be reimbursed for design and construction activities will not exceed $5 million.

Indemnification and Insurance

The Agreement also provides that except to the extent that losses are incurred as a result of the gross negligence, willful misconduct or unlawful acts of BART, the City will indemnify BART for all losses relating to (1) any accident, injury to or death of persons or loss of or damage to property as a result of the Project; (2) any civil rights action; and (3) any inverse condemnation or takings claims resulting from the Project. The City shall be responsible for tenant claims incurred by BART only to the extent that such losses are a result of physical damage or obstruction to the BART Facilities caused by the Project and only to the extent permitted by law. The City will hold BART harmless for loss of rental or lease revenue only to the extent that such loss is a result of physical damage or obstruction to the BART Facilities caused by the Project.

BART has agreed to indemnify and hold harmless the City from all losses directly or indirectly arising out of BART's gross negligence, unlawful acts or willful misconduct in connection with its Project Activities and occurring on or in the vicinity of the BART Facilities, but such indemnification shall not apply to any claim or action brought or maintained against the City by BART. BART shall hold the SFMTA harmless for all losses to BART Facilities arising from (1) BART's negligence (including its sole negligence) in the performance of its Project Activities; and (2) SFMTA's reliance on BART's construction standards and Project requirements.

The City has agreed to minimum insurance coverage to protect BART and its facilities, some of which may be obtained through an Owner Controlled Insurance Policy.

Independent Review Panel

At BART's request, there will be an Independent Review Panel (IRP) comprised of three experts

in tunnel engineering and construction. The IRP shall review the plans and specifications and data regarding the progress of tunneling of the Project insofar as it impacts BART facilities. If appropriate, the IRP may make recommendations regarding design and construction, including ground movement and protective measures to avoid damage to the BART facilities. This review will include the performance of the Contractor at designated points along the alignment approaching the point where the subway will cross under the BART facilities located adjacent to the Powell Street Station (the Undercrossing). The IRP shall be available until two years after the tunnel boring machines complete the Undercrossing. APTA has agreed to convene and facilitate administration of the IRP.

FUNDING IMPACT

The Cooperative Agreement will be funded by a combination of federal, state and local money. The Project Budget & Financial Plan is set forth in Enclosure 2.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None are anticipated.

The proposed agreement has been reviewed and approved as to form by the City Attorney's Office. The City Attorney's Office has also reviewed this calendar item.

RECOMMENDATION

It is recommended that the SFMTA Board of Directors approve a resolution authorizing the Executive Director/CEO to execute a Cooperative Agreement for the reimbursement of costs incurred by BART related to its activities to accommodate Central Subway work at the BART Market Street tunnel and the BART Powell Street Station, in an amount not to exceed $5,000,000 and for a term not to exceed 10 years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SFMTA intends to perform activities at the existing Bay Area Rapid Transit District (BART) Market Street Tunnels and Powell Street Station (the BART Facilities) to construct the Central Subway Project (Project); and,

WHEREAS, BART has expended and will continue to expend staff time and other resources on Project activities in and around the BART Facilities during design and construction of the Project; and,

WHEREAS, SFMTA staff has negotiated a ten-year agreement with BART for the reimbursement of costs related to Project design and construction activities; and,

WHEREAS, The reimbursement of these costs shall not exceed $5 million; and

WHEREAS, The costs will be reimbursed using capital funds appropriated for the Central Subway project; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO execute a Cooperative Agreement with BART for the reimbursement of costs incurred by BART related to its activities to accommodate Central Subway work at the BART Market Street tunnel and the BART Powell Street Station, in an amount not to exceed $5,000,000 and for a term not to exceed 10 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

ENCLOSURE 2
THIRD STREET LIGHT RAIL PROJECT
CENTRAL SUBWAY

San Francisco Municipal Railway

Project Budget and Financial Plan

Cost	**($Million)**
Conceptual and Preliminary Engineering	59.41
Program Management & Construction Management	132.78
Final Design	85.94
Construction Contracts	986.68
Vehicles	26.39
Contingency	160.26
Right-of-Way	34.84
Other Professional Services	92.00
Total Central Subway Cost	**$ 1,578.30**

Funding	**($Millions)**
Federal New Starts	942.20
Federal Congestion Mitigation	23.53
State Traffic Congestion Relief Program	14.00
State Transportation Improvement Program	88.00
State Proposition 1B / PTMISEA	325.50
State Proposition 1A / High Speed Rail	61.09
Local Proposition K Sales Tax	123.98
Total Central Subway Funding	**$ 1,578.30**

COOPERATIVE AGREEMENT

between the

CITY AND COUNTY OF SAN FRANCISCO

and the

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

TABLE OF CONTENTS

COOPERATIVE AGREEMENT

This COOPERATIVE AGREEMENT ("**Agreement**"), dated for reference purposes as of August , 2010, is by and between the SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT ("**BART**"), and the CITY AND COUNTY OF SAN FRANCISCO ("**City**"), acting by and through its MUNICIPAL TRANSPORTATION AGENCY ("**SFMTA**") (collectively, the "**Parties;**" each, a "**Party**").

RECITALS

THIS AGREEMENT is made with reference to the following facts:

A. SFMTA intends to perform certain activities at the existing BART Market Street Tunnels and Powell Street Station (collectively, the "**BART Facilities**") to construct the Central Subway Project, Phase 2 of the Third Street Light Rail Project ("**CSP**" or "**Project**").

B. BART has expended and will continue to expend considerable staff time and other resources on the "Project Activities," as defined below.

C. SFMTA agrees to reimburse BART for certain staff time and other approved costs expended by BART on Project Activities in the design and construction phases of the CSP on the terms and conditions set forth below.

AGREEMENT

NOW, THEREFORE, BART and SFMTA, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

1. Effective Date. This Agreement shall become effective when the City's Controller has first certified to the availability of funds and BART has been notified in writing.

2. Definitions.

2.1. Central Subway Project (CSP or Project) shall mean the Central Subway Project as defined in the Final Supplemental Environmental Impact Report/Environmental Impact Statement (FSEIR/EIS), dated September 2008, as it may be amended or supplemented from time to time.

2.2. Project Costs. "**Project Costs**" shall mean all of the reasonable costs and expenses ("Costs") incurred by BART on Project Activities (as defined below), including (a) all Costs attributable to BART staff's time (including staff of BART's Office of General Counsel) spent on Project Activities, which costs shall be equal to the hours billed by each BART staff person to Project Activities through appropriate time entry codes multiplied by the base hourly labor rate paid by BART for each such staff person, plus administrative overhead costs equal to the base hourly labor rate multiplied by an overhead rate of 99.5% (e.g., hourly labor costs = base hourly labor rate + (base hourly labor rate x .995); and (b) actual Costs (with no mark-up) of such outside counsel, third-party consultants, advisors and professionals engaged by and billed to

BART for work on Project Activities; and (c) Costs associated with BART staff travel related to Project Activities, including out of pocket costs and vehicular mileage based on the federal mileage rates when they are unable to take BART to such Project Activities. Notwithstanding the foregoing, Project Costs shall not include any fees and costs which are disallowed by federal, state or local granting agencies or that are duplicate costs paid under other agreements between the Parties.

2.3. Project Activities. "**Project Activities**" shall mean solely the following activities engaged in by BART pursuant to a Work Authorization from SFMTA as described in Section 7.3: (a) discussion and facilitation of communications on the Project with BART riders, community groups, and other interested parties; (b) negotiation and documentation of any agreements directly related to the CSP with SFMTA or any other public or private entity (e.g., Apple); (c) activities relating to agreements or other actions for the CSP that require approval from the BART Board or any other public agency; (d) performance of engineering, analysis, design, plan check, inspections, oversight and other reviews of the various CSP construction activities directly affecting the BART Facilities and operations in the BART Facilities; and (e) attendance at meetings and participation in conference calls related to the BART Facilities and operations in the BART Facilities directly affected by the CSP.

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

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

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

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

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

4. Guaranteed Maximum Costs. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the BART for, commodities or services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

5. Term; Termination.

5.1. Term. Subject to Section 3, the term of this Agreement shall be from December 1, 2008 through November 30, 2018.

5.2. Termination for Convenience.

5.2.1. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving BART at least 60 days' written notice of termination, or, in the event of termination under Section 3, 60 days' notice prior to the end of any fiscal year. The notice shall specify the date on which termination shall become effective.

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

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

(b) Not placing any further orders or subcontracts for services or other items.

(c) Terminating all existing subcontracts.

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

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

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

5.2.3. Within 60 days after the specified termination date, BART shall submit to City an invoice, which shall set forth the actual cost to BART for all services and other work BART has been authorized to perform prior to the specified termination date, for which services or work City has not already tendered payment, as well costs necessarily incurred to process such invoice.

5.2.4. In no event shall City be liable for costs incurred by BART or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in subsection 5.2.3. Such non-recoverable costs include, but are not limited to, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection 5.2.3.

5.2.5. In arriving at the amount due to BART under this Section, City may deduct: (a) all payments previously made by City for work or other services covered by BART's final invoice; (b) any claim which City may have against BART in connection with this Agreement and noticed pursuant to Section 16.4; and (c) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 5.2.4.

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

5.2.7. In the event that the City terminates this Agreement under this Section, the City may not proceed with construction activities in the vicinity of the BART Facilities that impact BART safety, operations or maintenance without agreement from BART.

6. Default; Remedies

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

6.1.1. BART or City fails or refuses to perform or observe any term, covenant or condition contained in this Agreement, and such default continues for a period of 30 days after written notice thereof from City to BART or BART to City.

6.1.2. BART or City (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 BART or City or of any substantial part of BART's or City's property or (e) takes action for the purpose of any of the foregoing.

6.1.3. A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to BART or City or with respect to any substantial part of BART's or City's property, or (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.

6.2. Remedies Available to City or BART. On and after any Event of Default of one party, the non-defaulting party shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, either party shall have the right (but no obligation) to cure (or cause to be cured) on behalf of the other party any Event of Default under Section 6.1.1; the defaulting party shall pay to the other party on demand all costs and expenses incurred by that party in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. The non-defaulting party shall have the right to offset from any amounts due to the defaulting party under this Agreement or any other agreement between the parties all damages, losses, costs or expenses incurred by the non-defaulting party as a result of such Event of Default. 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.

7. Reimbursement for Project Costs. SFMTA shall reimburse BART for its Project Costs as set forth below.

7.1. Amount of Contract. In no event shall the amount of this Agreement exceed Five Million Dollars ($5,000,000) without amendment to this Agreement.

7.2. Estimated Budget. Attached as Appendix A and made part hereof is BART's estimated budget (the "Budget") of the Project Costs through final design of the CSP. The parties acknowledge that the Budget may need to be modified from time to time (a) to add consultants and/or increase cost estimates of staff and/or outside consultants; (b) to address changes to the scope or duration of the CSP; and/or (c) to add cost estimates of BART Project Activities related to construction of the Project, all as negotiated by the Parties. Accordingly, the Budget may be increased from time to time without amendment to this Agreement up to the amount in 7.1 above with the written consent of SFMTA, which consent shall not be unreasonably withheld, conditioned or delayed, provided that before the Budget is increased BART shall have conferred with SFMTA and furnished such written justification for the increase as SFMTA may reasonably request.

7.3. Work Authorizations. SFMTA shall issue from time to time written work authorizations to BART authorizing BART to perform the specified Project Activities and expend related Project Costs (the "**Work Authorization**"). BART shall submit to SFMTA what BART, in its reasonable judgment, determines to be the scope and budget for each Work Authorization. Notwithstanding the foregoing, the scope, budget, and schedule shall be subject to negotiation by the parties. Once a Work Authorization is issued, SFMTA shall reimburse BART Project Costs for work undertaken by BART pursuant to that Work Authorization. BART shall not exceed the approved estimated Work Authorization budget without prior written consent of SFMTA, which consent shall not be unreasonably withheld. BART shall notify SFMTA when BART costs related to any Work Authorization will exceed seventy five percent (75%) of the estimated Work Authorization budget. The Parties understand that the SFTMA will not reimburse BART for any litigation-related activities without a specific Work Authorization.

7.4. Monthly Billing. For each calendar month, BART shall provide to SFMTA a breakdown of the Project Costs incurred by BART in such month in such reasonable detail as to allow review and approval by SFMTA (the "**Monthly Billing**"). Each Monthly Billing shall be sent no later than the twenty-fifth (25th) day of the calendar month following the calendar month reflected in the Monthly Billing at the address for notices to BART. BART and SFMTA shall cooperate with one another to develop a report format for the Monthly Billing that satisfies the reasonable informational needs of SFMTA and SFMTA's funding agencies to justify reimbursement of the Project Costs in accordance with this Agreement. SFMTA shall use its best efforts to review the Monthly Billing within 15 days of receipt and provide any questions or comment to BART about such Billing. SFMTA shall pay all uncontested amounts within 45 days of receipt of the Monthly Billing.

7.5. Prior Project Costs. Attached as Appendix B and made a part hereof is the estimate of Project Costs incurred by BART on Project Activities from December 1, 2008 through July 12, 2010 (the "Prior Project Costs"). SFMTA shall pay the Prior Project Costs no later than sixty (60) calendar days after full execution of this Agreement. All Project Costs incurred by BART subsequent to July 12, 2010 and prior to the Effective Date shall be treated as Project Costs and may be billed by BART under the provisions of Section 7.4, after issuance of a Work Authorization from SFMTA.

7.6. Remedies for Non-Payment

7.6.1. Uncontested Amounts. In the event that uncontested Monthly Billing amounts are not paid within the time period stated in Section 7.4, or in the event that prior Project Costs are not paid within the time period required in Section 7.5, BART may, after 30 days written notice to SFMTA without having received such payments, stop any work under Work Authorizations in progress. BART shall resume any such stopped work immediately upon receipt of the uncontested payment.

7.6.2. Contested Amounts. In the event that the Parties disagree as to certain amounts of a Monthly Billing, the SFMTA shall be held and reserved as an encumbrance against the City Controller's contract certification until such dispute is resolved by both Parties.

8. Project Design Review. . During the design and prior to construction of the Project, SFMTA shall provide BART with all designs, specifications, documents, and information ("Plans") regarding CSP construction activities in and around the BART Facilities, to include any Plans or proposed construction activities which may adversely affect BART in any manner. The Parties agree to provide to each other comments and responses concerning the Plans and proposed construction activity consistent with the Central Subway Quality Assurance Program. The Parties shall use their best efforts to provide comments and responses within 10 working days of receipt of the documents for comment or response. If BART in good faith does not issue a permit for work within BART Facilities under Section 18.2, or if BART in good faith believes that any Plans or proposed work in the vicinity of the BART Facilities may adversely affect the BART Facilities, BART shall so notify the SFMTA. An approval hereunder, or a permit granted under Section 18.2, shall constitute confirmation by BART that the design, construction, or intended operation of the permitted improvement will satisfy BART standards. BART's review of the Plans and issuance of any permit shall not reduce, modify, eliminate or otherwise affect SFMTA's or its contractor's responsibilities, obligations or liabilities under law. Except as provided above, BART's review of the Plans will be given with the understanding that BART makes no representations or warranties of any kind whatsoever regarding the Plans, including, without limitation, their validity, adequacy, accuracy, legal compliance or completeness.

9. Independent Review Panel.

9.1. Formation of IRP. BART and SFMTA agree, through the American Public Transit Association (APTA), to convene and maintain an Independent Review Panel ("IRP") comprised of three experts in tunnel engineering and construction. All members of the IRP are subject to approval of both BART and SFMTA. The IRP shall be available until two years after the TBM completes the Undercrossing (i.e., the location where the Central Subway Tunnel crosses underneath the BART Facilities located adjacent to the Powell Street Station). If the IRP is not unanimous in any opinion or recommendation, the views of two of the three members will govern, but the IRP shall present the dissenting opinion to the Parties as well. There shall be no ex parte contacts between the Parties and the IRP. BART and SFMTA agree to share equally the costs of the IRP; SFMTA may deduct BART's share of the costs from payments made to BART under Section 7.4. The Parties further agree to share equally any and all liability and costs arising from the City's agreement to indemnify APTA and the IRP for their work under this Agreement.

9.2. Scope of IRP

9.2.1. Review of Tunnel Construction Design Specifications. As soon as the panel is convened, the SFMTA will provide them with the plans and specifications for the CSP tunneling contract. The IRP will complete review of the plans and specifications for the Project within 30 days of receipt of them but in no event later than 60 days prior to SFMTA's receipt of

bids. The IRP will provide expertise, advice and consultation as to the design of the Undercrossing specifically with regard to:

(a) Protective measures for and avoidance of damage to the BART Facilities, including, but not limited to, application of pre-grouting;

(b) Hydrogeology and water issues;

(c) Movement of ground, structures, infrastructure, buildings and other improvements along the alignment in the Undercrossing and along Fourth Street and Stockton Street;

(d) Effective placement and use of equipment and resources to prevent, correct and otherwise mitigate the aforementioned movement; and

(e) Tunnel Construction Review Points (as defined below) and the adequacy of the BART crossing strategy.

9.2.2. Tunnel Construction Review Points. The IRP shall review the progress of tunneling of the CSP, including the performance of the Contractor at designated points along the alignment ("TCRP" or "Review Points") approaching the Undercrossing. The Review Points will be along the CSP alignment at the following locations: TCRP-1 Folsom Street; TCRP-2 Howard Street; TCRP-3 Mission Street; TCRP-4 Market Street. The IRP will provide expertise, advice and consultation as to the construction of the Undercrossing specifically with regard to:

(a) Protective measures for and avoidance of damage to the BART Facilities;

(b) Movement of ground, structures, infrastructure, buildings and other improvements along the alignment in the Undercrossing and along Fourth Street and Stockton Street;

(c) Accuracy of the tunneling contractor's operation, location and guidance of the tunnel boring machine (TBM) and tunnel construction;

(d) Effective placement and use of equipment and resources to prevent, correct and otherwise mitigate the aforementioned movement, including, but not limited to, application of grout through tube machetes.

9.2.3. Review of Data; IRP Recommendations. At each TCRP, the IRP will consider concerns raised by SFMTA or BART and review data gathered by the SFMTA (including its design consultants and PMO, if available), BART, and the construction contractor regarding settlement of land and improvements along the CSP alignment. The IRP will review the performance data to determine if TBM operation and tunnel construction is being performed in accordance with the contract specifications. The IRP may make recommendations as to changes in design, construction means and methods (including TBM operation), and mitigation measures to reduce settlement to levels allowed under the construction contract.

(a) At any point in the operation of the TBM and construction of the Tunnel, prior to proceeding with TBM operation to the next TCRP and prior to the Undercrossing, SFMTA shall require its construction contractor to implement any protective measures recommended by the IRP and approved by SFMTA and its design consultants to correct the contractor's failure to meet contract specifications and requirements, unless the

contractor objects to those recommendations and proposes alternative protective measures that are approved by the SFMTA, its design consultants and the IRP.

(b) If at the last Review Point the contractor's alternative protective measures are not acceptable to the IRP, SFMTA will not allow the contractor to proceed with the Undercrossing until all interested parties have reached consensus on the appropriate measures for the contractor to take.

(c) During the Undercrossing, the IRP may review data and make recommendations as to changes in construction means and methods; the SFMTA shall use its best efforts to comply with the IRP's recommendations, but the SFMTA shall have sole power to order the contractor to stop work, perform any remedial measures or make any other construction changes.

9.2.4. Contractor Cooperation. SFMTA agrees to include language in its construction contract to require its construction contractor to meet, confer, share information, and respond to comments, questions, concerns, and requests for information of the SFMTA (including its design consultants), BART, and the IRP as to means, methods, procedures and scheduling the construction of the Tunnel.

10. Dispute Resolution. If the Parties are unable to resolve a dispute regarding the Plans or construction activities or denial of a Permit, the Parties agree to resolve the dispute in accordance with the following mediation procedure:

10.1. Mediation. The mediation shall proceed in accordance with rules promulgated by the Mediator (chosen as described below) and shall be concluded within 30 days of appointment of a mediator, unless extended by mutual agreement of the Parties. BART shall be represented by the BART Chief Engineer or such other higher-level representative of its choosing, and SFMTA shall be represented by the Program Manager or such higher-level representative of its choosing. The Parties may bring their respective engineering consultants to the mediation. Lawyers may participate only if both Parties agree. The Parties intend that the mediation process shall be protected from disclosure and submission into evidence in litigation under Evidence Code Section 1152 and comparable federal rules of evidence.

10.2. Selection of Mediator. Within 10 days after either Party requests mediation, the Parties shall select a disinterested third person to act as mediator ("Mediator"). The Mediator shall have experience in construction tunneling projects and in mediation. If the Parties fail to agree on a Mediator, either Party may refer to the Dispute Resolution Board Foundation (DRBF) for a list of Mediators. The Parties shall have five days to select a Mediator from the list of Mediators obtained from the DRBF.

10.3. Cost of Mediator. Unless the Mediator has his or own facilities, SFMTA shall provide to the Mediator, at no cost to BART, administrative services, such as conference facilities and secretarial services. Fees and expenses of the Mediator shall be borne equally by SFMTA and BART; provided that SFMTA shall directly engage the Mediator and pay the Mediator's fees and expenses in their entirety and be reimbursed from BART for BART's share of such fees and expenses by crediting such sums against any Monthly Billings submitted by BART until SFMTA has been fully reimbursed for BART's share of Mediator fees and expenses.

10.4. No Waiver. The Parties' participation in mediation of a disputed comment shall not operate as a waiver of any of their rights at law or in equity.

11. Schedule. SFMTA shall provide BART with regular schedule updates of design and construction activities affecting BART Facilities.

12. Audits and Inspection of Records

12.1. BART shall maintain records of the Project Costs incurred and charged to SFMTA in accordance with generally accepted accounting principles, and all records shall provide a breakdown of total costs charged to the CSP, including, but not limited to, properly executed payrolls, time records, invoices and vouchers.

12.2. BART shall permit SFMTA and SFMTA's funding agencies, the U.S. Comptroller General, and their authorized representatives to inspect, examine and copy BART's books, records, accounts, and any and all data relevant to this Agreement at any reasonable time with advance written notice of at least fifteen (15) business days for the purpose of auditing and verifying statements, invoices or Monthly Billings submitted by BART pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection. SFMTA and SFMTA's funding agencies further reserve the right to examine and re-examine said books, records, accounts and data during the three-year period after the final payment under this Agreement and BART shall not dispose of, destroy, alter, or mutilate said books, records, accounts and data in any manner whatsoever for three years after the final payment under this Agreement, or until final audit is resolved, whichever is later.

12.3. Pursuant to California Government Code Section 8546.7, the parties to this Agreement agree that they are subject to the examination and audit of the Auditor General of the State of California for a period of three years after final payment under the Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement.

13. Dispute Resolution - Billing.

13.1. Notice of Contest. SFMTA shall have the right to contest the amount, validity or applicability of any Monthly Billing, or request further information, in the case of an incomplete Monthly Billing, by notifying BART in writing within fifteen (15) days of receipt of said Monthly Billing ("Notice of Contest"). Any such Notice of Contest shall describe in detail the amount(s) being contested and the reasons for such contest. Upon receipt of the Notice of Contest from SFMTA, BART and SFMTA shall in good faith meet with each other to resolve the contested amount(s) in accordance with the procedures described below. If the Parties are unable to resolve the dispute, the matter shall be resolved in accordance with Section 10.2 below.

13.2. Process. If any dispute under this Agreement (other than disputes under Section 8.2) cannot be resolved by the Parties, prior to submission to mediation as set forth below, upon the written request of either of the Parties, the matter shall be dealt with as follows:

13.2.1. First Level. Each Party will designate staff or individuals to be the initial person or persons to discuss any apparent dispute or disagreement between the Parties and initiate this procedure. Unless BART designates otherwise in writing, the first-level person shall be the BART Project Manager. For SFMTA, the first-level person shall be SFMTA's Program Manager ("Program Manager") for the CSP, unless SFMTA designates otherwise in writing, For any matter designated by the initiating Party as "urgent" (with explanation), the other Party shall make its first response within one working day of receipt of the request for dispute resolution, or within such other period as the first-level persons may agree. For any other matter, the other Party shall respond within five working days, or within such other period as the first-level persons may agree.

13.2.2. Second Level. Each Party will designate individuals to whom matters not resolved at the first level shall be referred. For BART, unless BART shall designate otherwise in writing, the second-level person shall be BART's Chief Engineer. For SFMTA the second-level person, unless SFMTA shall designate otherwise in writing, shall be its Central Subway Program Officer. The second level person representing the aggrieved party shall provide written notification to the second level person representing the other party that it is elevating the dispute to the second level. The other Party shall respond within five working days, or within such other period as the second-level persons may agree. If the Parties are unable to resolve the matter at the second level, the Parties may then agree to resolve the matter through mediation in accordance with the mediation provisions set forth below.

13.3. Mediation. If both Parties agree to mediation, they shall conduct the mediation in accordance with the following procedure:

13.3.1. Notice of Mediation. The mediation shall proceed in accordance with rules promulgated by the Mediator (chosen as described below) and shall be concluded within 30 days, unless extended by mutual agreement of the Parties. BART shall be represented by the BART Chief Engineer or such other higher-level representative of its choosing, and SFMTA shall be represented by the Program Manager or such higher-level representative of its choosing. Lawyers may participate only if both Parties agree. The entire process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

13.3.2. Selection of Mediator. Within 15 days after the Parties agree to mediation, they shall meet and select a disinterested third person to act as mediator ("Mediator"). If the Parties fail to agree, either Party may request JAMS in San Francisco to appoint the Mediator. The Mediator shall be replaced within 15 days of receipt of a written request of either Party, using the procedure outlined above; provided, however, that either Party may only replace the Mediator once.

13.3.3. Cost of Mediator. SFMTA shall provide to the Mediator, at no cost to BART, administrative services, such as conference facilities and secretarial services. Fees and expenses of the Mediator shall be borne equally by SFMTA and BART; provided that SFMTA shall directly engage the Mediator and pay the Mediator's fees and expenses in their entirety and be reimbursed from BART for BART's share of such fees and expenses by crediting such sums against any Monthly Billings submitted by BART until SFMTA has been fully reimbursed for BART's share of Mediator fees and expenses.

13.3.4. Payment. If SFMTA and the BART are able to resolve their dispute through mediation, either BART will withdraw its objection or SFMTA shall promptly process any remaining payment, as appropriate. If the Parties are still unable to resolve their dispute, either Party may seek further remedies available to it at law or in equity.

14. Indemnification.

14.1. City Indemnification of BART.

14.1.1. Consistent with California Civil Code section 2782, as applicable, City or its construction contractors shall assume the defense of, indemnify and hold harmless BART, its boards and commissions and other parties as may be designated by BART and agreed to by the City, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them (collectively "the BART Indemnitees"), from all claims, suits, actions, losses and liability of every kind, nature and description, including but not limited to attorney's fees ("Losses"),

directly or indirectly arising out of, connected with or resulting from the performance of work on the Project. The Losses shall include, without limitation, (1) any accident, injury to or death of persons or loss of or damage to property as a result of the Project; and (2) any civil rights action; and (3) any inverse condemnation or takings claims resulting from the Project. Notwithstanding the above, the City shall be responsible for tenant claims incurred by BART only to the extent that such Losses are a result of physical damage or obstruction to the BART Facilities caused by the Project and only to the extent permitted by law. The above indemnification shall not be valid to the extent that the Losses are caused by the sole or gross negligence or willful misconduct or unlawful acts of any of the BART Indemnitees; said indemnification shall not apply to any claim or action brought or maintained against BART by the City.

14.1.2. City shall hold BART Indemnitees harmless for loss of rental or lease revenue only to the extent that such loss is a result of physical damage or obstruction to the BART Facilities caused by the Project.

14.2. BART Indemnification of City.

14.2.1. BART shall assume the defense of, indemnify and hold harmless the City, the SFTMA, and their boards and commissions and other parties as may be designated by City and agreed to by BART, and all of their officers, agents, members, employees, authorized representatives, or any other persons deemed necessary by any of them acting within the scope of the duties entrusted to them (collectively "the SFMTA Indemnitees"), from all Losses directly or indirectly arising out of BART's gross negligence, unlawful acts or willful misconduct in connection with its Project Activities and occurring on or in the vicinity of the BART Facilities; said indemnification shall not apply to any claim or action brought or maintained against the City by BART.

14.2.2. BART shall hold the SFMTA Indemnitees harmless for all Losses to BART Facilities arising from (i) BART's negligence (including its sole negligence) in the performance of its Project Activities; and (ii) SFMTA's reliance on BART's construction standards and Project requirements.

14.2.3. This indemnification/hold harmless shall not be valid to the extent a Loss is caused by the sole or gross negligence or willful misconduct or unlawful acts of any of the SFMTA Indemnitees.

14.3. Immediate Obligation to Defend. On request, City (or its contractors) or BART, as applicable, shall defend any action, claim or suit asserting a claim which actually or potentially falls within the indemnification provisions set out in Sections 14.1 and 14.2, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to the indemnitor and continues at all times thereafter The indemnitor shall pay all costs that may be incurred by the City Indemnitees or the BART Indemnitees, as applicable, including reasonable attorney's fees, and costs of investigation, consultants and experts.

14.4. Consequential or Incidental Damages. Except as provided in Section 14.1 and 14.2, neither City nor BART, and their respective officers, agents, members, employees, and authorized representatives shall have liability to each other for any type of special, consequential or incidental damages arising out of or connected with the Project.

14.5. Survival. Both Parties' obligations under this Section 14 and any other indemnity in this Agreement shall survive the expiration or sooner termination of this Agreement.

14.6. Joint Station Maintenance Agreement. To the extent that any Losses in the BART Facilities result from the Project or Project Activities, the indemnification obligations under this Agreement shall prevail over the Parties' indemnification obligations under the First Supplemental MUNI/BART Joint Station Maintenance Agreement, dated July 1, 1986.

15. Liability Insurance SFMTA shall require its prime construction contractors for the Project to comply with the minimum insurance requirements indicated in Appendix C with respect to losses arising out of the Project. In the alternative, SFMTA may provide Owner Controlled Insurance Coverage for all or a portion of the coverages listed in Appendix C.

16. Obligations Survive Termination. Notwithstanding anything to the contrary contained in this Agreement, SFMTA shall be obligated to pay the Project Costs reasonably and actually incurred by BART under a Work Authorization, regardless of whether SFMTA decides not to pursue or terminates at any point its negotiations with BART for any or all of the CSP or SFMTA is unable to obtain required approvals of any or all agreements related to the CSP. If at the time of termination there are unpaid Project Costs or anticipated Project Costs that will be incurred through the date of termination (including necessary Project termination costs), then SFMTA shall pay the amount of such Project Costs to BART upon demand, which obligation shall survive the termination of this Agreement.

17. Compliance with Laws . SFMTA acknowledges and agrees that BART's execution of this Agreement shall not be deemed to imply that SFMTA will be able to obtain any required approvals from BART boards, departments and subdivisions which may have jurisdiction over the CSP. By entering into this Agreement, BART is in no way modifying SFMTA's obligations to comply with all applicable present or future laws, ordinances, resolutions, regulations, requirements, proclamations, orders or decrees, of any governmental, administrative or regulatory authority having jurisdiction over the CSP (collectively, "Laws").

18. Procurement of Regulatory Approvals/Property Rights.

18.1. Regulatory Approvals. SFMTA understands that the implementation of the CSP will require the procurement of approvals, authorizations or permits from governmental agencies with jurisdiction, including, but not limited to BART and the City (collectively, "Regulatory Approvals"). SFMTA shall be solely responsible for obtaining Regulatory Approvals as further provided in this Section 18.1. SFMTA shall pay or cause to be paid all costs associated with applying for, obtaining and maintaining any necessary or appropriate entitlements for the CSP as well as all costs associated with satisfying any and all conditions imposed by regulatory agencies as part of any Regulatory Approval. BART shall not be responsible for costs associated with obtaining such Regulatory Approvals or entitlements, even where BART may be a co-permittee with SFMTA, except as may be agreed by BART, in its respective sole and absolute discretion.

18.2. BART Permits . SFMTA shall obtain from BART permits for Project work in the BART Facilities prior to the commencement of such work. BART's issuance of said permits shall not be unreasonably withheld, conditioned or delayed. Specifically, BART shall not put conditions on such permits that are in conflict with the provisions of this Agreement.

18.3. BART as Co-Permittee. In any instance where BART will be required to act as a co-permittee, SFMTA shall not apply for any Regulatory Approvals without first obtaining the approval of BART, which approval will not be unreasonably withheld, conditioned or delayed. Throughout the permit process for any such Regulatory Approval involving BART as a co-permittee, SFMTA shall consult and coordinate with BART in SFMTA's efforts to obtain such Regulatory Approval, and BART shall cooperate reasonably with SFMTA in its efforts to obtain such Regulatory Approval. However, SFMTA shall not agree to the imposition of conditions or

restrictions in connection with its efforts to obtain a permit from any regulatory agency other than BART if the conditions or restrictions could create any substantial or material obligations (as determined by BART in its reasonable discretion) on the part of BART whether on or off the Facilities, unless in each instance BART has previously approved such conditions in writing in BART's sole and absolute discretion. No such approval by BART shall limit SFMTA's obligation to pay the costs of complying with such conditions under this Section. 18.3 or reimbursing BART for its Project Costs under Section 7.

18.4. BART Third Party Property Rights. SFMTA acknowledges that the CSP may impact various interests held by BART tenants, licensees, permittees, and contractors, and easement holders (collectively, "BART Third Party Property Rights"). SFMTA acknowledges and agrees that BART's execution of this Agreement shall not be deemed to imply that BART is modifying its existing agreements with holders of BART Third Party Property Rights or that SFMTA will be able to obtain any needed consents from such parties for any aspect of the CSP. SFMTA, in cooperation with BART, shall be responsible for obtaining any requisite consents regarding the existing Property Rights. Notwithstanding the foregoing, SFMTA shall not make any agreements with holders of BART Third Party Property Rights without informing BART and requesting BART's participation when required. BART agrees not to convey any BART Third Party Property Rights that might impair SFMTA's ability to implement the CSP in the Project Area in the Powell Street Station as defined in the FSEIR/EIS without written permission from the CSP Program Manager, who shall reasonably determine whether such conveyance will cause an impairment to the Project.

18.5. Fines and Penalties. SFMTA shall pay and discharge any fines, penalties or corrective actions imposed as a result of the failure of SFMTA to comply with the terms and conditions of any Regulatory Approval and BART shall have no liability for such fines and penalties. Without limiting the indemnification provisions of Section 14 above, SFMTA shall indemnify BART Agents from and against any and all such fines and penalties, together with attorneys' fees and costs, for which BART may be liable in connection with SFMTA's failure to comply with any Regulatory Approval or procure any requisite BART Third Party Property Rights or infringe upon any existing BART Third Party Property Rights granted by BART for the Facilities.

19. General Provisions

19.1. Amendment. This Agreement may be amended only by a writing signed by both Parties. Notwithstanding any other provision of this Agreement, the Parties agree to proceed expeditiously to amend this Agreement to add provisions regarding SFMTA's activities during construction of the Project. SFMTA shall not initiate construction activities (other than tunneling activities) for Contract No. 1253 (the Union Square Market Street Station) that potentially impact BART's safety, operations, or maintenance until construction-related provisions are incorporated by amendment into this Agreement.

19.2. Entire Agreement. This Agreement contains all of the representations and the entire agreement between the Parties with respect to the subject matter of this Agreement. Any agreements or representations not expressly set forth herein are null and void. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in their entirety by this Agreement. No prior drafts of this Agreement or changes between those drafts and the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider such drafts in interpreting this Agreement.

19.3. Waiver. The waiver by either Party hereto of a breach or violation of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach or violation.

19.4. Notices. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and addressed as follows, or at such other addresses as either Party may designate by written notice given in the manner provided in this Section 19.4.

If to BART

San Francisco Bay Area Rapid Transit District
P.O. Box 12688
Oakland, CA 94604-2688
Attention: Pepe Vallenas; BART Project Manager
FAX: (510) 464-6818

If by hand or special delivery:

San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, 9th Floor
Oakland, CA 94604-2688
Attention: Pepe Vallenas; BART Project Manager

Notices of Termination or Default under Sections 5 or 6 shall also be sent to:

San Francisco Bay Area Rapid Transit District
P.O. Box 12688
Oakland, CA 94604-2688
Attention: Office of General Counsel
FAX: (510) 464-6049

If to SFMTA:

SFMTA Central Subway Project
821 Howard Street, 2nd Floor
San Francisco, CA 94103
Attention: John Funghi, Program Manager
FAX: (415) 701-5222

Notices of Termination or Default under Sections 5 or 6 shall also be sent to:

City Attorney's Office
Attn: Transportation General Counsel
1390 Market St. 6th floor
San Francisco, CA 94102
FAX: (415) 255-3139

19.5. Governing Law. This Agreement has been made in and its validity, performance and effect shall be determined in accordance with the laws of the State of California. The parties agree that the jurisdiction and venue of any dispute between the Parties to this Agreement shall be the Superior Court of San Francisco.

19.6. Successors and Assigns. This Agreement is binding upon and will inure to the benefit of the successors and assigns of BART and the City. Where the term "BART" or "City" is used in this Agreement, it means and includes such Party's respective successors and assigns.

19.7. Severability. If any provision of this Agreement, or its application to any person, entity or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person, entity or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be grossly inequitable under all of the circumstances, or would frustrate the fundamental purposes of this Agreement.

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

19.9. Disallowance. If BART claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, BART 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 BART under this Agreement or any other Agreement. By executing this Agreement, BART certifies that BART is not suspended, debarred or otherwise excluded from participation in federal assistance programs. BART acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

19.10. BART Shall Not Discriminate. In the performance of this Agreement, BART agrees not to discriminate against any employee, City and County employee working with BART or its subcontractor, applicant for employment with BART or its 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.

19.11. Drug-Free Workplace Policy. BART 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. BART agrees that any violation of this prohibition by BART, its employees, agents or assigns will be deemed a material breach of this Agreement.

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

19.13. 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.

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

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

19.16. FTA Provisions. The FTA requirements that may apply to portions of this Agreement are attached as Appendix D and incorporated by reference as though fully set forth. If any term of this Agreement is in conflict with any applicable provision of Appendix D, the FTA requirements will prevail.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first above written.

BART: SAN FRANCISCO BAY AREA
RAPID TRANSIT DISTRICT

By:
DOROTHY W. DUGGER
Title: General Manager,

Date:

APPROVED AS TO FORM:

OFFICE OF THE GENERAL COUNSEL

By: _____
Attorney

CITY: CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

By:
NATHANIEL P. FORD SR.
Executive Director/CEO

Date:

Authorized by:

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

Attest: _____
Roberta Boomer, Secretary to the
SFMTA Board of Directors

APPROVED AS TO FORM:

DENNIS HERRERA, City Attorney

By:
Robin M. Reitzes
Deputy City Attorney

APPENDIX A
Estimated Budget

Group	Unburdened Salary ($hr)	Overhead Multiplier ($hr)	Fully Burdened Salary ($hr)	Total Estimated Hours	Total Staff Cost (FY 2011 $)	External Costs (Total)	Total Estimated Budget (FY 2011$)
Customer Access	40.23	1.995	80.26	333	26,711	$	$26,711
Legal	50.32	1.995	100.38	1,539	154,505	$200,000	$354,505
M&E - District Architect	48.17	1.995	96.09	1,331	127,915	$100,000	$227,915
M&E - Track Engineering	34.20	1.995	68.23	458	31,222	$	$31,222
M&E - Electrical/Mech	44.73	1.995	89.24	458	40,836		$40,836
Operations - Fleet & Capacity	43.09	1.995	85.97	1,040	89,409	$100,000	$189,409
Operations – Transportation (M-Line)	42.48	1.995	84.74	416	35,252	$	$35,252
Planning	43.22	1.995	86.23	208	17,936	$	$17,936
Police	41.45	1.995	82.69	208	17,200	$	$17,200
Real Estate	42.00	1.995	83.79	832	69,713	$	$69,713
System Safety	44.05	1.995	87.87	416	36,554	$10,000	$46,554
Systems Engineering	45.73	1.995	91.24	499	45,547	$	$45,547
TSD - Stations	51.84	1.995	103.42	208	21,511	$	$21,511
Subtotal				**7,946**	**714,310**	**$410,000**	**$1,124,310**
50% contingency							$562,155
TOTAL							**$1,686,465**

Appendix B

Group	Unburdened Salary ($/hr)	Overhead Multiplier	Fully Burdened Salary ($/hr)	Total Estimated Hours	Total (FY 2011 $)
Legal	$ 50.32	1.995	$ 100.38	271.2	$27,223.00
Electrical & Mechanical	$ 44.73	1.995	$ 89.24	22.0	$1,963.00
District Architect	$ 48.17	1.995	$ 96.09	436.0	$41,895.00
Operations	$ 43.09	1.995	$ 85.97	190.0	$16,334.00
Planning	$ 43.22	1.995	$ 86.23	27.0	$2,328.00
Real Estate	$ 42.00	1.995	$ 83.79	149.0	$12,485.00
Insurance	$ 41.43	1.995	$ 82.65	24.0	$1,984.00
Transit Systems Development	$ 51.84	1.995	$ 103.42	18.0	$1,862.00
Total				**1,137.2**	**$106,074.00**

APPENDIX C

INSURANCE PROVISIONS

SFMTA shall require its prime construction contractors for the Project to comply with the following minimum insurance requirements with respect to losses arising out of the Project. In the alternative, SFMTA may provide Owner Controlled Insurance Coverage for all or a portion of the coverages listed below. With respect to insurance for architects and engineering consultants for the Project, BART acknowledges that it has reviewed the insurance provisions in the existing contracts of said consultants and accepts those provisions.

A. LIABILITY INSURANCE

1. Contractors shall maintain in full force and effect, for the period covered by the contract, the following liability insurance with the following minimum specified coverages or coverages as required by laws and regulations, whichever is greater:

   a. Worker's Compensation in the statutory amount, including Employers' Liability coverage with limits not less than $1,000,000 each accident, injury, or illness. The policy shall include Broad Form All States/Other States coverage. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City and of BART for all work performed by the Contractor, its employees, agents and subcontractors.

   b. Commercial General Liability insurance with limits not less than One Hundred Million Dollars ($100,000,000) each occurrence combined single limit for bodily injury and property damage, including coverage for Contractual Liability, independent contractors, Explosion, Collapse, and Underground (XCU), Personal Injury, Broad Form Property Damage, Products, and Completed Operations.

   c. Commercial Automobile Liability insurance with limits not less than Two Million Dollars ($2,000,000) each occurrence combined single limit for bodily injury and property damage, including owned, hired or non-owned vehicles, as applicable.

2. Approval of contractors' insurance by the City will not relieve or decrease the liability of contractors. The City reserves the right to require an increase in insurance coverage in the event the City determines that conditions show cause for an increase.

B. ADDITIONAL COVERAGES

1. Builder's Risk Insurance: City contractors or the SFMTA shall purchase and maintain in force, throughout the term of this Contract, Builder's Risk insurance on an all-risk form, excluding earthquake and flood, for 100 percent of the completed value of the Work. Any deductible shall be the responsibility of City contractors, including coverage for debris removal of at least 100 percent of the completed value of removal. Such policy shall include as named insureds and be made payable to contractor, to their subcontractors and suppliers of all

tiers, to the City and County of San Francisco, as their interests may appear, and shall be issued by carrier(s) satisfactory to the City to conduct insurance business in California. In the event of damage, it shall be City contractors' responsibility to perform at their expense all required repair and replacement at no cost to the City. In accordance with Public Contract Code section 7105, in the event of damage caused by earthquake or tidal waves, contractors shall not be responsible for losses in excess of five percent of the contract amount, including deductibles.

2. Environmental Pollution Liability: The Contractor, or its subcontractor, who perform abatement of hazardous or contaminated materials removal, shall maintain in force, throughout the term of this Contract, contractor's pollution liability insurance with limits not less than Ten Million Dollars ($10,000,000) each occurrence combined single limit (true occurrence form), including coverages for on-Site or off-Site third party claims for bodily injury and property damage, with any deductible not to exceed $50,000, unless a different deductible amount is approved in writing by the SFMTA. Coverage shall included contractor and subcontractor's legal liability for contaminated soils, in ground or airborne asbestos, lead, PCBs and other hazardous material that may be encountered on the Site.

3. Railroad Protective Liability for bodily injury (including death), property damage, and physical damage, including loss of use thereof, to railroad property with limits of not less than Ten Million Dollars ($10,000,000) per occurrence and Ten Million Dollars ($10,000,000) in the aggregate annually applicable to all operations of Contractor and its subcontractor(s) within 50 feet vertically or horizontally of the center line of BART's tracks. BART shall have the right to approve of the policy wording. The named insured shall be San Francisco Bay Area Rapid Transit District. Prior to commencing work or entering BART property, SFMTA shall file the original copy of the policy with BART's Department Manager, Insurance. This coverage shall be maintained for the term of this Contract.

4. Professional Liability Insurance. City shall provide or require its prime consultant architects and engineers working on the Project to meet the professional liability insurance requirements provided below:

a. Professional liability insurance coverage with limits not less than Twenty Million Dollars ($20,000,000) each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided. Any deductible for said policy shall not exceed Two Hundred Fifty Thousand Dollars ($250,000). The consultants shall be responsible for the payment of all claim expenses and loss payments within the deductible.

b. The City will in good faith endeavor to obtain an excess liability policy to protect against its consultants' errors and omissions in excess of the coverage in subsection a above for commercially reasonable terms and cost.

C. FORMS OF POLICIES AND OTHER INSURANCE REQUIREMENTS

1. Before commencement of the Work of this Contract, certificates of insurance and policy endorsements in form and with insurers acceptable to the City, evidencing all required insurance and with proper endorsements from contractors' insurance carriers identifying as additional insureds the parties indicated above, shall be furnished to the City, with

complete copies of policies to be furnished to the City promptly upon request. Contractor will be allowed a maximum of five working days after the date on which the Contract is awarded in which to deliver appropriate bond and insurance certificates and endorsements.

2. Approval of the insurance by the City shall not relieve or decrease the extent to which contractors or subcontractors of any tier may be held responsible for payment of any and all damages resulting from their operations. Contractors shall be responsible for all losses not covered by the policy, excluding damage caused by earthquake and tidal waves consistent with section 7105 of the California Public Contract Code in excess of five percent of the Contract Sum, including the deductibles. All policies of insurance and certificates shall be satisfactory to the City.

3. The contractors and their subcontractors shall comply with the provisions of California Labor Code section 3700. Prior to commencing the performance of work, the Contractor and all of its subcontractors shall submit to the awarding department a certificate of insurance against liability for workers compensation or proof of self-insurance in accordance with the provisions of the California Labor Code.

4. Liability insurance, except for professional liability insurance, shall be on an occurrence basis, and said insurance shall provide that the coverage afforded thereby shall be primary coverage (and non-contributory to any other existing valid and collectable insurance) to the full limit of liability stated in the declaration, and such insurance shall apply separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.

5. Except for professional liability insurance, should any of the required insurance be provided under a form of coverage that includes an annual general aggregate limit or provides that claims investigation or legal defense costs be included in such annual general aggregate limit, such general annual aggregate limit shall be two times the occurrence limits stipulated. City reserves the right to increase any insurance requirement as needed and as appropriate.

6. Should any of the required insurance be provided under a claims-made form, contractors shall maintain such coverage continuously throughout the term of their contracts, and without lapse, for a period five years beyond the final completion dates, to the effect that, should occurrences during the Contract term give rise to claims made after expiration of the Contract, such claims shall be covered by such claims-made policies.

7. Each such policy shall provide that no cancellation or non-renewal shall occur without the carrier giving to the City at least 30 days' written notice prior thereto.

8. Contractors, upon notification of receipt by the City of any such notice, shall file with the City a certificate of the required new or renewed policy at least 10 days before the effective date of such cancellation, change or expiration, with a complete copy of new or renewed policy.

9. If, at any time during the life of this Contract, contractors fail to maintain any item of the required insurance in full force and effect, all work of the contracts may, at City's sole option, be discontinued immediately, and all contract payments due or that become due will be withheld, until notice is received by the City as provided in the immediately preceding

Paragraph that such insurance has been restored to full force and effect and that the premiums for such policies have been paid for a period satisfactory to the City.

10. For general liability, environmental pollution liability and automobile liability insurance, Contractor shall include as additional insureds, the City and County of San Francisco, BART, their board members and commissions, and all authorized agents and representatives, and members, directors, officers, trustees, agents and employees of any of them.

11. Contractors agree to waive subrogation which any insurer of contractors may acquire from contractors by virtue of the payment of any loss. Contractors agree to obtain any endorsement that may be necessary to effect this waiver of subrogation.

12. Any failure to maintain any item of the required insurance may, at City's sole option, be sufficient cause for termination for default.

13. Insurance companies shall be legally authorized to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-,VIII" and shall be satisfactory to the City.

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

1. DEFINITIONS

1.1. 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.

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

1.3. 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.

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

1.5. 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.

1.6. 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.

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

1.8. 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.

1.9. 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.

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

1.11. 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.

1.12. 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.

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

2. 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.

3. ACCESS TO RECORDS

3.1. 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.

3.2. 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.

3.3. 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).

4. DEBARMENT AND SUSPENSION

See Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

5. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

5.1. 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.

5.2. 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.

6. CIVIL RIGHTS

6.1. **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.

6.2. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

6.2.1. 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.

6.2.2. 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.

6.2.3. 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.

6.3. 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.

7. PATENT RIGHTS *(applicable to contracts for experimental, research, or development projects financed by FTA)*

7.1. General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

7.2. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

7.3. The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

8. RIGHTS IN DATA AND COPYRIGHTS (Applicable to contracts for planning, research, or development financed by FTA)

8.1. Definition. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

8.2. Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of this Agreement.

8.2.1. Publication of Data. Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

8.2.2. Federal License. In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, "for Federal Government purposes," any subject data or copyright described below. As used in the previous sentence, "for Federal Government purposes" means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not extend its Federal license to any other party:

(a) Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

(b) Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.

8.2.3. FTA Intention. When FTA awards Federal assistance for a experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This

subsection does not apply to adaptations of automatic data processing equipment or programs for the City's use the costs of which are financed with Federal transportation funds for capital projects.

8.2.4. Hold Harmless. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

8.2.5. Restrictions on Access to Patent Rights. Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

8.2.6. Application to Data Incorporated into Work. The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

8.2.7. Application to Subcontractors. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

8.3. Provision of Rights to Government. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

8.4. Flow Down. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

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

9.1. 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.

9.2. 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.

9.3. 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.

9.4. 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.

10. 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.

11. CLEAN WATER REQUIREMENTS *(applicable to all contracts in excess of $100,000)*

11.1. 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.

11.2. 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.

12. CLEAN AIR *(applicable to all contracts and subcontracts in excess of $100,000, including indefinite quantities where the amount is expected to exceed $100,000 in any yea.)*

12.1. 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.

12.2. 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.

13. 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.

14. 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.

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

See Agreement Terms and Conditions.

16. TERMINATION FOR DEFAULT *(required for all contracts in excess of $10,000)*

See Agreement Terms and Conditions.

17. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

17.1. 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.

17.2. 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.

17.3. 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.

18. 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.

19. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

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

20. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS (applicable to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator)

20.1. The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

20.1.1. General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

20.1.2. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

20.1.3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

20.2. The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

THIS PRINT COVERS CALENDAR ITEM NO. : 10.9

MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Approving a lease between Hudson 1455 Market, LLC (Hudson), as Landlord, and City and County of San Francisco (City), as Tenant, for a Portion of the 7th Floor and Locker Room Premises on the 1st Floor and Bike Room Premises on the 3rd Floor of 1455 Market Street (Lease) for the SFMTA Transportation Management Center (TMC) which is a part of the Agency's Central Control and Communications (C3) Project.

SUMMARY:

- The SFMTA's real-time command and control functions currently reside in various locations dispersed around the City in facilities that are undersized and include outdated systems. The SFMTA seeks to consolidate its real-time command and control functions in a single secure facility, adequately sized, with fully integrated and up-to-date systems.
- In May 2010 $11.155 m in Prop K funds were allocated to the TMC Project at 1455 Market Street.
- The Lease includes 39,573 rentable square feet with base rent starting at $30.50 per square feet (s.f.) per year for a portion of the 7th Floor and $18 per s.f. per year for a portion of the 1st Floor. The initial lease term is ten years with two successive 10-year extension options.
- The C3 Program Budget is $32,553,231, of which the Lease for 1455 Market, including Tenant Improvements (TIs), is estimated at $11,217,986.
- The SFMTA Board of Directors is asked to approve the Lease which will require approval by the Board of Supervisors as well.

ENCLOSURES:
1. SFMTA Board Resolution
2. Summary of Lease at 1455 Market St.
3. C3 Budget
4. Lease for 1455 Market Street

APPROVALS: **DATE**

DIRECTOR OF DIVISION
PREPARING ITEM _____ _____

FINANCE _____ _____

EXECUTIVE DIRECTOR/CEO _____ _____

SECRETARY_____ _____

ADOPTED RESOLUTION RETURNED TO: Sonali Bose

ASSIGNED MTAB CALENDAR DATE: _____

PURPOSE

Approval of a lease between Hudson 1455 Market, LLC, as Landlord, and the City and County of San Francisco, as Tenant, for 1455 Market Street for a portion of the 7th Floor, a portion of the 1st Floor and a Bike Room in the 3rd Floor garage (Lease) for the SFMTA Transportation Management Center (TMC) which is a part of the Agency's Central Control and Communications (C3) Project.

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GOALS

The Lease at 1455 Market St. for the SFMTA's TMC will help multiple goals and objectives in the SFMTA Strategic Plan including:

- Goal 2 – System Performance: To get customers where they want to go, when they want to be there.
- Goal 4 – Financial Capacity: To ensure financial stability and effective resource utilization.
- Goal 6 – Information Technology: To improve service and efficiency, the SFMTA must leverage technology

DESCRIPTION

Background

Since 1980, there have been increasing demands for the use of new technologies to support the City's complex transit and transportation services. The SFMTA's various real-time command and control functions currently reside in locations dispersed around the City. The SFMTA seeks to consolidate its command and control functions in a single facility, adequately sized, with fully integrated and up-to-date systems, namely, a Transportation Management Center (TMC).

In September 2008, the SFMTA completed an Operational Concept Document (OCD) to establish key goals and recommendations for a new TMC. Key findings from the 2008 study included:

1. Co-locate command-and-control functions SFgo and Power Control with Transit;
2. Integrate existing and expand capabilities for CCTV monitoring of traffic and transit;
3. Relocate Power Control Center functionality;
4. Develop and adopt security design criteria detailed in the OCD, including development of both a primary and a secondary TMC; and
5. Conduct a site survey of a new primary TMC

In May 2010, the SFMTA received an allocation of $11.155 million of Prop K funds for an integrated TMC which includes consolidation of the following command-and-control functions:

- **Muni transit Operations Control Center,** currently located at 131 Lenox Way (OCC), was constructed in the late 1970s and commissioned in 1980. This facility is owned by the Bay Area Rapid Transit District**.** The OCC operates 24 hours a day, seven days a week. After the OCC is moved to the TMC, Lenox will be renovated as a secondary control center under a separate C3 Project.

- **SFMTA's satellite Line Management Center (LMC)** is at 1 SVN on the 8th Floor, and was implemented as part of the C3 program, using ARRA (economic stimulus) funding. The LMC is a functional extension to the OCC for staff dedicated to real-time line management of transit lines, for early identification and resolution of service issues before they develop into significant service performance problems. LMC workstations are staffed by inspectors reassigned from on-street locations.

- **Muni's Power Control Center,** currently housed at 1401 Bryant St., is critical to Muni's operation, but there is no integration of systems between Power Control and the Lenox OCC. Monitoring of the overhead power system is not available at the OCC, and any requests for circuit shutdowns are handled by a phone call from the OCC to Power Control. The C3 Program plan is to extend the Power Control monitoring functions to the TMC, creating a power control workstation at the new location, while retaining the existing Power Control center at 1401 Bryant for power system maintenance's staff and shop.

- **Sustainable Streets' Traffic Management Center, SFgo.** This facility is currently housed at 25 Van Ness Avenue in CCSF-owned, rental space under the City's Real Estate Division's jurisdiction. There is currently no integration of traffic and transit data between SFgo and OCC.

- **Security Division.** This division currently dispatches Parking Control Officers and towing from leased space at 505 7th Street. The facility is outdated and has no space for expansion. Security also dispatches contracted security employees and Transit Fare Inspectors from 1 SVN and from Muni Metro East.

- **Other Functions.** The future primary TMC would also have expansion capacity for future SFMTA control functions, such as taxi dispatch.

The Lease term is for a minimum of 10 years, with two options to renew for 10 years each.

The base rent for the 7th Floor starts at $30.50; the base rent for the 1st Floor starts at $18.00. There are annual increases of 3% on July 1. The base rent is within the range for San Francisco office space rents and expenses in the Fourth Quarter of 2010 (average $32.24 s.f. per year full service).

Additionally, SFMTA will be responsible for the following: (i) utility costs, (ii) the after-hours or excess services and utilities costs, (iii) equipment maintenance costs, (iv) janitorial services, (v) tenant improvement costs that exceed the tenant improvement allowances of $1.73 m, (vi) additional service requested by City; and (vii) the costs incurred by Landlord for any alterations or other modifications to any part of the Property requested by City.

1455 Market Street represents a unique opportunity for the SFMTA to create a new command and control operating environment on an accelerated timeline with minimal facility costs.

ALTERNATIVES CONSIDERED

In March 2009, the SFMTA completed a Site Assessment Study to evaluate and rank potential sites for a new primary TMC. The following 12 criteria were used to evaluate the potential sites:

- Site Size;
- Future Configurability. and Expandability;
- Meeting SFMTA Mission & Goals;
- Meeting Safety & Security Criteria;
- Structural Vulnerability;
- Zoning;

- Proximity to Metro Subway;
- Capital Costs;
- Available Funding;
- Schedule;
- Cost of Occupancy; and
- Transportation Access.

The 1455 Market site ranked the highest.

The Transbay Terminal is a long-term option to implement a TMC. When and if the Transbay Terminal is constructed, part of that planning process will be to for the SFMTA to decide whether to continue use of 1455 Market Street as the primary TMC site and to develop the Transbay Terminal as a secondary site, or potentially a regional control center; or whether to develop the Transbay Terminal location as the primary site and convert 1455 Market Street to serve as a fully-functional secondary site.

SCHEDULE

The schedule is for the tenant improvements to be completed by May 31, 2012, and SFMTA's move-ins are to occur over the next six-to-twelve months.

FUNDING IMPACT

The C3 Program Budget is $32,553,231. Of the C3 Program Budget, the Lease for 1455 Market Street, is estimated at $11,217,985.67 which includes the first six months of lease payments.

The FY 2013 and FY 2014 budget cycle SFMTA Operating Budget will need to include the $1.2 m annual lease payment.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Board of Supervisors must approve the Lease.

The City Attorney has reviewed this report

RECOMMENDATION

SFMTA staff recommends approval of a lease between Hudson 1455 Market, LLC, as Landlord, and City and County of San Francisco (City), as Tenant, for a Portion of the 7th Floor and Locker Room Premises on the 1st Floor and Bike Room Premises on the 3rd Floor of 1455 Market Street for the SFMTA Transportation Management Center which is a part of the Agency's Central Control and Communications Project.

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

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency's (SFMTA) real-time command and control functions currently reside in various locations dispersed around the City in facilities, which are undersized, with outdated systems, including at the Muni transit Operations Control Center (OCC) at 131 Lenox Way, the satellite Line Management Center at 1 South Van Ness Avenue on the 8th Floor, Muni's Power Control Center at 1401 Bryant St., the Sustainable Streets' Traffic Management Center, SF*go*, at 25 Van Ness Avenue, and the Security Division, which currently dispatches Parking Control Officers and towing at 505 7th Street, and

WHEREAS, The SFMTA seeks to consolidate its real-time command and control functions in a single, secure facility, adequately sized, with fully integrated and up-to-date systems, and which also have expansion capacity for future SFMTA control functions, such as taxi dispatch and SF*park*.; and

WHEREAS, In September 2008, the SFMTA completed an Operational Concept Document to establish key goals and recommendations for a new Transportation Management Center (TMC); and

WHEREAS, In March 2009, the SFMTA completed a Site Assessment Study, to evaluate and rank potential sites for a new TMC; the Study evaluated nine sites against 12 criteria, and ranked 1455 Market Street as the best site; and

WHEREAS, In May 2010 an allocation of $11.155 million from Prop K was authorized to fund the TMC; and

WHEREAS, The SFMTA, through the City's Real Estate Division, has negotiated a Lease Hudson in December 2010; and

WHEREAS, the SFMTA will lease 39,573 square feet in the building, including 38,894 square feet on the 7th Floor for the TMC, 679 square feet on the 1st Floor plus approximately 700 square feet in one parking space for a Bike Room in the building's 3rd Floor garage; and

WHEREAS, The base rent on the 7th Floor starts at $30.50 and the base rent on the 1st Floor starts at $18, with annual increases of three per cent as negotiated by the City's Real Estate Department;

WHEREAS, SFMTA will reimburse Hudson for SFMTA's prorated share of increased operating expenses and taxes over base year operating expenses and taxes as detailed in the Lease; and

WHEREAS, The Lease has a term of 10 years, with two 10-year options; and now, therefore be it

RESOLVED, That the SFMTA Board of Directors approves the Lease between Hudson 1455 Market, LLC, as Landlord, and City and County of San Francisco as Tenant, for a Portion of the 7th Floor and Locker Room Premises on the 1st Floor and Bike Room Premises on the 3rd Floor of 1455 Market Street, San Francisco, for the SFMTA Transportation Management Center; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to submit the Lease to the Board of Supervisors for approval.

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

_____

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Enclosure 2

Summary of SFMTA's Lease Terms for 1455 Market Street

RED negotiated with Bank of America National Association (BofA) re: a Letter of Intent (LOI) for a lease only for SFMTA's C3 Program for the Transportation Management Center (TMC), the terms of which are in the Lease with Hudson 1455 Market, LLC (Hudson), namely:

Building, floors, and square feet (s.f.):	1455 Market – total 39,573 rentable s.f., including 38,894 s.f. on the 7th Floor, and 679 s.f. on the 1st Floor for the Locker Room; also approximately 700 s.f. in one parking space for a Bike Room in the building's 3rd Floor garage.
Owner/Landlord	Hudson 1455 Market, LLC
Tenant:	City on behalf of SFMTA for the TMC for a 24/7 command, control and communications center, offices and related uses; Locker/Shower Room(s) for employees of the TMC; and Bike Room for bicycle storage.
Rent:	$1,192,250.00 plus 3% annual increases on July 1, based on 7th Floor - $30.50 per s.f. base rent, 1st Floor - $18.00 per s.f. base rent, and no charge for Bike Room; net of Additional Rent – see below.
Base Rent Abatement:	First 2 months of Term.
Operating Expenses/Taxes:	Tenant to pay prorated share of increases in equitably adjusted operating expenses and taxes over Base Year.
Additional Rent:	City shall reimburse Landlord, on a monthly basis upon receipt of appropriate invoices, for the following: (i) separately metered electrical charges for the 7th Floor (Electrical Service); (ii) metered chilled water charges payable by City; (iii) the after-hours or excess services and utilities costs, (iv) equipment maintenance costs, (v) the cost of interior janitorial services, (vi) the costs incurred by Landlord for any alterations or other modifications to any part of the Property requested by City, and (vii) any additional services requested by City or otherwise as set forth
Term:	10 years, plus two 10-year options. Base Rent for Option Period 105% of the previous year's Base Rent for the first year, with 3% annual increases thereafter.
Tenant Improvements (TIs) and TI Allowance:	Landlord, at Landlord's cost, will construct turnkey tenant improvements per mutually agreeable construction plans and specifications. Landlord's architect and contractor shall be reasonably approved by City. Landlord shall provide a "below the ceiling" allowance of $44.00 per s.f. for the 7th Floor and $27 per s.f. for the 1st Floor, inclusive of A & E and Construction Supervision costs but exclusive of Base Building Improvements. Landlord's construction supervision fee shall be 8% on the first $50 per s.f. of TI costs and 1% of TIs funding by City up to $5 million, plus 2% of TIs funded by City above $5 million and 4% of cost of all TIs thereafter. The TI Allowance may not be used to offset rent. See Attachment B for the estimated TI costs and TI allowance.
City Required Contribution to Improvements:	City agrees to contribute at least $5,000,000 towards TIs and trade fixtures to the premises (in addition to the TI Allowance).

Additional Tenant Improvement Costs & Amortization:	If the TIs are in excess of the TI Allowance plus the City's Required Contribution to Improvements, City has the right to amortize the cost of additional TIs up to $35 per s.f. over the term at 8% interest as Additional Rent.
Base Building Improvements:	Landlord at Landlord's cost will be responsible for the cost of (i) mutually agreeable upgrades to the common areas, (ii) provision of windows along 11th Street, (iii) demising walls and decommissioning costs (iv) provision of HVAC zoning at 1:1200 rentable square feet (r.s.f.), (v) an allowance of $15,000 for direct electrical metering for utilities for the Premises and (vi) all ADA and code upgrades to existing improvements.
City's rights to use existing equipment:	City has the right to use the furniture and existing equipment currently located within the Premises.
Improvements at the beginning of extension periods.	If City extends the lease Term, Landlord will repaint and recarpet the common areas and the Premises (subject to a cap on Landlord's cost).
LEED Certification:	City intends to either seek Leadership in Energy & Environmental Design (LEED) Commercial Interiors Silver certification of the tenant improvements and/or provide similar sustainable improvements without USGBC certification. The costs for improvements to the Building for such certification(s) shall be paid from the TI allowance.
Parking:	At a ratio of 1 space for each full 4,200 s.f. of rentable s.f. (39,573 rentable s.f. / 4,200 = 9 spaces), of which approximately one parking space will be used by City for the Bicycle Room.
Roof:	City has the non-exclusive right to install and maintain communications equipment on the roof of the Building, subject to Landlord's approval and requirements.
Options to Expand the Premises:	City shall have during the Initial Term two first right(s) of refusal to expand the Premises into any 3,000 s.f. or greater vacant and unencumbered space located on the 7th Floor.
Access:	City personnel and invitees will have 24 hours per day, 7 days per week, 52 weeks per year, access to the Premises.
Maintenance & Repair:	Landlord shall repair and maintain the building and systems in good condition, in a manner consistent with maintenance standards for privately owned, comparable N-2 data center facilities.
Hold Over:	Rent in first 60 days (or any portion thereof) of holdover will be 125% of the then base rent and 200% of the then rent thereafter.
Sublease/Assignment:	City has the right to sublease all or part of the Premises during the term with Landlord's prior written consent. Landlord can retain 50% of any net subleasing or assignment profits after City has recaptured all costs. Use of all or any part of the Premises or sublease(s) to any City departments, nonprofits, vendors or contractors of City is not considered a sublet and is not subject to Landlord approval or profit participation.
Subordination and Non Disturbance:	Landlord's lender will be required to execute a Subordination and Non Disturbance Agreement.
Commissions:	Landlord shall be solely responsible for any and all real estate commissions. City represents and warrants that it has not had any dealings with any realtor, broker or agent in connection with this transaction other than Jones Lang LaSalle Americas, Inc., and Cushman & Wakefield, representing BofA and Landlord

Landlord Representations:	Landlord represents and warrants that Landlord has no knowledge of any hazardous materials or contamination in or about the Premises except for those to be disclosed in writing prior to submittal of authorizing legislation. City acknowledges that some asbestos containing building materials were utilized in the construction of the Building. In the early 1990's a number of asbestos surveys were conducted and all friable ACBM was removed by licensed Abatement contractors under the supervision of Bank environmental consultants. There are a small number of areas where non-friable ACBM remains. These areas identified in the annual report submitted via hard copy to the Building tenants and contractors (e.g., floor tile mastic or in the material used within some of the components of mechanical insulation). City agrees to perform its due diligence during as part of the space planning and cost estimating.
City Lease Form:	The Lease Agreement has been approved as to form by the City Attorney and is subject to approval by the SFMTA Board, the Board of Supervisors and Mayor.
SFMTA Rent Estimate:	The estimated rent and expense projections for three Fiscal Years: • FY 2011-12 (at current locations at Lenox OCC, 25 Van Ness, and 1 VN, plus one month at 1455 Market St.). – $361,701 • FY 2012-13 (at 1455 Market St.) – $1,415,742 (less $780,000 paid by the C3 Program budget)= $651,970 • FY 2013-14 (at 1455 Market St.) – $1,474,929

Enclosure 3

C3 Program for Transportation Management Center: Budget, 1455 Market St. Estimated Tenant Improvement Costs, and Funding Sources
C3 Program Budget (as of 11/29/10)

#	1455 Market Street Tenant Improvements	Revised 17Feb2011
1	Detailed Design (SFMTA OTI Contract & Landlord Negotiation)	$ 3,698,000
2	Construction Contract (OTI)	$ 3,850,000
3	Department of Technology (OTI Construction Work)	$ 1,000,000
4	Department of Emergency Management (OTI Construction Work)	$ 25,000
5	San Francisco Police Department (OTI Construction Work)	$ 25,000
6	SFMTA Information Technology (OTI Construction Work)	$ 500,000
7	Landlord (Tenant Improvement)	$ 10,224,271
8	Construction Management & Support (SFMTA OTI Contract & Landlord TIs)	$ 2,000,000
9	Department of Public Works - Bureau of Architecture	$ 110,000
10	San Francisco Department of Real Estate	$ 130,000
11	SFMTA Contract Administration	$ 186,000
12	SFMTA Quality Assurance	$ 65,000
13	SFMTA - Maintenance	$ 250,000
14	SFMTA - Operations	$ 650,000
15	SFMTA - Start-Up Team	$ 250,000
16	Permitting and Licensing Fees	$ 25,000
17	Utility Service Connections	$ 10,000
18	Miscellaneous Printing	$ 30,000
19	Landlord Rent & Utilities	$ 780,000
20	Special Job order / Service Contacts	$ 170,000
	SUBTOTAL	**$ 23,978,271**
	Escalation to Mid Construction at 2.50% Annual (2013)	$ 827,194
	Contingency (25%)	$ 6,247,766
	SUBTOTAL	**$ 31,053,231**
	CER Development	$ 1,500,000
	TOTAL PROJECT COST	**$ 32,553,231**
Notes:		
1 Assumed escalation at 2.5% 2011 to 2013 (excludes Landlord TIs)		n/a
2 Line 7 TI costs are ROM, pending final negotiation with Landlord		n/a
3 Contingency for Landlord TIs included in overall contingency		n/a

Enclosure 3
C3 Program for Transportation Management Center: Budget, 1455 Market St. Tenant Improvement Costs, and Funding Sources
1455 Market St. Estimated Tenant Improvement Costs (as of 2/15/11)

Assumes	square foot	$/sf/year	Amount
Locker Rm Rentable Area	38,894	$30.50	$1,186,267.00
7th Floor Theater Rentable Area	679	$18.00	$12,222.00
Total:	39,573	$48.50	$1,198,489.00
Rent (net of Int Jan, Electricity, chilled water, and equipment maintenance)			
7th Floor	38,894	$30.50	$1,186,267.00
1st Floor	679	$18.00	$12,222.00
Total:	39,573	$48.50	$1,198,489.00
Allowance			
7th Floor	38,894	$44.00	$1,711,336.00
1st Floor	679	$27.00	$18,333.00
Total:	39,573		$1,729,669.00
ROM			
CBI Estimate Dated 11/29/10			$9,899,153.00
MOD Fees (allowance)			$3,000.00
Potential Structural (for equipment over 200 lbs psf)			$30,000.00
USGBC Fees (allowance)			$5,000.00
Subtotal			$9,937,153.00
Contingency @ 10%			$993,715.30
Subtotal			$10,930,868.30
Project management/Supervision (See below)			$287,117.37
ROM TOTAL			$11,217,985.67
Less Allowance			($1,729,669.00)
Projected City Cost			$9,488,316.67
Project Management/ Supervision Fees			
(i) eight percent (8%) of the first $50.00 per rentable square foot, plus			
(ii) one percent (1%) of the cost of the Leasehold Improvements funded directly by City (without an allowance) up to $5 million, plus			
(iii) two percent (2%) of the cost of the Leasehold Improvements funded directly by City in excess of $5 million as shown in the ROM Budget; and			
(iv) four percent (4%) of the cost of all Leasehold Improvements thereafter.			
Original Estimate at $50/sf times 39,500 sf.			$1,975,000.00
City Contribution			$5,000,000.00
Subtotal Costs			$6,975,000.00
Remaining ROM (ROM total = $6,975,000)			$3,955,868.30
Project management/Supervision			
8% of Original			$158,000.00
1% of City Contribution			$50,000.00
2% of Remaining ROM			$79,117.00
Total:			$287,117.00

Enclosure 3

C3 Program for SFMTA's Transportation Management Center: Funding Sources

Funding Source	Planned	Programmed	Allocated	TOTAL BY FUND
Prop K				
Res. 10-67 EP22			*$8,755,000*	*$8,755,000*
Res. 10-67 EP20			*$2,400,000*	*$2,400,000*
EP20	*$14,872,000*			*$14,872,000*
Federal Funding				
Section 5307	*$746,181*		*$2,367,284*	*$3,113,465*
State Funding				
Prop 1B - PTMISEA			*$1,700,000*	*$1,700,000*
Local Funding				
SFMTA Operating Funds			*$62,766*	*$62,766*
*Bank of America (now Hudson) Tenant Improvement (TI) Allowance**	*$1,400,000*			*$1,400,000*
AB664			*$250,000*	*$250,000*
TOTAL	**$17,018,181**	**$0**	**$15,535,050**	**$32,553,231**

**Note: as of 2/11 the TI Allowance is now approximately $1,729,669*

Enclosure 4

Lease between Hudson 1455 Market, LLC, as Landlord, and City and County of San Francisco (City) as Tenant, for the Lease of a Portion of 1455 Market Street on the Seventh Floor and First Floor Bicycle Room, for the San Francisco Municipal Transportation Agency
Transportation Management Center

LEASE

between

HUDSON 1455 MARKET, LLC,
as Landlord

and

CITY AND COUNTY OF SAN FRANCISCO,
as Tenant

For the lease of a
Portion of the 7th Floor
and
Locker Room Premises on the 1st Floor
and
Bike Room Premises on the 3rd Floor

of

1455 Market Street
San Francisco, California

_____, 2011

OFFICE LEASE

Table of Contents

LIST OF EXHIBITS:

DEFINITIONS

"7th Floor Premises" shall have the meaning set forth in Section 1 and Section 2.1(a) and shown in ***Exhibit A-1***.

"ACM" shall have the meaning set forth in Section 23.34.

"Actual Knowledge" whether or not capitalized, when referring to Landlord, shall have the meaning set forth in Section 21.2.

"Additional Charges" shall have the meaning set forth in Section 1 and Section 4.4.

"Additional Construction Allowance " shall have the meaning set forth in Section 6.1(c) and Section 22.1(j).

"Additional Construction Allowance Amortization Payment" shall have the meaning set forth in Section 6.1(c).

"Additional Equipment" shall have the meaning set forth in Section 2.4.

"Additional Services" shall have the meaning set forth in Section 9.7.

"Adjustment Date" shall have the meaning set forth in Section 4.2.

"Affiliate" of a person or entity shall mean a person or entity that directly or indirectly owns or is owned by, controls or is controlled by, or under common ownership control with another party. For purposes of this definition, the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such person, whether through the ownership of voting rights or by contract or otherwise. Without limiting the foregoing, an Affiliate shall include any person that beneficially owns or holds more than thirty five percent (35%) of any voting interest or equity interest in another person or entity.

"Additional Charges" shall have the meaning set forth in Section 4.4(a).

"Affiliate Lien" shall have the meaning set forth in Section 15.5.

"Agents" shall have the meaning set forth in Section 23.5.

"Allowance" shall have the meaning set forth in Section 1 and Section 22.1(j).

"Alterations" shall have the meaning set forth in Section 7.1.

"Amortization Schedule" shall have the meaning set forth in Section 3.2.

"Availability Notice" shall have the meaning set forth in Section 21.2(b).

"Award" shall have the meaning set forth in Section 13.1.

"Banking Use" shall have the meaning set forth in Section 5.1(b).

"Base Building Improvements" shall have the meaning set forth in Section 1, Section 6.1 and Section 22.1(j).

"Base Rent" shall have the meaning set forth in Section 1 and Section 4.1.

"Base Rent for First Offer Space" shall have the meaning set forth in Section 1 and Section 4.1.

"Base Rent for Initial Premises" shall have the meaning set forth in Section 1.

"Base Year" shall have the meaning set forth in Section 1 and Section 4.5.

"Basic Lease Information" shall have the meaning set forth in Section 1.

"Bike Room Premises" shall have the meaning set forth in Section 1 and Section 2.1 and shown in ***Exhibit A-2***.

"BORP" shall have the meaning set forth in Section 23.35.

"Building" shall have the meaning set forth in Section 1 and Section 2.1.

"Building Rules and Regulations" shall have the meaning set forth in Section 5.2.

"Building Systems" shall have the meaning set forth in Section 8.1.

"Casualty " shall have the meaning set forth in Section 12.1.

"Casualty Notice" shall have the meaning set forth in Section 12.3.

"CERCLA" shall have the meaning set forth in Section 21.1.
"CEWA" shall have the meaning set forth in Section 5.2.
"City" shall have the meaning set forth in the introductory paragraph.
"City Program Affiliate" shall have the meaning set forth in Section 14.2.
"City Required Contribution" shall have the meaning set forth in Section 6.1(b).
"City Requirements" shall have the meaning set forth in Section 23.36.
"City Service Charges" shall have the meaning set forth in Section 4.4(a).
"City's Extension Notice" shall have the meaning set forth in Section 3.3(b).
"City's Percentage Share" shall have the meaning set forth in Section 1 and Section 4.5.
"City's Personal Property" shall have the meaning set forth in Section 7.3.
"City's Representative" shall have the meaning set forth in Section 4.9(b).
"City's Server Connection" shall have the meaning set forth in Section 2.5 and the Initial Work Letter.
"Claims" shall have the meaning set forth in Section 16.1.
"Code" shall have the meaning set forth in Section 23.27.
"Commencement Date" shall have the meaning set forth in Section 1 and Section 3.1.
"Common Areas" shall have the meaning set forth in Section 2.2.
"Communications Equipment" shall have the meaning set forth in Section 2.4.
"Confidential Information" shall have the meaning set forth in Section 4.11.
"Confidential Trade Secret" shall have the meaning set forth in Section 4.11.
"Connections" shall have the meaning set forth in Section 2.5.
"Construction Administration Fee" shall have the meaning set forth in Section 6.1(d).
"Cosmetic Alteration" shall have the meaning set forth in Section 7.1.
"CRAC" shall have the meaning set forth in Section 9.3(A).
"Daily Basis" shall have the meaning set forth in Section 9.1.
"Date of Taking" shall have the meaning set forth in Section 13.1.
"DBI" shall have the meaning set forth in Section 23.35.
"Disabilities Laws" shall have the meaning set forth in Section 10.1.
"Effective Date" shall have the meaning set forth in Section 1 and Section 23.30.
"Encumbrance" shall have the meaning set forth in Section 11.
"Environmental Laws" shall have the meaning set forth in Section 21.1.
"Essential Services" shall have the meaning set forth in Section 4.14.
"Estimated Commencement Date" shall have the meaning set forth in Section 1.
"Estimated Monthly Service Charge" shall have the meaning set forth in Section 4.4(b).
"Event of Default" shall have the meaning set forth in Section 15.1.
"Excess Portion" shall have the meaning set forth in Section 15.5.
"Exercise Notice" shall have the meaning set forth in Section 22.1.
"Existing Lease" shall have the meaning set forth in Section 3.3(c).
"Existing Personal Property" shall have the meaning set forth in Section 22.2.
"Expense Shortfall" shall have the meaning set forth in Section 4.6.
"Expense Year" shall have the meaning set forth in Section 4.5.
"Expiration Date" shall have the meaning set forth in Section 1.
"Extended Outside Delivery Date" shall have the meaning set forth in Section 3.3(b).
"Extension Authorizing Resolution" shall have the meaning set forth in Section 3.4 (b).
"Extension Exercise Notice" shall have the meaning set forth in Section 3.4(a).
"Extension Option" and "Extension Options" shall have the meaning set forth in Section 1 and Section 3.4.

"Extension Term" shall have the meaning set forth in Section 3.4.
"Extraordinary Improvements" shall have the meaning set forth in Section 20.
"Financial Institution" shall have the meaning set forth in Section 5.1.
"Financing Lien" shall have the meaning set forth in Section 15.5.
"First Offer Right" shall have the meaning set forth in Section 22.1.
"First Offer Space" shall have the meaning set forth in Section 22.1.
"First Offer Space Work Letter" shall have the meaning set forth in Section 22.1(i).
"Hazardous Material" shall have the meaning set forth in Section 21.1.
"HEPA" shall have the meaning set forth in Section 6.7.
"HRC" shall have the meaning set forth in Section 23.25(d).
"Indemnify" shall have the meaning set forth in Section 16.1.
"Independent CPA" shall have the meaning set forth in Section 4.9(c).
"Initial Communications Equipment" shall have the meaning set forth in Section 2.4(a).
"Initial Premises" shall have the meaning set forth in Section 1 and Section 2.1 and shown in ***Exhibits A-1***, ***A-2*** and ***A-3***.
"Initial Premises Work Letter" shall have the meaning set forth in Section 6.1.
"Initial Telecom Site" shall have the meaning set forth in Section 2.4(a).
"Initial Term" shall have the meaning set forth in Section 3.1.
"Invitees" shall have the meaning set forth in Section 23.5.
"Judgment Lien" shall have the meaning set forth in Section 15.5.
"Landlord" shall have the meaning set forth in the introductory paragraph and Section 1.
"Landlord Delay" shall have the meaning set forth in Section 3.1(b).
"Landlord's Expense Statement" shall have the meaning set forth in Section 4.6.
"Landlord's Suspension Notice" shall have the meaning set forth in Section 3.3(b).
"Landlord's Suspension Request" shall have the meaning set forth in Section 3.3(b).
"Landlord's Tax Statement" shall have the meaning set forth in Section 4.7.
"Laws" shall have the meaning set forth in Section 10.1.
"Lease" shall have the meaning set forth in the introductory paragraph.
"Leasehold Improvement Work" shall have the meaning set forth in Section 6.1(a).
"Leasehold Improvements" shall have the meaning set forth in Section 1 and Section 6.1(a).
"Legislative Approval Deadline" shall have the meaning set forth in Section 22.1(g).
"Life Safety Laws" shall have the meaning set forth in Section 10.1.
"Locker Room Premises" shall have the meaning set forth in Section 1 and Section 2.1 and shown in Exhibit A-3.
"Major Damage or Destruction" shall have the meaning set forth in Section 12.3.
"Memorandum of Lease" shall have the form set forth in Section 23.26 and Exhibit L.
"Muni Connection" shall have the meaning set forth in Section 2.5 and ***Exhibit F-1***.
"Operating Cost Increase" shall have the meaning set forth in Section 4.6.
"Operating Costs" shall have the meaning set forth in Section 4.5.
"Other Transferred Property" shall have the meaning set forth in Section 22.2.
"Outside Delivery Date" shall have the meaning set forth in Section 3.3(b).
"Permitted LTV Ratio" shall have the meaning set forth in Section 15.5.
"Permitted Use" shall have the meaning set forth in Section 5.1.
"Planning Deadline" shall have the meaning set forth in Section 22.1(g).
"Premises" shall have the meaning set forth in Section 2.1.
"Prohibited Use" shall have the meaning set forth in Section 5.1(a).
"Projected Completion Date" shall have the meaning set forth in Section 3.3(b).

"Projected Repair Time" shall have the meaning set forth in Section 12.3.
"Property" shall have the meaning set forth in Section 2.1.
"Prorated Abatement Days" shall have the meaning set forth in Section 22.1(i).
"Real Estate Tax Increase" shall have the meaning set forth in Section 4.7.
"Real Estate Taxes" shall have the meaning set forth in Section 4.5.
"Recapture" shall have the meaning set forth in Section 14.3(b).
"Rescission Trigger Date" shall have the meaning set forth in Section 22.1(k).
"Release" shall have the meaning set forth in Section 21.1.
"Removal Items" shall have the meaning set forth in Section 20.
"Rent" shall have the meaning set forth in Section 4.4.
"Rent Commencement Date" shall have the meaning set forth in Section 1, Section 3.1(a) and Section 22.1(j).
"Rentable area" shall have the meaning set forth in Section 2.1(b).
"Rentable square feet" shall have the meaning set forth in Section 2.1(b).
"ROM Budget" shall have the meaning set forth in Section 22.1(e).
"Rules and Regulations" shall have the meaning set forth in Section 5.2.
"Seismic Safety Laws" shall have the meaning set forth in Section 10.1.
"Seismic Work" shall have the meaning set forth in Section 6.6.
"Self-inure" shall have the meaning set forth in Section 17.1.
"SNDA" shall have the meaning set forth in Section 11.2.
"Sole Cost" shall have the meaning set forth in Section 4.5(c).
"Sublet Notification" shall have the meaning set forth in Section 14.3(b).
"Sublet Premises" shall have the meaning set forth in Section 14.3(b).
"Substantially Completed" and "Substantial Completion" shall have the meaning set forth in Section 6.2.
"Supplemental Property Schedule" shall have the meaning set forth in Section 22.2.
"Taking" shall have the meaning set forth in Section 13.1.
"Tax Shortfall" shall have the meaning set forth in Section 4.7.
"Tax Year" shall have the meaning set forth in Section 4.5.
"Tenant" shall have the meaning set forth in the introductory paragraph and Section 1.
"Tenant Delay" shall have the meaning set forth in Section 3.1(c).
"Term" shall have the meaning set forth in Section 1 and Section 3.1(e).
"Termination Notice" shall have the meaning set forth in Section 3.3(b).
"Termination Trigger Date" shall have the meaning set forth in Section 3.3(b).
"Transfer Premium" shall have the meaning set forth in Section 14.3(e).
"Transferee" shall have the meaning set forth in Section 14.3(e).
"Unavoidable Delay" shall have the meaning set forth in Section 3.1(d).
"Unsafe Condition" shall have the meaning set forth in Section 4.14.
"Work Letter" and "Work Letters" shall have the meaning set forth in Section 6.1(a).

LEASE

THIS LEASE (this "Lease"), dated for reference purposes only as of _____, 2011 is by and between HUDSON 1455 MARKET, LLC, a Delaware limited liability company ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("City", or "Tenant"), acting by and through the San Francisco Municipal Transportation Agency ("SFMTA").

Landlord and City hereby agree as follows:

1. BASIC LEASE INFORMATION

The following is a summary of basic lease information (the "Basic Lease Information"). Each item below shall be deemed to incorporate all of the terms in this Lease pertaining to such item. In the event of any conflict between the information in this Section and any more specific provision of this Lease, the more specific provision shall control.

Lease Reference Date:	_____, 2011
Landlord:	HUDSON 1455 MARKET, LLC
Tenant:	CITY AND COUNTY OF SAN FRANCISCO
Building (Section 2.1):	1455 Market Street, San Francisco, California
Premises, Initial Premises (Section 2.1):	The Premises shall consist of (i) certain rentable space on the seventh (7th) floor of the Building (the "7th Floor Premises") and (ii) certain rentable space located on the first (1st) Floor of the Building to be used for shower, locker room and related purposes as provided below (the "Locker Room Premises"), and (iii) certain premises to be located on the third (3rd) Floor parking area of the Building to be used for bike storage and related purposes as provided below (the "Bike Room Premises"). The 7th Floor Premises are shown outlined and labeled on Exhibit A-1, the Bike Room Premises are shown outlined and labeled on Exhibit A-2, and the Locker Room Premises are shown outlined and labeled on Exhibit A-3. The 7th Floor Premises, the Bike Room Premises and the Locker Room Premises are sometimes referred to collectively as the "Initial Premises." City has a right of first offer to lease additional space on the 7th Floor of the Building as set forth in Section 22.1. Upon City's exercise of the right of first offer, the applicable First Offer Space shall be added to the Premises in accordance with the provisions of Section 22.1.
Rentable Area of Initial Premises (Section 2.1):	7th Floor Premises: 38,894 rentable square feet Locker Room Premises: 679 rentable square feet Bike Room Premises: Not applicable

Parking Rights (Section 2.3):	City has the right during the Term to one parking space for every 4,200 rentable square feet of City's then-existing Premises (other than the Locker Room Premises), as set forth in Section 2.3; provided, however, City's parking allocation shall be reduced by the number of parking spaces that are converted and used by City as the Bike Room Premises.
Communications Equipment (Section 2.4):	City has the non-exclusive right to install and maintain communications equipment on the roof of the Building, subject to Landlord's approval and requirements as set forth in Section 2.4, including the Initial Communications Equipment described in Exhibit B-1 to be installed in the location depicted on Exhibit B-2.
Term (Section 3):	Ten (10) years, commencing on the Commencement Date and ending on the Expiration Date, subject to City's Extension Options as set forth in Section 3.4.
Estimated Commencement Date:	The "Estimated Commencement Date" shall be June 1, 2012.
Commencement Date:	The "Commencement Date" shall be the earlier of (i) the date Substantial Completion of the applicable Base Building Improvements and Leasehold Improvements occurs and (ii) the date Substantial Completion of the applicable Base Building Improvements and Leasehold Improvements would have occurred but for Tenant Delay(s) (but in no event earlier than the Effective Date).
Expiration Date:	The "Expiration Date" shall be the date immediately preceding the tenth (10th) anniversary of the Commencement Date.
Extension Options (Section 3.4):	City shall have the option to extend the Term for two (2) successive terms of ten (10) years each, as set forth in Section 3.4.
Base Rent for Initial Premises (Section 4.1); Base Rent for First Offer Space (Section 4.1):	Annual Base Rent for the Initial Premises and each First Offer Space added to the Premises during the Initial Term shall be computed in accordance with the following schedule, subject to adjustment as set forth below: Annual Base Rent for space on the 7th Floor of the Building: $30.50 per rentable square foot (or $2.54 per rentable square foot per month). Annual Base Rent for the Locker Room Premises: $18.00 per rentable square foot (or $1.50 per rentable square foot per month). The Base Rent rates are subject to escalation as provided below.
Rent Commencement Date (Section 3.1):	The "Rent Commencement Date" for the Initial Premises shall be sixty (60) days following the Commencement Date. The "Rent Commencement Date" for each First Offer Space shall be established as provided in Section 22.1(j) below.

Base Rent Escalations (Section 4.2):	Commencing on the first or second July 1 following the Commencement Date (as provided in Section 4.2), and annually on each July 1 thereafter during the Initial Term, the Base Rent rates shall be increased by 3%, as provided in Section 4.2. Base Rent shall also be adjusted if City exercises an Extension Option, as provided in Section 4.2. At the commencement of each Extension Term, the Base Rent rates per rentable square foot shall be adjusted to 105% of the Base Rent rate per rentable square foot in effect with respect to the applicable portion of the Premises immediately prior to the commencement of the applicable Extension Term. Commencing on the first or second July 1 after the commencement of the applicable Extension Term (as provided in Section 4.2), and on each July 1 thereafter of such Extension Term, the Base Rent rates shall be increased by 3%. Additional Charges shall not be subject to the above escalation.
Additional Charges (Section 4.4):	Throughout the Term, City shall pay, in addition to Base Rent, City's Percentage Share of increases in Operating Costs and Real Estate Taxes over the relevant Base Year Operating Costs and Real Estate Taxes. City shall pay the cost to amortize the Additional Tenant Improvement Allowance utilized for the Leasehold Improvements, if any, on a straight-line basis with interest at 8% per annum, as provided in Sections 6.1(c). City shall pay other Additional Charges as provided in this Lease.
Base Year (Section 4.5):	Calendar year 2012.
City's Percentage Share (Section 4.5):	The percentage of rentable space leased by City at any given time during the Term compared to 1,054,631 (the total rentable space in the Building).
Use (Section 5.1):	7th Floor Premises and First Offer Space: Command center for the SFMTA and other general office and data center uses for SFMTA and, subject to the limitations set forth below, other City departments and other public or nonprofit agencies for the performance of their services under contract with the City and uses incidental thereto, including public programs ancillary to the primary use of the Premises, if required by the City's Charter or Laws, provided that at all times use of the 7th Floor Premises and First Offer Space, if any, shall be consistent with standards of a first-class office building Without limiting other uses that are inconsistent with the standards of a first-class office building, City expressly agrees that the Premises shall not be used for any of the following purposes: (i) drug counseling or treatment; (ii) the detention of criminals; (iii) parole or probation programs, counseling or meetings; (iv) medical clinics, mental health programs or other medical services; or (v) general assistance/welfare disbursements or job training/counseling or other programs for the recipients of general assistance/welfare

	disbursements. In addition, City shall not use or permit the use of the Premises or any portion thereof for Banking Use (as defined in Section 5.1). Bike Room Premises: Bicycle storage and for no other purposes whatsoever. Locker Room Premises: Changing room(s) and shower room(s) for employees of City, City's Program Affiliates, and Transferees, and for no other purposes whatsoever.
Leasehold Improvements and Base Building Improvements (Section 6.1):	Landlord shall provide Leasehold Improvements and Base Building Improvements with respect to the Premises, including the Initial Premises and each First Offer Space, pursuant to plans agreed to by City, as further set forth in, respectively, Section 6.1 and Section 22.1, and in the Initial Premises Work Letter or the First Offer Space Work Letter, as applicable.
Allowance (Section 6.1(b) and Section 22.1(j)):	Landlord shall provide an Allowance of $44.00 per rentable square foot of the 7th Floor Premises and $27.00 per rentable square foot for the Locker Room Premises for the construction of the Leasehold Improvements as provided in Section 6.1(b) and in the Initial Premises Work Letter. Landlord shall provide a prorated Allowance for each First Offer Space as provided in Section 22.1(j) and in the First Offer Space Work Letter.
Additional Construction Allowance (Section 6.1(d) and Section 22.1(j)):	Landlord shall make available an Additional Construction Allowance in the amount of $35.00 per rentable square foot of the 7th Floor Premises for the construction of the Leasehold Improvements as provided in Section 6.1(c). Landlord shall provide a prorated Additional Construction Allowance for each First Offer Space as provided in Section 22.1(j). City shall repay the Additional Construction Allowance in the manner described in Section 6.1(c).
City Contribution (Section 4.1(d)):	City must contribute a minimum of $5 million toward the Leasehold Improvements, as provided in Section 6.1(d).
Base Building Improvements (Section 6.4):	Landlord shall provide the Base Building Improvements, as defined in the applicable Work Letter, at Landlord's sole cost, except as otherwise provided in the Work Letter, in accordance with Section 6.4.
Utilities and Services (Section 9.1):	Landlord shall furnish the utilities and services set forth in Section 9.1. City shall pay for its separately metered electricity costs to the 7th Floor Premises and Landlord shall pay (subject to City's payment of City's Percentage Share of increases in Operating Costs and subject to City's obligation to pay for excess and after-hours usage, when applicable) all other utility costs, as provided in Section 9.1.

Common Area and Building Services (Section 9.2):	Landlord shall furnish, at Landlord's cost (subject to City's payment of City's Percentage Share of increases in Operating Costs, to the extent applicable), janitorial services to the Common Areas of the Building and Building security services and graffiti removal, as provided in Section 9.2.
Special Computer Equipment Requirements (Section 9.3):	Landlord shall furnish at City's direct cost (and not as an Operating Cost): separately metered chilled water and electricity for operating CRAC units and other supplemental equipment in the 7th Floor Premises and maintenance and repair on a regular basis of certain systems within the Premises connected to the Building Systems, as provided in Section 9.3.
Janitorial Services to Premises (Section 9.4):	Landlord shall furnish mutually agreed janitorial services within the Premises, as set forth in Section 9.4. Janitorial services to the 7th Floor Premises and Locker Room Premises shall be provided at City's direct cost (and not as an Operating Cost).
Notice Address of Landlord (Section 23.1):	c/o Hudson Pacific Properties, Inc. 11601 Wilshire Boulevard, Suite 1600 Los Angeles, California 90025 Attn: Asset Manager – 1455 Market Street
with copy to:	Elkins Kalt Weintraub Reuben Gartside LLP 1800 Century Park East, 7th Floor Los Angeles, California 90067 Attention: Scott M. Kalt, Esq.
Key Contact for Landlord:	_____
Landlord Contact Telephone No.:	_____
Notice Address for Tenant (Section 23.1):	SFMTA Real Estate Section 1 South Van Ness Avenue, 8th Floor San Francisco, CA 94103 Re: 1455 Market Street, 7th Floor Fax No.: (415) 701-4341
with a copy to:	City and County of San Francisco Real Estate Division 25 Van Ness Avenue, Suite 400 San Francisco, CA 94102 Attn: Director of Property Re: 1455 Market Street, 7th Floor Fax No.: (415) 552-9216

and a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682 Attn: Real Estate/Finance Team Re: 1455 Market Street, 7th Floor Fax No.: (415) 554-4755
Contact for Tenant:	Senior Manager SFMTA Real Estate Section Finance and Information Technology Division
Tenant Contact Telephone No.:	(415) 701-4323
Alternate Contact for Tenant:	Manager SFMTA Real Estate Section Finance and Information Technology Division
Alternate Contact Telephone No.:	(415) 701-4794
First Right of Offer to Lease (Section 22.1):	City shall have the right of first offer to rent additional space on the 7th Floor of the Building as set forth in Section 22.1.
Existing Personal Property (Section 22.2):	Landlord shall deliver the Initial Premises to City with Existing Personal Property listed on Exhibit P in place.
Brokers (Section 23.8):	Landlord's Broker: Cushman & Wakefield City's Broker: None

2. PREMISES

2.1 LEASE PREMISES

(a) Landlord leases to City and City leases from Landlord, subject to the provisions of this Lease, those premises in the building identified in the Basic Lease Information (the "Building") and shown in ***Exhibit A-1***, ***Exhibit A-2*** and ***Exhibit A-3*** as, respectively, the 7th Floor Premises, Bike Room Premises and the Locker Room Premises (respectively, the "7th Floor Premises", the "Bike Room Premises" and the "Locker Room Premises", and collectively the "Initial Premises"). The "Premises" shall initially mean the Initial Premises. The Premises leased hereunder may be modified by the addition of one or more First Offer Spaces in accordance with the terms of this Lease. The Building, the land upon which the

Building is located and all other improvements on or appurtenances to such land are referred to collectively as the "Property."

(b) The Initial Premises are located on the floors of the Building, and contain the rentable area, specified in the Basic Lease Information. Landlord and City hereby stipulate that the rentable area of the Initial Premises shall be as set forth in the Basic Lease Information, and the provisions of Section 2.1(c) below apply only to the First Offer Spaces. Landlord and Tenant agree that the usable area of the Initial Premises has been verified by both parties and that Landlord is utilizing a deemed add-on load factor of 25.00% to compute the rentable area of the Initial Premises.

(c) Landlord shall cause each applicable First Offer Space to be measured in accordance with the same practice used with respect to the Initial Premises, and shall provide a copy of the measurement report to City. In the event City disagrees with such determination, City shall notify Landlord of the objection within thirty (30) days of receipt of such measurement report. Any measurement not objected to by City by such date shall be deemed accurate, final and binding against City for purposes of this Lease. With respect to any measurement to which City has timely objected, Landlord and City shall use reasonable efforts to meet and confer with one another in an attempt to agree upon the proper measurement of such First Offer Space within thirty (30) days after Landlord receives City's objection notice. If, following such period, Landlord and City are still unable to agree, Landlord and City shall jointly select an independent consultant to remeasure the space, and the determination of such consultant shall be binding upon the parties. Landlord and City shall share equally the cost of such consultant.

2.2. COMMON AREAS

City shall have the non-exclusive right to use, together with other tenants and occupants of the Building and subject to the Rules and Regulations, the portions of the Building designated by Landlord from time to time for the common use or benefit of occupants of the Building, including lobbies, corridors, elevators, stairways, and loading and parking areas of the Building and the Property (collectively, the "Common Areas"), and the non-exclusive right, together with other tenants and occupants of the Building and subject to the Rules and Regulations, of access to and from the Premises by the entrances to the Building and the Property. Landlord shall have the right to (i) change the arrangement and/or location of any amenity, installation or improvement in the Common Areas, and (ii) utilize portions of the Common Areas from time to time for entertainment, displays, product shows, leasing of kiosks or such other uses that in Landlord's sole judgment tend to enhance the Building, so long as such changes or uses do not materially interfere with or materially impair City's access to or use or occupancy of the Premises or the parking areas.

2.3 PARKING

(a) Subject to the provisions of this Section 2.3, City shall have the right during the Term, without additional charge, to use one unreserved self-park parking space within the Building's parking garage for every full 4,200 rentable square feet of area leased to City. As of the date of this Lease, the hours of operation of the on-site parking garage are twenty-four (24) hours per day, seven (7) days per week. The hours of operation are subject to change at any time, effective upon posted notice.

(b) All parking pursuant to this Section 2.3 shall be subject to reasonable and nondiscriminatory rules and regulations adopted by Landlord from time to time for the orderly operation and use of the parking garage, including the implementation of any sticker or other identification system established by Landlord. Such rules and regulations, and reasonable additions or modifications thereto, shall be binding upon City after delivery to City of a copy thereof (and a reasonable implementation period, if reasonably necessary), provided that such rules and regulations shall not reduce City's obligations hereunder, shall not conflict with the provisions of this Lease, shall not materially increase the burdens or obligations upon City or City staff, and shall not impose a charge upon City for services or rights which this Lease contemplates will be provided to City at no charge. City shall abide by, and exercise reasonable efforts to cause City's Agents and Invitees to abide by such rules and regulations. Landlord may engage a parking operator for the garage in the Building, in which case such parking operator shall have all the rights of control reserved hereunder by Landlord.

(c) Landlord specifically reserves the right to change the size, configuration, design, layout and other aspects of the parking garage at any time. City acknowledges and agrees that Landlord may, without incurring any liability to City and without any abatement of Rent under this Lease, from time to time, temporarily close-off or restrict access to the parking garage for purposes of permitting or facilitating any such construction, alteration or improvements, provided that Landlord shall (i) provide City with reasonable advance written notice of such disruption, (ii) allocate any parking spaces which remain accessible during such disruption in a nondiscriminatory manner, (iii) diligently attempt to make City's parking spaces available as promptly as possible, (iv) keep City apprised of Landlord's efforts, and (v) provide City with access to City's bicycle parking in the garage of the Building or provide reasonable substitute bicycle parking. Landlord shall not be liable to City, nor shall this Lease be affected, if any parking is impaired by any moratorium, initiative, referendum, law, ordinance, regulation or order passed, issued or made by any governmental or quasi-governmental body.

(d) In no event shall Landlord be liable for any damage of any nature to, or any theft of, vehicles or the contents thereof, in or about the parking garage, and at Landlord's request, City shall cause persons using its allocated parking spaces to execute a commercially reasonable standard agreement confirming the same.

(e) City's parking rights hereunder may not be assigned or transferred apart from this Lease, provided that the foregoing shall not prohibit use of the parking spaces by City's Program Affiliates or subtenants under an approved sublease. Upon the expiration or earlier termination of this Lease, City's parking rights hereunder shall automatically terminate.

2.4 COMMUNICATIONS EQUIPMENT

(a) City shall have the non-exclusive right, at its sole cost and expense, and solely for City's use, to install, maintain and operate upon the roof of the Building a reasonable number of transmitters or receiver antennas or dishes approved by Landlord (including, but not limited to, approval with respect to the size, weight, location and method of attachment), which approval shall not be unreasonably withheld or delayed (collectively, the "Communications Equipment") solely for use by City in the conduct of its business; provided that such Communications Equipment may not materially compromise the aesthetics or appearance of

the Building nor shall Landlord be required to incur any expense in accommodating the Communications Equipment. Without limiting the generality of the foregoing, City acknowledges that it shall be reasonable for Landlord to withhold approval of certain Communications Equipment proposed to be installed by City to the extent required to reserve adequate space and capacity for use of existing or future occupants of the Building (reasonably proportional to the respective square footage leased by such occupants), and subject to the understanding that Landlord, in Landlord's reasonable discretion, shall determine the roof area of the Building that is available and appropriate for the installation of communications equipment. The Communications Equipment must be (i) designed, installed and operated in compliance with all Laws, (ii) installed and operated so as not to adversely affect or impact structural, mechanical, electrical, elevator, or other systems serving the Building or any communication systems of the Building and so as not to cause injury to persons or property, and without limitation of the foregoing, so as not to void or impair any applicable roof warranty, and (iii) not impair the Building's heliport. City shall obtain Landlord's prior written approval of plans and specifications for the Communications Equipment, which approval shall not be unreasonably withheld, conditioned or delayed. Upon the expiration or termination of this Lease, City shall remove the Communications Equipment and repair any damage to the Building caused by the installation, maintenance, use or removal of the Communications Equipment. Without limiting the generality of the foregoing, City and Landlord acknowledge that commencing on the Effective Date, City shall have the right to install the Communications Equipment listed on the attached Exhibit B-1 (the "Initial Communications Equipment") in the location(s) indicated on the attached Exhibit B-2 (the "Initial Telecom Site"). Installation of the Initial Communications Equipment shall be subject to the applicable provisions of the Initial Premises Work Letter and Article 6 of this Lease, including, without limitation, City's agreement that (i) such installation shall comply with all laws, regulations, permits and approvals applicable to such installation and (ii) City's indemnity obligations under this Lease shall apply with respect thereto. City acknowledges that if City proposes to install City's Communications Equipment other than the Initial Communications Equipment in a site that may create radio frequency interference with existing equipment on the roof, Landlord may engage a consultant to evaluate such potential interference, and City shall reimburse Landlord for the reasonable fees and costs of such consultant within thirty (30) days after written request accompanied by an invoice or other reasonable supporting documentation.

(b) Landlord hereby grants to City the right to install (at City's sole cost and expense) any additional equipment required to operate the Communications Equipment and to connect the Communications Equipment to City's other machinery and equipment located in the Premises (e.g., conduits and cables) in the shafts, ducts, chases and utility closets located in the core of the Building ("Additional Equipment"), which Additional Equipment shall be deemed a part of the Communications Equipment for all purposes of this Section 2.4, provided that (i) the use of such space in the Building core by City (except customary chases for cabling) may not materially adversely affect the marketability of the remaining space on any floor of the Building, and (ii) to the extent any such Additional Equipment occupies space (other than space in customary chases for the Building) that would have otherwise been net rentable area on a floor of the Building, such space shall be included within the rentable area of the Premises and City shall be obligated to pay Base Rent and additional Rent with respect to such space as if such space were included in the Premises. City's use of such space in the

Building core shall be subject to Article 7 and the provisions of this Lease relating to City's use of Common Areas of the Building.

(c) Subject to Building Rules and other reasonable rules relating to Building security and safety that may be promulgated by Landlord pertaining to access by tenants to the roof of the Building and provided City does not unreasonably disturb any other tenants or occupants of the Building, City and City's contractors shall have reasonable access to the Communications Equipment and the Additional Equipment for purposes of operating, servicing, repairing or otherwise maintaining said equipment. City shall provide Landlord with reasonable advance notice prior to commencing installation of or other work on the Communications Equipment or Additional Equipment, provided that only subsequent notice within a reasonable time shall be required in the event of an emergency. Landlord may elect to be present for all such work, so long as the same does not require rescheduling of such work or unduly hinder, interfere with or delay the performance of the work. Upon Landlord's written request, City shall use the roofing contractor designated by Landlord to perform any roof penetration or other work that may affect the integrity of the roof or the roof warranty. City shall pay Landlord monthly, within thirty (30) days after being billed therefor, for all electricity used in connection with operation of the Communications Equipment. Electrical usage shall be measured by submeters installed by Landlord at Landlord's expense.

(d) Nothing contained in this Section 2.4 shall be deemed to prohibit or restrict any other individual or entity, including without limitation Landlord or any other tenant of the Building, from installing communications equipment on the roof of the Building or to use the roof for any other purpose. However, if Landlord shall place on the roof of any Building communications equipment of its own, or shall grant to any third party the right to locate and maintain any such equipment, all such equipment shall be located, designed and operated so as not to interfere with signals to and from City's Communications Equipment and Additional Equipment, the installation of which, in accordance with this Section 2.4, predates the installation of such equipment. Similarly, any Communications Equipment and Additional Equipment hereafter installed by City shall be located and designed so as not to interfere with signals to and from such other equipment belonging to Landlord or to third parties that may have previously been installed. If City's Communications Equipment or Additional Equipment interferes with equipment previously installed by others City shall be required, at its expense, to take all measures necessary to eliminate the source of interference caused by City's equipment. If communications equipment belonging to Landlord or a third party interferes with equipment previously installed by City, Landlord, at no expense to City, shall take all measures necessary to eliminate the source of interference caused by such equipment.

(e) Upon the expiration or earlier termination of this Lease, City shall remove the Communications Equipment and Additional Equipment. In connection with its installation, repair, maintenance and removal of any Communications Equipment and Additional Equipment, City, at City's sole cost and expense, shall comply with all applicable Building Rules and Regulations and Laws and repair any damage to the Building caused by such installation, repair, maintenance or removal, or at Landlord's election, such damage shall be repaired by Landlord, and City shall reimburse Landlord for the costs reasonably incurred by Landlord therefor, provided that prior to incurring such costs Landlord shall provide City, for City's approval or disapproval, with written notice of the required repairs together with a budget or other satisfactory estimate of the costs and expenses to be incurred in connection therewith. In the event that the placement of City's Communications Equipment or

Additional Equipment interferes with Landlord's performance of any repair or maintenance to the Building, including without limitation, the roofs of the Buildings, either City or , at City's election, Landlord, shall temporarily or permanently relocate and reinstall City's Communications Equipment or Additional Equipment at Landlord's cost, which cost shall be included in the cost of such repair or maintenance as an Operating Expense. City acknowledges it must comply with the Building's Rules and Regulations and Article 7, to the extent reasonably applicable to the installation, maintenance, repair, operation, replacement and removal of City's Communication Equipment and Additional Equipment.

(f) Landlord shall have no liability for damage arising from, and Landlord does not warrant that City's use of the Communications Equipment or Additional Equipment will be free from, any breach in security or damage or interference by third parties or free from any shortages, failures, variations, interruptions, disconnections, loss or damage caused by environmental conditions or any failure in the power supply for the Building. City assumes full responsibility for protecting from theft or damage, the Communications Equipment and Additional Equipment and any tools or other equipment that City may use in connection with the installation, operation, use, repair, maintenance or removal of the Communications Equipment or the Additional Equipment, and assumes all risk of theft, loss or damage, and to the maximum extent permitted by applicable Laws, and waives all Claims with respect thereto against Landlord and its Agents, including any Claims caused by any active or passive act, omission or neglect of Landlord or its Agents, except for Claims resulting from the gross negligence or willful misconduct of Landlord or its Agents. Further, no damage or disruption in City's use of the Communications Equipment or the Additional Equipment shall entitle City to abate Rent or relieve City from the performance of any of City's other obligations under this Lease.

2.5 MUNI CONNECTION AND CITY'S SERVER CONNECTION

In order to function as a command center for City's SFMTA operations, City must connect City's servers in the Premises to certain SFMTA equipment located in the SFMTA transit tunnel located underneath Market Street and to City's servers installed in the building located at One South Van Ness Avenue. Landlord grants City the right, at City's expense, (i) to install secure fiber cable through a new conduit running through the basement wall of the Building to City's underground Muni transit tunnel located underneath Market Street (the "Muni Connection"), (ii) to install secure fiber cable through Landlord's existing tunnel which runs from the basement of the Building underneath 11th Street to the building located at One South Van Ness Avenue (the "City's Server Connection"), provided that City shall be responsible for the cost of any new conduit required for City's Server Connection, and (iii) to install such conduits and cables the in the shafts, ducts, chases and utility closets located in the core of the Building as required to connect the Muni Connection and the Server Connection (collectively, the "Connections") to City's equipment located in the Premises, which conduits and cables shall be deemed a part of, respectively, the Muni Connection and the City Server Connection for the purposes of this Lease. Use of space in the Building by City for the Muni Connection and the City Server Connection (except customary chases for cabling) may not materially adversely affect the marketability of the remaining space on any floor of the Building, and to the extent any such equipment occupies space (other than space in customary chases for the Building) that would have otherwise been net rentable area on a floor of the Building, such space shall be included within the rentable area of the Premises

and City shall be obligated to pay Base Rent and additional Rent with respect to such space as if such space were included in the 7th Floor Premises. City is responsible for designing and installing City's Connections, and any delay in Substantial Completion resulting from or in connection with City's Connections shall constitute a Tenant Delay. City's Connections are detailed in the Initial Premises Work Letter, and the installation, maintenance, repair, replacement and removal of City's Connections shall comply with the provisions of the Initial Premises Work Letter and Article 6 and Article 7, as applicable. City shall pay Landlord monthly, within thirty (30) days after being billed therefor, for all electricity used in connection with operation of City's Connections. Electrical usage shall be measured by submeters installed by Landlord at Landlord's expense (subject to the cap of Landlord's submetering costs set forth in Section 9.1(b) below). City acknowledges that City's Connections will traverse Common Areas of the Building and the premises of other tenants in the Building. Landlord shall use reasonable good-faith efforts to enforce the Building Rules and Regulations and constructions standards in a manner minimize the risk of damage to or interference with the City's Connections by third parties, provided that Landlord shall have no liability for damages arising from, and Landlord does not warrant that City's use of City's Connections will be free from any breach in security or damage or interference by third parties, or any shortages, failures, variations, interruptions, disconnections, loss or damage caused by environmental conditions or any failure in the power supply for the Building. City assumes full responsibility for protecting from theft or damage, City's Connections and any tools or other equipment that City may use in connection with the installation, operation, use, repair, maintenance or removal of City's Connections, and assumes all risk of theft, loss or damage, and to the maximum extent permitted by applicable Laws, and waives all Claims with respect thereto against Landlord and its Agents, including any Claims caused by any active or passive act, omission or neglect of Landlord or its Agents ,except for Claims resulting from the gross negligence or willful misconduct of Landlord or its Agents. Further, no damage or disruption in City's use of City's Connections shall entitle City to abate Rent or relieve City from the performance of any of City's other obligations under this Lease.

3. TERM

3.1. TERM OF LEASE

(a) The Initial Premises are leased for an initial term (the "Initial Term") commencing on the earlier of (i) the date Substantial Completion of the Base Building Improvements and Leasehold Improvements occurs and (ii) the date Substantial Completion of the Base Building Improvements and Leasehold Improvements would have occurred but for Tenant Delay(s) (but in no event earlier than the Effective Date) (such date, the "Commencement Date"), and expiring on the Expiration Date, or such earlier date on which this Lease terminates pursuant to the provisions of this Lease, subject to City's right to extend the Term pursuant to Section 3.4 (Extension Options). City's obligation to pay Rent for the Initial Premises, shall commence sixty (60) days following the Commencement Date with respect to such space (the "Rent Commencement Date"), and City's obligation to pay Rent for each increment of First Offer Space shall commence on the Rent Commencement Date applicable to such space, as provided in Section 22.1(j).

(b) Except to the extent resulting from a Tenant Delay or an Unavoidable Delay (as defined below), "Landlord Delay" shall mean any actual delays in the Substantial Completion of any Base Building Improvements or Leasehold Improvements resulting from (i) the failure by Landlord to deliver space plans, pricing plans, estimated construction costs, working drawings or other construction documents or to otherwise comply with its obligations under the Work Letter by the dates or within the time periods set forth therein, (ii) any Changes requested by Landlord in the Space Plans, Working Drawings or Final Plans, after approval thereof by Landlord and City (except for changes necessary due to unforeseen conditions or to comply with unforeseen interpretations of applicable Laws), (iii) any delay caused by the Landlord's contractor or the subcontractors including, without limitation, the failure of Landlord's architect to provide or revise plans, drawings or documents in a reasonably expeditious manner or the failure of Landlord's contractor or the subcontractors to process and execute (or disapprove) any Changes in a reasonably expeditious manner, and (iv) any delay resulting from the performance of the Base Building Improvements which affect City's occupancy.

(c) Except to the extent resulting from a Landlord Delay or an Unavoidable Delay "Tenant Delay" shall mean any actual delays in the Substantial Completion of any Base Building Improvements or Leasehold Improvements resulting from (i) a City Change Order (as defined in the applicable Work Letter), (ii) City's failure to comply with any deadline set forth in the applicable Work Letter, (iii) review of plans by the Mayor's Office of Disability failing to occur within thirty (30) days after request by Landlord, (iv) City's seeking to obtain LEED certification for such construction, (v) the performance of any work to be performed by City, including, but not limited to, the installation of City's Connections and any other trade fixtures or specialty equipment, or (vi) any other act or omission of City (acting in its capacity as Tenant under this Lease) or any of City's Agents, which materially interferes with or delays construction of the Base Building Improvements or the Leasehold Improvements or which is defined as a "Tenant Delay" in the applicable Work Letter. Notwithstanding the foregoing, matters otherwise designated hereunder as Tenant Delays which first occur following Landlord's contractor's establishment of an estimated completion date shall be Tenant Delays only to the extent Substantial Completion of the applicable Leasehold Improvements is delayed beyond the estimated completion date as a result thereof. After Landlord becomes aware of any occurrence that will, or is likely to, result in a Tenant Delay, Landlord shall use reasonable good faith efforts to promptly notify City of such occurrence together with Landlord's then good faith estimate of the probable duration of such Tenant Delay.

(d) As used in this Lease, "Unavoidable Delay" shall mean any delay by reason of fire, acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor, materials, fuels or energy after using diligent and timely efforts, inclement weather, enemy action, national emergency, acts of war or terrorism, criminal acts, unforeseen conditions (which shall not include conditions which could reasonably have been foreseen in the exercise of reasonable care), civil commotion, protests, riots, demonstrations, or by any other reason without fault and beyond the reasonable control of the party obligated to perform. In the event of the occurrence of any such Unavoidable Delay, the time or times for performance of the obligations of the delayed party will be extended for the period of the delay; provided, however, that as a condition to claiming an Unavoidable Delay, (i) within thirty (30) days after the beginning of any such delay, the delayed party shall have notified

the other party in writing of the cause or causes of such delay, which notice shall include the reasonably estimated period of the delay (provided that the estimate contained in such notice shall not be binding, and the delayed party shall be entitled to extend the date for performance by the actual number of days of Unavoidable Delay, notwithstanding the estimate) and (ii) the delayed party cannot, through commercially reasonable and diligent efforts (but without any obligation to pay premiums for overtime labor or to incur any other additional expense), make up for the delay within the time period remaining prior to the applicable performance date. Notwithstanding anything to the contrary in this definition, the lack of credit or financing shall not be considered to be a matter beyond a party's control and therefore shall not be considered an Unavoidable Delay for purposes of this Lease.

(e) The word "Term" as used herein shall refer to the period commencing on the Commencement Date and ending on the Expiration Date, as extended, if applicable.

3.2. CONFIRMATION OF DATES AND OTHER LEASE CHANGES

(a) Within thirty (30) days following the Commencement Date, Landlord and City shall execute a notice substantially in the form of Exhibit C-1 confirming the actual Commencement Date and the Rent Commencement date, and, if applicable, the amortization schedule for the Additional Construction Allowance (the "Amortization Schedule"), but the failure to do so shall not affect the commencement of the Term with respect to such space or the other matters included in such notice.

(b) Within thirty (30) days following each First Offer Space Commencement Date, if any, Landlord and City shall execute a notice substantially in the form of Exhibit C-2 confirming the actual First Offer Space Commencement Date and First Offer Space Rent Commencement Date, the revised description of the Premises, the total monthly Base Rent then applicable, and other relevant terms of the applicable First Offer Space, but the failure to do so shall not affect the commencement date for First Offer Space or the other matters to be included in such notice.

3.3. DELIVERY OF POSSESSION; DELAY IN DELIVERY OF POSSESSION

(a) Delivery. Landlord shall use commercially reasonable and diligent efforts (without any obligation to pay premiums for overtime labor) to deliver possession of the Initial Premises with all of the Base Building Improvements and Leasehold Improvements Substantially Completed on or before the Estimated Commencement Date.

(b) City Option to Terminate Due to Delay.

(i) Generally. If Landlord is unable to deliver possession of the Initial Premises in the condition required hereunder by the Estimated Commencement Date (as extended by the number of days of delay due to Unavoidable Delay or Tenant Delay), then, subject to the provisions of this Section, the validity of this Lease shall not be affected by such inability to deliver. If Landlord is unable to deliver possession of the Initial Premises to City as required hereunder by the date which is one hundred eighty (180) days after the Estimated Commencement Date (which date shall be extended by the number of days of delay due to Tenant Delay or Unavoidable Delay) (the "Outside Delivery Date"), then City may, at its option, terminate this Lease upon written notice to Landlord (the "Termination Notice")

given prior to delivery of possession of the Initial Premises to City, and this Lease shall terminate effective on the date which is ten (10) business days after the date of the Termination Notice (the "Termination Date").

(ii) Landlord Suspension Notice; Notice of Projected Completion Date; Automatic Suspension of Termination Date. Notwithstanding the foregoing, if City delivers a Termination Notice, and Landlord's contractor's reasonable, good-faith estimate of the date by which Substantial Completion of the Tenant Improvements will occur (the "Projected Completion Date") is not later than sixty (60) days after the Outside Delivery Date, Landlord shall have the right to suspend the termination of the Lease until the Projected Completion Date, unless construction of the Tenant Improvements has not commenced as of the Outside Delivery Date, in which event this Lease shall terminate on the original Termination Date. In order to suspend the Termination Date pursuant to the foregoing, Landlord must deliver to Tenant, within three (3) business days after receipt of City's Termination Notice, notice of such suspension ("Landlord's Suspension Notice"), which notice shall include Landlord's contractor's reasonable, good-faith estimate of the Projected Completion Date. If Landlord timely delivers Landlord's Suspension Notice and actually delivers the Initial Premises to City in the condition required hereunder not later than the Projected Completion Date set forth in Landlord's Suspension Notice (as extended by the number of days of delay following Landlord's Suspension Notice due to Tenant Delay), then the Termination Notice and City's exercise of the right to terminate this Lease shall be null and void and of no force or effect.

(iii) Landlord's Suspension Request; City's Extension Notice and Agreed Suspension of Termination Date. If the Projected Completion Date is more than sixty (60) days after the Outside Delivery Date, and Landlord nevertheless wishes to continue construction of the Tenant Improvements, Landlord may elect to deliver to City, within three (3) business days after receipt of Tenant's Termination Notice, a written request for a suspension of the Termination Date ("Landlord's Suspension Request"), which request shall include Landlord's contractor's reasonable, good-faith estimate of the Projected Completion Date and shall state Landlord's desired new outside delivery date (the "Extended Outside Delivery Date"). City may agree to the Extended Outside Delivery Date, at its sole election, by written notice to Landlord given within five (5) business days after City's receipt of Landlord's Suspension Request ("City's Extension Notice"). If Landlord timely gives a Landlord's Suspension Request and City timely gives City's Extension Notice, the Termination Date shall be postponed until the Extended Outside Delivery Date (as such date is extended by the number of days of delay following Landlord's Suspension Request due to Tenant Delay), and if Landlord thereafter actually delivers possession of the Initial Premises to City with the Tenant Improvements Substantially Completed prior to the Extended Outside Delivery Date, then the Termination Notice and City's exercise of the right to terminate this Lease shall be null and void and of no force or effect.

(iv) If City terminates this Lease pursuant to this Section 3.3(b), neither party shall have any obligations to each other under this Lease, except for obligations that expressly survive the expiration or earlier termination of this Lease. The foregoing restriction shall be inapplicable if Landlord intentionally fails to complete the Base Building Improvements or Leasehold Improvements or deliver the Premises to City by the Outside Delivery Date (as such date may have been extended pursuant to the terms hereof), in which case City shall have the right to pursue a claim for City's costs and expenses for the Leasehold

Improvements or other installations in the Building, including any portion of City's Contribution made prior to the termination of this Lease.

(c) Hold-Over Rent Reimbursement. If Substantial Completion of the Base Building Improvements or the Leasehold Improvements for any First Offer Space is delayed by ninety (90) or more days due to Landlord Delays, then Landlord shall reimburse City for the amount by which the holdover rent which City is required to pay under the terms of the applicable Existing Lease exceeds the rent City is required to pay during the final month of the term of the applicable Existing Lease (calculated on a daily basis with reference to a rentable square footage not to exceed that of the First Offer Space) for the period commencing on the date on which Substantial Completion of the applicable Base Building Improvements and Leasehold Improvements would have occurred, but for such Landlord Delay (but not earlier than the Target Occupancy Date applicable to such First Offer Space), and continuing for the number of days of Landlord Delay. Such sums shall be payable by Landlord from time to time within thirty (30) days after Landlord's receipt of a rent invoice for such holdover rent from the landlord under the applicable Existing Lease. As used herein, an "Existing Lease" is a lease between City and a third party landlord for one or more City user-groups which is to be relocated to the First Offer Space. Notwithstanding anything to the contrary contained in this Section 3.3(c), Landlord shall have no obligation to reimburse City for such increase in rent unless at the time City delivers its Exercise Notice with respect to a First Offer Space, City provides Landlord with written notice of the user-group to be relocated to the First Offer Space and the holdover provisions in the applicable Existing Lease, including, but not limited to, the date on which the holdover rent would commence and the amount of the holdover rent. In addition, if Landlord notifies City that Landlord will not be able to deliver the First Offer Space as scheduled due to Landlord Delays, City agrees to exercise reasonable good faith efforts to negotiate the right to extend the term of the Existing Lease at the pre-holdover rental rate for the time period Landlord estimates that delivery of the First Offer Space will be delayed due to Landlord Delays.

3.4. EXTENSION OPTIONS

(a) Extension Options; Exercise. Subject to the terms and conditions set forth in this Section 3.4, City shall have the right to extend the Term (each, an "Extension Option" and collectively, the "Extension Options") with respect to the Initial Premises and any First Offer Space then included in the Premises, for two (2) consecutive additional terms of ten (10) years each, (each, and "Extension Term") commencing upon the expiration of the Initial Term of the Lease or the expiration of the initial Extension Term, as applicable. City may exercise each Extension Option, if at all, by giving written notice (the "Extension Exercise Notice") to Landlord no earlier than eighteen (18) months and not later than fifteen (15) months prior to expiration of the Term to be extended.

(b) Extension Authorizing Resolutions. City's delivery of an Extension Exercise Notice shall be binding upon City, subject only to the condition subsequent of the enactment of a resolution (each, an "Extension Authorizing Resolution") by the Board of Director's of City's San Francisco Municipal Transportation Agency and the City's Board of Supervisors, if required, in their respective sole and absolute discretion, approving and authorizing the exercise of the applicable Extension Option and lease of the Premises for the Extension Term. If the Extension Authorizing Resolution has not been finally adopted and become

binding on City within ninety (90) days after the date of City's Extension Exercise Notice (subject to any mutually agreed upon extensions, which Landlord may agree to or not in Landlord's sole discretion), then City's Extension Exercise Notice shall become null and void without cost or penalty and the Term shall not be extended and the applicable Extension Option and any future Extension Option shall terminate.

(c) Terms and Conditions. Each Extension Term shall be on all of the terms and conditions contained in this Lease, except that (i) commencing on the first day of any Extension Term, the Base Rent rates payable for the Premises shall each be adjusted to one hundred five percent (105%) of the Base Rent rates (expressed on a rentable square foot basis) payable with respect to the applicable portion of the Premises immediately prior to the start of the applicable Extension Term, as determined pursuant to Section 4.3, (ii) Landlord shall perform the Refurbishment Work in accordance with Section 3.4(d) below), (iii) except as provided in Section 3.4(d), City shall take the Premises in their "as is" condition as of the commencement of the applicable Extension Term and Landlord shall have no obligation to remodel, improve or alter the Premises or to provide City with any construction or refurbishment allowance, and (iv) City shall have no further right to extend the Term after expiration of the second Extension Term. In addition, Landlord shall have no obligation to pay any brokerage commission to any representative of City in connection with City's exercise of any Extension Option.

(d) Refurbishment. Within one hundred eighty (180) days of City's delivery of the applicable Extension Authorizing Resolution, Landlord shall repaint and recarpet the 7th Floor Premises and Common Areas of the Building's 7th Floor, using materials of the same quality as the initial installation and in colors approved by City, provided that in no event shall Landlord be required to spend on such repainting and recarpeting an amount in excess of $5.00 multiplied by the total rentable square footage of the Premises, increased by the percentage increase in the Consumer Price Index, if any, between the Commencement Date of this Lease and the commencement of the applicable Extension Term. City's only responsibility with respect to the performance of such work shall be to clear desktops and remove other loose materials. Landlord acknowledges that City's use of the 7th Floor Premises will be a 24/7 operation, and Landlord will coordinate the scheduling of such work with City and cause such work to be performed in a manner so as to minimize noise, fumes, and disruption to City's operations, to the extent commercially reasonable. As used herein, the Consumer Price Index used for computing the adjustment shall be the Consumer Price Index for All Urban Consumers (1982-1984=100) for the San Francisco-Oakland-San Jose Area, published by the United States Department of Labor, Bureau of Labor Statistics.

(e) General Provisions. The following general provisions shall apply to each Extension Option:

(i) Each Extension Option must be exercised, if at all, only with respect to the entire Premises then leased by City.

(ii) Notwithstanding anything to the contrary contained herein, if an uncured material Event of Default exists at the time of exercise of the applicable Extension Option, Landlord may reject such exercise by delivering written notice thereof to City within three (3) business days of receipt of the applicable Extension Exercise Notice.

(iii) City's right to exercise each Extension Option is personal to, and may be exercised only by, the City.

(iv) If City shall assign this Lease then immediately upon such assignment, City's right to exercise all future Extension Options shall terminate and be of no further force and effect, and if City shall sublet more than twenty-five (25%) percent of the rentable area of the Premises (other than space sharing arrangements pursuant to Section 14.2 below), then immediately upon such subletting, City's right to exercise all future Extension Options shall simultaneously terminate and be of no further force or effect. No assignee or subtenant shall have any right to exercise any Extension Option granted herein.

(v) After the Base Rent payable during the applicable Extension Term is determined, the parties shall promptly execute an amendment to this Lease in a form reasonably acceptable to both parties, memorializing the extension of the Term and stating the amount of the Base Rent payable during the applicable Extension Term.

(vi) Subject to the provisions of this Section 3.4, after exercise of an Extension Option, all references in this Lease to the Term shall be deemed to refer to the Term as extended, unless the context clearly provides to the contrary.

(vi) If City shall fail to timely exercise an Extension Option, the applicable Extension Option and any subsequent Extension Option shall terminate and be of no further force and effect, subject to the provisions of Section 23.15. If this Lease shall terminate for any reason, then immediately upon such termination all Extension Options shall simultaneously terminate and become null and void.

4. RENT

4.1. BASE RENT

Beginning on the Rent Commencement Date, City shall pay to Landlord during the Term the annual Base Rent at the applicable rates per rentable square foot as specified in the Basic Lease Information (the "Base Rent"). City shall pay Base Rent to Landlord, in advance, in monthly installments, commencing on the Rent Commencement Date, and thereafter on or before the first day of each calendar month during the Term at the address specified for Landlord in the Basic Lease Information, or such other place as Landlord may designate in writing upon not less than sixty (60) days' advance notice. The Base Rent rates per rentable square foot shall be adjusted from time to time as set forth in Section 4.2 below. Upon each First Offer Space Rent Commencement Date, if any, the Base Rent shall be adjusted to include the Base Rent payable for such First Offer Space, computed by multiplying the rentable square footage of such First Offer Space, as determined pursuant to Section 2.1(c), by the Base Rent rate then payable with respect to the 7th Floor Premises (the "Base Rent for First Offer Space"). During each Extension Term, the new Base Rent rates established for such Extension Term in accordance with Section 4.3 (Base Rent During Extension Terms) shall apply to the space to which such Extension Term applies. Notwithstanding the foregoing, to the extent reasonably possible, City agrees to make Rent payments by electronic transfer. City shall pay the Base Rent without any prior demand and without any deductions or setoff except as otherwise provided in this Lease. If a Rent Commencement

Date occurs on a day other than the first day of a calendar month or the Expiration Date occurs on a day other than the last day of a calendar month, then the monthly payment of the Base Rent for the applicable space for such fractional month shall be prorated based on a 28, 29, 30 or 31 day month as the case may be.

4.2. BASE RENT ESCALATIONS

(a) If the Commencement Date occurs during the period of January 1 through June 30 of a calendar year, then commencing on the second July 1 following the Commencement Date and annually on each July 1 thereafter during the Initial Term, the Base Rent rates per rentable square foot for the Premises shall each be adjusted to one hundred three percent (103%) of the Base Rent rate per rentable square foot in effect with respect to the applicable portion of the Premises immediately prior to such adjustment. If the Commencement Date occurs during the period of July 1 through December 31 of a calendar year, then commencing on the first July 1 following the Commencement Date and annually on each July 1 thereafter during the Initial Term, the Base Rent rates per rentable square foot for the Premises shall each be adjusted to one hundred three percent (103%) of the Base Rent rate per rentable square foot in effect with respect to the applicable portion of the Premises immediately prior to such adjustment. For example, if the Commencement Date is January 15, 2012, the first adjustment in Base Rent rates would occur on July 1, 2013, and if the Commencement Date is December 15, 2012, the first adjustment in Base Rent rates would likewise occur on July 1, 2013.

(b) The applicable Base Rent rates per rentable square foot in effect from time to time, calculated as set forth above, shall apply to all space leased by City during the relevant time period, whether such space constitutes the Initial Premises or First Offer Space.

4.3. BASE RENT DURING EXTENSION TERMS

At the start of each Extension Term, the Base Rent rates per rentable square foot payable for the Premises shall each be adjusted to one hundred five percent (105%) of the Base Rent rate per rentable square foot in effect with respect to the applicable portion of the Premises immediately prior to the commencement of the applicable Extension Term. If the applicable Extension Term commences during the period of January 1 through June 30 of a calendar year, then commencing on the second July 1 following the commencement of the applicable Extension Term and annually on each July 1 thereafter during the applicable Extension Term, the Base Rent rates per rentable square foot for the Premises shall each be adjusted to one hundred three percent (103%) of the Base Rent rate per rentable square foot in effect with respect to the applicable portion of the Premises immediately prior to such adjustment. If the applicable Extension Term commences during the period of July 1 through December 31 of a calendar year, then commencing on the first July 1 following the commencement of the applicable Extension Term and annually on each July 1 thereafter during the applicable Extension Term, the Base Rent rates per rentable square foot for the Premises shall each be adjusted to one hundred three percent (103%) of the Base Rent rate per rentable square foot in effect with respect to the applicable portion of the Premises immediately prior to such adjustment.

4.4. ADDITIONAL CHARGES

(a) City Service Charges; Additional Charges. Except as otherwise set forth in this Lease, Landlord shall pay, at Landlord's sole cost (subject to applicable reimbursement provisions of this Lease), all Real Estate Taxes, Operating Costs, and all other costs, fees and charges in connection with the management, operation, maintenance and repair of the Building and in fulfilling Landlord's obligations under this Lease, including, but not limited to the cost of any and all improvements and repairs made to the Building whether or not required by applicable Law. City shall reimburse Landlord, on a monthly basis upon receipt of appropriate invoices, for the following: (i) electrical charges payable by City as set forth in Section 9.1(b) (Electrical Service), (ii) chilled water charges payable by City as set forth in Section 9.1(a), (iii) the after-hours or excess services and utilities costs as set forth in Section 9.1(c) (After-Hours HVAC and Excess Services), (iv) equipment maintenance costs payable by City pursuant to Section 9.3(b) (Equipment Maintenance), (v) the cost of janitorial services payable by City pursuant to Section 9.4 (Janitorial Services), (vi) the costs incurred by Landlord for any alterations or other modifications to any part of the Property requested by City, and (vii) any additional services requested by City or otherwise as set forth in Section 9.7 (Additional Services). The charges payable by City pursuant to the preceding sentence are sometimes referred to as "City Service Charges." In addition, City shall pay to Landlord as additional Rent, City's Percentage Share of increases in Real Estate Taxes and Operating Costs as provided in Sections 4.5 through 4.8 below. All of the reimbursements, payments and charges referred to in this Section 4.4 are collectively referred to in this Lease as the "Additional Charges." Additional Charges shall be payable to Landlord at the place where the Base Rent is payable, without deduction, offset or abatement, except as expressly set forth in this Lease. Landlord shall have the same remedies for a default in the payment of any Additional Charges as for a default in the payment of Base Rent. The Base Rent, Additional Charges, Additional Construction Allowance Amortization Payments, if any, and all other additional payments due to Landlord by City under this Lease are collectively referred to in this Lease as "Rent."

(b) Estimated Monthly Service Charge. Notwithstanding the foregoing, if Landlord prefers to require City to pay an estimate of one or more component of the City Service Charges in advance, then from time to time Landlord may specify, by written notice to City, Landlord's good faith estimate of the monthly City Service Charges payable for such component (the "Estimated Monthly Service Charge") for an upcoming period specified by Landlord in such notice (such as the following six (6) months). The estimate must be made in good faith based on actual historic data regarding the City's usage and the cost of the relevant utility or service. Commencing on the first day of the calendar month which is thirty (30) days after receipt of Landlord's notice of the estimate of the Estimated Monthly Service Charge and continuing on the first day of each calendar month thereafter until Landlord shall provide an updated estimate or City shall have disputed Landlord's estimate, as provided below, City shall pay Landlord the Estimated Monthly Service Charge specified in such notice. Landlord may revise such estimate from time to time and City shall thereafter make payments on the basis of such revised estimates. Not less frequently than every six (6) months, Landlord shall provide City with a statement showing the total Estimated Monthly Service Charge paid by City since the last reconciliation, City's usage of the relevant utility or service for such period, and the actual City Service Charge payable for such utility or service for such period, together with reasonable evidence supporting the calculations, including copies of the

relevant utility bills or invoices. If the actual City Service Charge payable for such utility or service for such period exceeds the total Estimated Monthly Service Charge paid by City for such period, then within sixty (60) days, City shall pay to Landlord the difference between the amount of Estimated Monthly Service Charge paid by City and the actual City Service Charge payable for such utility or service for such period. If the total amount paid by City for any such period exceeds the amount actually payable for such period, such excess shall be credited against the next installments of Rent due from City hereunder, or, if this Lease has terminated, then such excess shall be refunded to City within thirty (30) days.

(c) Statements; Disputes. If City reasonably believes that the amount of City's Service Charge invoiced by Landlord or the amount of the Monthly Estimated Service Charge set forth in Landlord's notice has been incorrectly calculated, City may provide notice of such dispute to Landlord and Landlord shall promptly investigate and either (i) equitably recalculate the amounts invoiced or estimated or (ii) if the amount can be justified in good faith, provide a written justification to City, together with back-up calculations and materials, within thirty (30) days of City's notice. City may withhold the disputed amount, however any disputed amounts shall not affect payment of non-disputed amounts. The parties shall use good faith efforts to promptly resolve any dispute.

4.5. DEFINITIONS

(a) Generally. For purposes hereof, the following terms shall have the meanings hereinafter set forth:

"Base Year" means the calendar year set forth in the Basic Lease Information.

"City's Percentage Share" means the percentage of rentable space leased by City from time to time compared to the total rentable space in the Building.

"Expense Year" means each calendar year commencing January 1st of each year, starting in the calendar year following the Base Year and continuing each year thereafter during the Term.

"Operating Costs" means the total costs and expenses actually paid or incurred by Landlord, subject to imputed insurance costs as set forth below and "gross-up" provisions set forth in Section 4.5(b), in connection with the management, operation, maintenance and repair of the Property, including, but not limited to: (1) the cost of air conditioning, electricity, steam, water, heating, mechanical, telephone, ventilating, escalator and elevator systems and all other utilities, (2) the cost of repairs and all labor and material costs related thereto, and the cost of general maintenance, cleaning and service contracts and the cost of all supplies, tools and equipment required in connection therewith, (3) the cost incurred by Landlord for insurance (including an imputed premium if Landlord self-insures all or a portion of the insurance for the Property, provided that such imputed premium shall not exceed the amount of the insurance premium that would have been incurred if Landlord obtained third-party insurance for such self-insured risks); (4) wages, salaries, payroll taxes and other labor costs and employee benefits relating to employees of Landlord or its Agents engaged in the operating, repair, or maintenance of the Building, allocated in proportion to the percentage of such person's working time actually spent working in connection with the Building, (5) management fees, subject to the limitation set forth in Exhibit D, (6) accounting and legal expenses, (7) depreciation on personal property, including, without limitation,

carpeting in public corridor and Common Areas and window coverings provided by Landlord, (8) to the extent not directly reimbursed by City, the cost of capital expenditures incurred after the Base Year, to the extent allowed under Item 1 of Exhibit D, and (9) other expenses incurred in connection with the management, operation, maintenance or repair of the Building (other than Real Estate Taxes and any services for which Landlord is separately and directly reimbursed by City or other tenants in the Building) which would generally be considered an operating expense. With respect to the costs of items included in Operating Costs under clause (8) above, such costs shall be amortized over the useful life thereof, together with interest on the unamortized balance at an interest rate specified in Item 1 of Exhibit D. Notwithstanding the foregoing, "Operating Costs" shall exclude the items described on the attached Exhibit D. In addition, Operating Costs for the Base Year shall not include extraordinary market-wide labor-rate increases due to extraordinary circumstances outside of Landlord's control, including, but not limited to, boycotts and strikes, and extraordinary utility rate increases due to extraordinary circumstances outside of Landlord's control, including, but not limited to, conservation surcharges, boycotts, embargoes or other shortages, or amortized costs relating to capital improvements, and if such extraordinary increases continue beyond the Base Year, Operating Costs for such subsequent years shall not include such extraordinary increases.

"Real Estate Taxes" means all taxes, assessments and charges levied upon or with respect to the Property, or Landlord's interest in the Property. Real Estate Taxes shall include, without limitation, all general real property taxes and general and special assessments, charges, fees, or assessments for transit, housing, police, fire, or other governmental services thereof, any tax on or measured by the rent, or imposed against right to rent or against the business of leasing any portion of the Property (measured as if the receipts from the Property were the only receipts of Landlord), service payments in lieu of taxes that are now or hereafter levied or assessed against Landlord by the United States of America, the State of California or any political subdivision thereof, public corporation, district, or any other political or public entity, and shall also include any other tax, fee or other excise, however described, that may be levied or assessed as a substitute for, or as an addition to, in whole or in part, any other Real Estate Taxes. Notwithstanding the foregoing, Real Estate Taxes shall exclude (1) franchise, transfer, inheritance, or capital stock taxes or income taxes measured by the net income of Landlord from all sources unless, due to a change in the method of taxation, any of such taxes is levied or assessed against Landlord as a substitute for, or as an addition to, in whole or in part, any other tax that would otherwise constitute a Real Estate Tax, (2) any penalties, fines, interest or charges attributable to the late payment of any taxes, except to the extent attributable to City's failure to pay its portion of Real Estate Taxes hereunder, (3) any personal property taxes payable by City hereunder or by any other tenant or occupant of the Building, or (4) any increase in Real Estate Taxes due to any reassessment upon a transfer of any of Landlord's interest in the Building or the real property on which the Building is located. For purposes of calculating the Real Estate Taxes that would have resulted absent such sale, the taxing rate used shall be the rate in effect just prior to such sale as increased annually by the maximum amount allowable had such sale not occurred.

"Tax Year" means each calendar year during the Term; provided that Landlord, upon notice to City, may change the Tax Year from time to time to any other twelve (12) consecutive month period and, in the event of any such change, City's Percentage Share of Real Estate Taxes shall be equitably adjusted for the Tax Year involved in any such change.

(b) Adjustment for Occupancy Factor. City and Landlord intend that Operating Costs which vary by occupancy (or density of occupancy) be equitably adjusted to reflect a 100% occupied and fully functioning Building. To accomplish the foregoing, all variable components (i.e. costs that vary based on occupancy and density) of Operating Costs for each calendar year shall be adjusted to the amount such variable components would have been if all space in the Building had been fully occupied at densities typical for the Building's office, data center and other uses during the entire calendar year, and the adjusted amount of the variable components shall be used in determining Operating Costs for the calendar year. In the event that the Building is less than one hundred percent (100%) occupied (with densities typical and customary for office and data center uses), Landlord shall appropriately and equitably adjust the Operating Costs for the Base Year or any Expense Year, in accordance with industry custom, to reflect such one hundred percent (100%) occupancy level.

In no event shall Landlord recapture more than one hundred percent (100%) of any line item Operating Costs in any Expense Year.

Landlord and City acknowledge that there are many variables to determining the appropriate expenses for a 100% occupied building when the building is not 100% occupied at typical densities, and that, without malice, errors may be made benefitting either party in establishing the Base Year Operating Costs or Expense Year Operating Costs. It is the intent of the parties that amounts payable by City for City's Percentage Share of increases in Operating Costs be generally limited to increases in unit costs for the relevant services (such as an increase in utility costs per unit by the applicable utility service provider) and not increases resulting from a miscalculation of the occupancy factor or Building density.

If City' Percentage Share of increases in Operating Costs in any year are not typical of comparable buildings' increases in such costs, and City reasonably believes that one or more of the adjustments required by this Section has been incorrectly calculated, City may provide notice of such dispute to Landlord and Landlord shall promptly investigate and determine the reason why the challenged increase does not follow the typical unit cost increase and either (i) equitably recalculate the adjustment(s) and if necessary the Base Year Operating Costs or (ii) if the expense increase can be justified (beyond any unit cost increase) in good faith for other legitimate and allowed reasons, provide a written justification to City, together with back-up calculations and materials, within thirty (30) days of City's notice.

During the next forty five (45) days Landlord and City shall meet at least twice and use good faith efforts to attempt to equitably resolve the matter.

If City and Landlord continue to disagree after the expiration of such period, City may give notice to Landlord of City's election to arbitrate the matter, in which case the following procedure shall be followed.

Each party shall select (within thirty (30) days of City's notice) a Certified Public Accountant experienced in San Francisco high rise property operating expenses, occupancy adjustments, and pass throughs over a Base Year. The representatives so selected shall in good faith investigate, meet and confer and try to equitably resolve the matter within sixty (60) days of the last representative's appointment. In the event the two representatives do not agree by the expiration of such period, the representatives shall select a mutually agreeable third qualified representative, and Landlord shall engage such third representative within forty five (45) days of the expiration of the 60-day period given for the representatives to resolve the

dispute. Within thirty (30) days after Landlord engages such third party representative, the two initial representatives shall each submit a written analysis and justification for its position. If necessary, the third representative shall also meet with both representatives. The third representative shall then select one or the others position as equitable. The party whose position was not selected shall pay the actual and reasonable costs of all representatives engaged to resolve the dispute.

(c) Clarification Regarding "Sole Cost". The parties agree that statements in this Lease to the effect that Landlord is to perform certain of its obligations hereunder at its own cost or sole cost and expense shall not be interpreted as excluding any cost from Operating Cost or Real Estate Taxes if such cost is an Operating Cost or Real Estate Tax pursuant to the terms of this Lease (except where such cost is specifically excluded from Operating Costs or Real Estate Taxes).

4.6. PAYMENT OF PERCENTAGE SHARE OF OPERATING COSTS

City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the amount, if any, by which Operating Costs for the current Expense Year exceed the Operating Costs for the Base Year (the "Operating Cost Increase"). City shall make such payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City by November of the previous year (e.g., by November 2011 for the calendar year 2012 payments). Landlord may revise such estimates of Operating Costs during an Expense Year if done in a writing delivered to City prior to May 1st, and City shall thereafter make payments on the basis of such revised estimates, commencing on the first day of the calendar month which is thirty days after City's receipt of the revised estimate. With reasonable promptness not to exceed one hundred eighty days (180) days after the expiration of each Expense Year, Landlord shall furnish City with a statement (herein called "Landlord's Expense Statement"), setting forth in reasonable detail the Operating Costs for such Expense Year and City's Percentage Share of the Operating Cost Increase for such Expense Year. Landlord shall also furnish City with Landlord's reasonable estimate of the Landlord's Expense Statement not later than seventy five (75) days after the expiration of each Expense Year, provided that such estimate shall not be binding on Landlord. If City's Percentage Share of the actual Operating Cost Increase for such Expense Year exceeds the total amount paid by City for such Expense Year pursuant to this Section 4.6, City shall pay to Landlord (whether or not this Lease has terminated) the difference between the total amount of estimated Operating Cost Increase paid by City and City's Percentage Share of the actual Operating Cost Increase for such Expense Year (the "Expense Shortfall") as follows: the amount of the Expense Shortfall up to five percent (5%) of the total amount of estimated Operating Cost Increase paid by City for such Expense Year shall be payable within thirty (30) days after Landlord's delivery of Landlord's Expense Statement to City, and the balance of the Expense Shortfall, if any, shall be paid at the beginning of City's next fiscal year. If the total amount of estimated Operating Cost Increase paid by City for any Expense Year exceeds City's Percentage Share of the actual Operating Cost Increase for such Expense Year, such excess shall be credited against the next installments of Rent due from City to Landlord hereunder, or, if this Lease has terminated, then refunded to City within thirty (30) days after Landlord's delivery of Landlord's Expense Statement to City.

Notwithstanding the foregoing, any failure or delay in the delivery of Landlord's Expense Statement or Landlord estimate of City's Percentage Share of increases in Operating Costs for the succeeding calendar year shall not operate as a waiver of Landlord's right to collect City's Percentage Share of Operating Cost Increase owing to Landlord, and in such event City shall make estimated payments for such Expense Year based on the estimate for the prior Expense Year.

4.7. PAYMENT OF PERCENTAGE SHARE OF REAL ESTATE TAXES

City shall pay to Landlord each month, as Additional Charges, one twelfth (1/12) of City's Percentage Share of the amount, if any, by which Real Estate Taxes for each Tax Year exceed Real Estate Taxes for the Base Year ("Real Estate Tax Increase"). City shall make such payments, in advance, in an amount estimated by Landlord in reasonable detail in a writing delivered to City by January of the previous Tax Year (e.g., by January 31, 2012 for the Tax Year 2012-2013 payments). With reasonable promptness not to exceed sixty (60) days after Landlord has received the tax bills for any Tax Year, Landlord shall furnish City with a statement ("Landlord's Tax Statement") setting forth the amount of Real Property Taxes for such Tax Year and City's Percentage Share of the Real Estate Tax Increase for such Tax Year. If City's Percentage Share of the actual Real Estate Tax Increase for such Tax Year exceeds the total amount paid by City for such Tax Year pursuant to this Section 4.7, then within sixty (60) days, City shall pay to Landlord (whether or not this Lease has terminated) the difference between the total amount of estimated Real Estate Tax Increase paid by City and City's Percentage Share of the actual Real Estate Tax Increase for such Tax Year (the "Tax Shortfall") as follows: the amount of the Tax Shortfall up to five percent (5%) of the total amount of estimated Real Estate Tax Increase paid by City for such Tax Year shall be payable within thirty (30) days after Landlord's delivery of Landlord's Tax Statement to City, and the balance of the Tax Shortfall, if any, shall be paid at the beginning of City's next fiscal year. If the total amount of estimated Real Estate Tax Increase paid by City for any Tax Year exceeds City's Percentage Share of the actual Tax Expense Increase for such Tax Year, such excess shall be credited against the next installments of Rent due from City to Landlord hereunder, or, if this Lease has terminated, then refunded to City within thirty (30) days after Landlord's delivery of Landlord's Tax Statement to City.

Notwithstanding the foregoing, any failure or delay in the delivery of Landlord's Tax Statement or Landlord's estimate of City's Percentage Share of increases in Real Estate Taxes for the succeeding calendar year shall not operate as a waiver of Landlord's right to collect City's Percentage Share of Real Estate Tax Increase owing to Landlord, and in such event City shall make estimated payments for such Tax Year based on the estimate for the prior Tax Year.

4.8. PRORATION

If any Commencement Date or Expiration Date occurs on a date other than the first or last day of a Tax Year or Expense Year, the applicable City's Percentage Share of Real Estate Taxes or Operating Costs for the Tax Year or Expense Year in which such Commencement Date or Expiration Date occurs shall be prorated based on a 365-day year.

4.9. REVIEW AND AUDITS

(a) City shall have the right, by written notice to Landlord given within one hundred eighty (180) days after City's receipt of the annual statement, to request reasonable back-up documentation for specific Operating Costs and Real Estate Taxes shown on such annual statement, or specific categories thereof, and Landlord shall provide City with (or make available to City at Landlord's offices in San Francisco) reasonable supporting documentation for any expenses or category of expenses questioned by City in such notice. Promptly after the receipt of such written request from City, Landlord and City shall endeavor in good faith to resolve City's questions or dispute.

(b) Further, City shall have the right, not more frequently than once during any calendar year and upon not less than thirty (30) days' written notice to Landlord, to audit the books and records of the Building related to Operating Costs and Real Estate Taxes for any or all of the prior five (5) Expense Years and Tax Years as well as for the Base Year. Such audit may be conducted by the City Controller or his or her designee or by an independent accounting firm selected by City ("City's Representative") and may be made in connection with City's review of back-up documentation described above or independent of such review. Upon completion of the audit, City shall deliver a copy of the audit report to Landlord. Within thirty (30) days of Landlord's receipt of City's audit report, Landlord shall notify City as to whether Landlord agrees or disagrees with the conclusions reached in City's auditor's report. Disclosure of materials provided by Landlord in connection with the audit shall be subject to the terms of Section 4.11 below.

(c) If Landlord disputes the results of City's audit by giving written notice of its objection to City within thirty (30) days after receipt of the City's audit report, the parties shall meet and endeavor in good faith to resolve the dispute. If the parties fail to reach agreement within ninety (90) days after City's receipt of Landlord's objection, Landlord shall provide to City, within thirty (30) days after expiration of such ninety (90) day period, a list of three (3) independent certified public accounting firms that are not currently providing, and have not within the five (5) previous years provided, services to Landlord or City's Controller or Municipal Transportation Agency. Each of the firms shall be nationally or regionally recognized firms with experience in accounting related to commercial office buildings. In order to accommodate the foregoing, City shall provide to Landlord, within ten (10) business days after request, a complete list of all certified public accounting firms that are currently providing, or have within the five (5) previous years provided, services to City's Controller or Municipal Transportation Agency. Within thirty (30) days after receipt of the list of accounting firms from Landlord, City shall select one of the three (3) firms by written notice to Landlord, which firm is referred to herein as the "Independent CPA." The Independent CPA shall be engaged by Landlord on a non-contingency basis and must sign a confidentiality agreement in a form reasonably acceptable to Landlord. The Independent CPA shall examine and inspect the records of Landlord concerning the disputed components of Operating Costs and/or Real Estate Taxes for the Expense Year or Tax Year in question (including the Base Year, if applicable) and make a determination regarding the accuracy of City's audit. The Independent CPA shall begin such examination and inspection within sixty (60) days after selection and shall diligently pursue such audit to completion as quickly as reasonably possible.

(d) If the Independent CPA (or, if Landlord does not engage the Independent CPA as provided above, then City's audit following the resolution, if any, of any dispute between Landlord and City as provided in the first sentence of Section 4.9(c) above) determines that Landlord's Expense Statements or Tax Statements were in error, and the correction of such errors would reduce City's Percentage Share of Operating Costs or Real Estate Taxes for any of the past four (4) Expense Years or Tax Years, then Landlord shall refund to City the amount of any overpayment by City within thirty (30) days following City's demand or permit City to credit such amount against the Rent as it next becomes due and owing. City shall pay the cost of City's audit and shall reimburse Landlord for one-half (1/2) of the cost of the examination and inspection by the Independent CPA, provided that if the Independent CPA review (or, if Landlord does not engage the Independent CPA as provided above, then City's audit following the resolution, if any, of any dispute between Landlord and City as provided in the first sentence of Section 4.9(c) above) discloses any errors that result in a reduction in the amount of City's Percentage Share of increases in Operating Costs or Real Estate Taxes of five percent (5%) or more for any Expense Year or Tax Year, then Landlord shall pay the costs reasonably incurred for such audit and review for such Expense Year or Tax Year. In no event shall City be permitted to make a claim against Landlord for any errors or omissions in an Expense Statement or in Landlord's Tax Statement that was delivered to City more than four (4) years prior to the date of the claim, or, if City exercises its right to audit Landlord's books and records, more than four (4) years prior to the date such audit was commenced.

4.10. RECORDS

Landlord shall maintain in a commercially reasonable manner all material records pertaining to Operating Costs, Real Estate Taxes, and any other charges paid by City pursuant hereto, for the greater of five (5) years following the year to which the record pertains or the resolution of any dispute between Landlord and City regarding the Operating Costs, Real Estate taxes, and any other charges for the applicable year (or such longer period that Landlord, in its sole discretion determines appropriate). City acknowledges that it is commercially reasonable to retain the records in electronic format, provided that such format allows for delivery to City of reasonable back up documentation, such as invoices and contracts (which may be retained and delivered in an electronic format such as pdf) . All such books and records shall be available for inspection, copying and audit by City and its representatives, at City's expense, subject to the provisions of Section 4.9 (Audits) above. Landlord shall not charge for electronic delivery of documents.

4.11. DISCLOSURES; CONFIDENTIALITY

The California Public Records Act (Government. Code Section 6250 *et seq.*) is the State law governing public access to the records of State and local agencies. The San Francisco Sunshine Ordinance (Administrative Code Chapter 67) imposes additional requirements affecting the public's access to records. The premise of both the Public Records Act and the Sunshine Ordinance is that records in the possession of government generally are public property. Absent some specific and limited exceptions, City agencies must make those records available for the public to inspect and copy.

Landlord anticipates that in connection with the audit rights contemplated by this Lease, Landlord may share with certain representatives of the City certain confidential information that is exempt from discovery under the California Public Records Act and the San Francisco Sunshine Ordinance. As used in this Section, "Confidential Information" means certain technical and non-technical proprietary information that constitutes the trade secrets of Landlord.

If Landlord believes in good faith that any information required to be reported or disclosed by this Section contains Confidential Information, Landlord shall provide the information to the City Representative requiring such information, conspicuously marked with a "Confidential Trade Secret" legend, and shall notify the City in writing of that belief, detailing the basis of the belief as to each specific item of information the person claims is Confidential Information and identifying the specific statute or judicial authority under which the claim is made.

City agrees that to use reasonable care to safeguard the Confidential Information from disclosure to any third party other than employees and contractors of City departments who have a need to have access to and knowledge of the Confidential Information for the purpose of conducting the audit authorized above. Notwithstanding the foregoing, if and to the extent any Confidential Information may be subject to disclosure by City pursuant to federal, state, or local law, including the California Public Records Act or the San Francisco Sunshine Ordinance, or a court order, City may disclose such Confidential Information to the extent required thereby, and such disclosure shall not be deemed a violation of this Lease. City shall use reasonable efforts to notify Landlord of a disclosure request not less than 48 hours prior to any disclosure by City, provided that City's failure to notify Landlord shall not result in any liability to City. If City receives a request for disclosure of information identified by Landlord as Confidential Information, City shall inform Landlord either that the City will refuse to disclose the purported Confidential Information or, that City has determined that there is no proper basis for such refusal and that City intends to disclose the information unless ordered otherwise by a court. Upon receipt of notice from City of a disclosure request, Landlord may at its election provide City with any information Landlord believes is relevant to the determination of whether such information is exempt from discovery under the California Public Records Act and the San Francisco Sunshine Ordinance, or seek injunctive relief against such disclosure. Landlord shall not seek to prevent or limit the disclosure of any information subject to a disclosure request or an order by a court or governmental agency unless Landlord has a reasonable, good faith belief that the information is privileged or otherwise exempt from disclosure.

Notwithstanding the foregoing, City shall have no obligation with respect to Confidential Information that (i) was rightfully in possession of or known to City without any obligation of confidentiality prior to receiving it from Landlord; (ii) is, or subsequently becomes, legally and publicly available without breach of this Lease; (iii) is rightfully obtained by City from a source other than Landlord without any obligation of confidentiality; or (iv) is developed by or for the City without use of the Confidential Information.

4.12. AMORTIZATION OF ADDITIONAL CONSTRUCTION ALLOWANCES

City shall pay Landlord on a monthly basis concurrently with Base Rent, as additional Rent, the Additional Construction Allowance Amortization Payments, if any, calculated in accordance with Section 6.1(c), during the payment periods specified therein.

4.13 ELECTRIC CHARGES

The Base Rent for the 7th Floor Premises is net of electrical charges. City shall pay the actual cost of electricity use within the 7th Floor Premises, without markup, either directly to the electricity utility provider, if electrical usage in the 7th Floor Premises is measured by direct meters, or, if electrical usage in the Premises is measured by submeters, to Landlord on a monthly basis, as additional Rent, within thirty (30) days after presentation of an invoice showing the usage and the charge therefor.

4.14 RENT ABATEMENT AND TERMINATION RIGHTS FOR UNSAFE CONDITION OR INTERRUPTION IN ESSENTIAL SERVICES

If City's ability to carry on its business in the Premises (excluding the Bike Room Premises) is materially impaired as a result of (i) Landlord's inability to supply any of the Building's sanitary, electrical, heating, air conditioning, water, or elevators serving the Premises ("Essential Services") or (ii) the Premises or the Common Areas or any portion thereof being rendered unsafe for human occupancy (an "Unsafe Condition"), and such disruption in Essential Services or Unsafe Condition continues for three (3) or more consecutive business days after notice to Landlord of the disruption in Essential Services or Unsafe Condition, then commencing on the third (3rd) business day Rent payable hereunder shall be abated based on the extent such disruption in Essential Service or an Unsafe Condition materially impairs City's ability to carry on its business at the Premises. Such abatement shall continue until the Essential Services have been restored or the Unsafe Condition has been remedied so that such matter no longer materially impairs City's ability to carry on its business in the Premises. In addition, if City's use of the Premises is materially impaired as a result of a disruption in Essential Services or an Unsafe Condition that is (i) within Landlord's reasonable control and continues for ninety (90) or more consecutive days after City's written notice thereof to Landlord, or (ii) outside of Landlord's reasonable control (provided that such interruption, failure or inability did not arise from the negligence or willful misconduct of City or any other City Parties) and continues for one hundred eighty (180) or more consecutive days after City's written notice thereof to Landlord, then City shall have the right to terminate this Lease upon thirty (30) days written notice to Landlord given during the period of such failure, without limiting any of its other rights or remedies hereunder or at law or in equity. Notwithstanding the foregoing, (i) nothing in this Section shall limit or expand the parties' rights and responsibilities with respect to any disruption due to casualty pursuant to Article 12 (Damage and Destruction) or Article 10 (Compliance with Laws), and (ii) nothing in this Section shall create additional maintenance or repair obligations that Landlord does not otherwise have under the terms of this Lease. Notwithstanding the foregoing, City shall not be entitled to any abatement of Base Rent or City's Percentage Share of increases in Operating Costs and Real Estate Taxes or right to terminate if the Unsafe Condition or Landlord's inability to supply Essential Services to City is due to the

acts, omissions or negligence of City, its Agents or Invitees. To the extent the disruption of Essential Services results from damage or destruction to the Building, the Rent abatement provisions of Article 12 shall control.

5. USE

5.1 PERMITTED USE

(a) City may use the Premises for such uses as may be specified in the Basic Lease Information (the "Permitted Use"), and for no other use without the prior written consent of Landlord, which shall not be unreasonably withheld or delayed. City shall not use the Premises or Common Areas or permit anything to be done by City or City's Agents or Invitees in or about the Premises or the Common Areas, or any other portion of the Building or Property, which would unreasonably interfere with or unreasonably disturb the rights of Landlord or other occupants of the Building, or cause, maintain or permit by City or City's Agents or Invitees any nuisance or waste in, on or about the Premises, or Common Areas or any other portion of the Building or Property. Without limiting the generality of the foregoing, City expressly agrees that City shall not use the Premises for drug counseling or treatment, the detention of criminals, parole or probation programs, counseling or meetings, medical clinics, mental health programs or other medical services, or general assistance/welfare disbursements or job training/counseling or other programs for the recipients of general assistance/welfare disbursements (each, a "Prohibited Use"), without Landlord's prior written consent, which Landlord may not delay but may withhold in its sole absolute discretion.

(b) In addition, City shall have no right to use the Premises for any Banking Use, without Landlord's prior written consent, which consent may be withheld in Landlord's sole and absolute discretion. For purposes of this Lease, "Banking Use" means retail or wholesale banking operations, including, without limitation, receiving deposits, offering checking accounts, making loans (including, without limitation, home mortgage loans and automobile loans), issuing credit or debit cards, providing automated teller machines, or selling securities (e.g., stocks and mutual funds) or giving investment advice to the general public, whether done by a Financial Institution or other entity or individual and whether accomplished by means of full service, express service, automated teller machines or other self-service banking devices or otherwise. "Financial Institution" means any state bank, national bank, savings and loan association, savings bank, credit union, investment or stock brokerage firm, or other similar entity. The foregoing shall not be deemed to prohibit City from the collection of taxes or fees.

5.2. OBSERVANCE OF RULES AND REGULATIONS

City acknowledges and agrees to observe the current Building rules and regulations attached hereto as ***Exhibit E-1*** (the "Building Rules and Regulations") and the Building's current Critical Environment Work Authorization ("CEWA"), a general description of which is attached hereto as ***Exhibit E-2*** (together referred to as "Rules and Regulations"). Landlord may make reasonable additions or modifications thereto, which shall be binding upon City within a reasonable implementation period upon Landlord's delivery to City of a copy

thereof, provided that such additions or modifications shall not reduce Landlord's obligations hereunder nor unreasonably interfere with City's business otherwise permitted to be conducted in the Premises in accordance with this Lease, and such additions or modifications must be applicable to the other Building tenants, not conflict with the provisions of this Lease, not materially increase the burdens or obligations upon City, not impose a charge upon City for services which this Lease expressly states are to be provided to City at no charge, and not materially adversely affect the conduct of any business in the Premises which City is permitted to conduct pursuant to Section 5.1 (Permitted Use) hereof. Landlord shall administer the Rules and Regulations in a fair and nondiscriminatory manner and use reasonable efforts to cause other Building tenants to comply with them.

6. LEASEHOLD IMPROVEMENTS

6.1. LEASEHOLD IMPROVEMENTS

(a) Leasehold Improvements. Landlord, through its general contractor approved by City, shall demise the Premises, perform the work and make the installations in the Initial Premises and the Common Areas pursuant to the Construction Documents approved by City, and in accordance with the provisions of the Work Letter attached as ***Exhibit F-1*** hereto (the "Initial Premises Work Letter"). The terms "Base Building Improvements," "Leasehold Improvement Work" and "Leasehold Improvements" with respect to the Initial Premises shall have the respective meanings given to them in the Initial Premises Work Letter. (The Initial Premises Work Letter and the First Offer Space Work Letters are sometimes referred to as a "Work Letter" or collectively as "Work Letters".) The cost of the Base Building Improvements shall be paid by Landlord and the cost of the Leasehold Improvements shall be paid by City, subject to the Allowance provided by Landlord, as described in the Basic Lease Information and the Initial Premises Work Letter. Base Building Improvements, Leasehold Improvement Work and Leasehold Improvements with respect to any First Offer Space shall be performed as provided in the First Offer Space Work Letter described in Section 22.1, and the Allowance provided by Landlord for such Leasehold Improvement Work shall be calculated as provided in Section 22.1. Without limiting Landlord's obligation under Section 10.2 regarding compliance with applicable Laws, except for structural improvements specifically specified in the applicable Work Letter (such as limited structural bracing to handle floor loads for City's equipment), Landlord shall not be required to make any structural improvements, modifications or alterations as part of any Leasehold Improvement Work or Leasehold Improvements.

(b) City Contribution. City agrees to contribute at least $5,000,000 of its own funds toward Leasehold Improvements and trade fixtures installed in the Premises (the "City Required Contribution"). The trade fixtures and specific elements of the Leasehold Improvements to be funded by the City Required Contribution shall be clearly identified in the ROM Budget described in the Initial Premises Work Letter (for the purpose of budgeting only). The balance of the City Required Contribution toward the Leasehold Improvements shall be paid in monthly payments as construction progresses and invoices are paid by Landlord pursuant to a formula which incorporates the Allowance, the Additional Construction Allowance, if applicable, and a ten percent (10%) construction holdback, all as detailed in the Initial

Premises Work Letter. Prior to commencement of construction, City shall provide Landlord with satisfactory evidence that City's Required Contribution has been earmarked for the Premises and will be funded as required during construction. Payments shall be due within thirty (30) days of Landlord's invoicing and other required documentation.

(c) Additional Construction Allowance. At City's request, in addition to the amount of any construction allowance provided by Landlord pursuant to any Work Letter, Landlord shall provide an additional allowance for construction of improvements to the Initial Premises or First Offer Space which is the subject of such Work Letter (each, an "Additional Construction Allowance"). The Additional Construction Allowance shall be in the amount of Thirty-Five Dollars ($35.00) per rentable square foot of the Initial Premises, and shall be specified in the Work Letter. The Additional Construction Allowance for First Offer Space shall be calculated as provided in Section 22.1. Commencing on the Rent Commencement Date with respect to the Initial Premises or the applicable First Offer Space and continuing until such sum is repaid in full, City shall pay Landlord on a monthly basis, as additional Rent, the sum required to amortize the Additional Construction Allowance on a straight-line basis with interest on unpaid sums at eight percent (8%) per annum, compounded monthly, over the period commencing on the Rent Commencement Date with respect to the Initial Premises or applicable First Offer Space and ending on the Expiration Date with respect to such space (without regard to Extension Options) (each such monthly payment, an "Additional Construction Allowance Amortization Payment"). Landlord and City shall confirm in writing the amounts for such Additional Construction Allowance in an Amortization Schedule. City and Landlord shall prepare an Amortization Schedule for the Additional Construction Allowance for First Offer Space, if any, prior to submittal of the required authorizing legislation with respect to City's exercise of the First Offer Right for such First Offer Space, as provided in Section 22.1. City may prepay part or all of the Additional Construction Allowance at any time without pre-payment penalty.

(d) Construction Administration Fee. Landlord shall be entitled to a construction administration fee (the "Construction Administration Fee") equal to: (i) eight percent (8%) of the first $50.00 per rentable square foot of the cost of the Leasehold Improvements and the Additional Construction Allowance utilized by City in excess of $50.00 per rentable square foot, plus (ii) one percent (1%) of the cost of the Leasehold Improvements funded directly by City (without an allowance) up to $5 million, plus (iii) two percent (2%) of the cost of the Leasehold Improvements funded directly by City in excess of $5 million as shown in the ROM Budget, and (iv) four percent (4%) of the cost of all Leasehold Improvements thereafter. For the purposes of this Section 6.1(d), "cost" includes architectural fees, permit fees, disability review fees and other "soft" costs, but excludes LEED certification fees. An example of a calculation of the Construction Administration Fee is attached hereto as Exhibit F-3. Any Construction Administration Fee payable pursuant to this Lease shall compensate Landlord for review of plans and specifications, construction and construction cost administration, attendance at all meetings, supervision of all construction compliance with plans and good workmanlike construction practices, invoicing and change order management, scheduling, inspections, electrical energy consumed in connection with the construction work, use of elevators, refuse removal, decommissioning of current operations, extraordinary costs associated with construction containment, construction signage, storage of construction and reuse materials, security, parking, costs associated with move ins, and for any other costs incurred by Landlord as a result of the construction work not otherwise

specifically reimbursable by City hereunder; provided that the foregoing shall not restrict or negate the ability of the general contractor to charge such costs. At the time Landlord makes any disbursement of an Allowance, Landlord shall retain from the Allowance, as a partial payment of the Construction Administration Fee, a proportionate amount of the Construction Administration Fee based upon Landlord's reasonable estimate of the amount required to be withheld from such disbursement in order to ensure that the entire Construction Administration Fee is retained over the course of the applicable construction on a prorata basis. At such time as an Allowance has been entirely disbursed, if the entire Construction Administration Fee payable with respect to the applicable portion of the Premises has not yet been paid to Landlord, City shall pay to Landlord a prorata portion of each payment made by City on account of the Leasehold Improvements in order to ensure that the balance of the Construction Administration Fee is paid to Landlord over the course of construction on a prorata basis.

6.2. SUBSTANTIAL COMPLETION

The terms "Substantially Completed" and "Substantial Completion" for purposes of this Lease shall mean (i) the applicable improvements or other work shall have been completed (including furniture if it is purchased as part of the Leasehold Improvements, in contrast to furniture otherwise purchased or already owned by City, but excluding minor details that do not materially interfere with City's occupancy and use) substantially in accordance with the approved Construction Documents and the terms of the Work Letter or other plans or specifications or standards set forth in this Lease, as certified by the architect of record for the Construction Documents by delivery of AIA Document G704, Certificate of Substantial Completion, so that City can occupy the Premises and conduct business therein, (ii) Landlord has procured a temporary or final certificate of occupancy or final inspection and sign-off on the job card for the applicable improvements or other work and all necessary inspections required for occupancy of the applicable improvements or other work have been completed and signed off as approved by the appropriate governmental agencies, and has delivered evidence thereof to City, (iii) Landlord has completed a three (3) day running "burn off" of any HVAC system serving the applicable improvements or other work following completion of all floor installations and painting to dissipate fumes and dust, (iv) Landlord has delivered an air balance report showing any HVAC system serving the applicable improvements or other work is operative as designed, (v) Landlord and City have completed a joint walk-through of the space with Landlord's architect, which shall be scheduled within three (3) days of Landlord's written notice to City that the applicable Leasehold Improvements are ready for walk-through inspection, and during which Landlord's architect and City shall compile a written punchlist of items that have not yet been completed in accordance with the Construction Documents, and (vi) Landlord shall have delivered to City keys or access cards for the applicable space. Obtaining LEED certification shall not be a requirement of Substantial Completion, nor shall the installation and operability of the Communication Equipment or Additional Equipment or City's Connections, all of which are City's responsibility, be a requirement of Substantial Completion. The date of Substantial Completion shall, upon request by either party, be memorialized in a writing signed by both Landlord and City. The applicable improvements or other work shall be deemed Substantially Completed even though there may remain minor details that would not materially interfere with City's use. Landlord shall diligently pursue to final completion all

such details. Notwithstanding the foregoing, City shall have the right to present to Landlord, within thirty (30) days after City's acceptance of the Premises, a supplemental written punch list consisting of any incomplete or defective items that have not been finished in accordance with the Construction Documents and the terms of the Work Letter, provided that such incomplete or defective items were not reasonably observable on the earlier walkthrough inspection of the Premises and are not the result of damage caused by City during or after its move-in. Landlord shall use commercially reasonable efforts to complete all defective or incomplete items identified in such punchlist within thirty (30) days after the delivery of such list, or as soon thereafter as reasonably practicable. City's failure to include any item on such list shall not constitute any waiver of any latent defects.

No approval by City or any of its Agents of the pricing plans, Construction Documents or completion of the Leasehold Improvement Work for purposes of this Lease shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises, and nothing herein shall limit Landlord's obligations to obtain all such approvals.

6.3. INSTALLATION OF TELECOMMUNICATIONS AND OTHER EQUIPMENT

Landlord and City acknowledge that the Leasehold Improvement Work will be completed by Landlord exclusive of the installation of telecommunications, data and computer cabling facilities and equipment. City shall be responsible for installing such facilities and equipment, provided that Landlord shall furnish reasonable access to City and its consultants and contractors to the main telephone service serving the floor(s) on which the Premises are located and all other parts of the Building for which access is needed for proper installation of all such facilities and equipment including, but not limited to, wiring. City acknowledges Landlord maintains a CEWA process for working within the Building. Landlord and City shall cooperate in determining the horizontal and vertical locations of the risers and other areas of the Building (if any) through which City's telephone and data cables will be installed, in order to satisfy City's reasonable requirements, without interfering with the operation of Building Systems or other tenants' or occupants' systems and without interfering with Landlord's ability to provide services and utilities to other tenants or occupants. In addition, City acknowledges that its cabling will connect to a MPOE used by other tenants of the Building. Subject to the provisions of the CEWA Rules, the Building Rules and Regulations, and Landlord's approval of any tradesmen in Landlord's sole discretion, City shall have the right to enter the Premises and such other portions of the Building at reasonable times during the course of construction of the Leasehold Improvements in order to install City's facilities and equipment. City and Landlord shall use their good faith efforts to coordinate any such activities to allow the Leasehold Improvements and the installation of such facilities and equipment to be completed in a timely and cost-effective manner.

6.4. BASE BUILDING IMPROVEMENTS

Landlord shall make the Base Building Improvements described in the Work Letter at no cost to City except where specified.

6.5. GRAPHICS; BUILDING DIRECTORY

(a) Building Directory. Prior to the Commencement Date, Landlord shall install or construct a Building directory in the lobby of the Building containing a listing of City's name and such other information as City shall reasonably require (including, at City's option, the names of all of City's businesses, related entities, assignees and sublessees and the suite numbers occupied, including the suites(s) occupied by the Locker Room Premises), provided that City's listing on the directory shall be in a size and manner that is representative of City's proportionate share of space in the Building. Landlord, at Landlord's expense, shall pay the cost of constructing the directory in the lobby and the cost of maintaining (but not constructing) the directory shall be an Operating Cost.

(b) Elevator Lobby Signage. Landlord shall install and maintain in the seventh (7th) Floor elevator lobby and on or adjacent to entrances to the 7th Floor Premises and Locker Room Premises City's user name and/or logo and designating the appropriate suite numbers and department(s) occupying such space, using Building standard graphics (as Landlord may change its standard signage and graphics from time to time).

(c) City Signage. All City graphics visible in or from elevator lobbies, public corridors or the exterior of the Premises shall be subject to Landlord's prior written approval. City shall not display any signs or graphics of City visible from the exterior of the Building without Landlord's prior written approval, which Landlord with withhold in its sole discretion.

6.6. SEISMIC IMPROVEMENTS TO THE BUILDING

Landlord, at Landlord's sole cost and expense, shall perform the work recommended in the report dated October, 16, 2009 by Tipping Mar Structural Engineering (the "Seismic Work"). Landlord shall proceed expeditiously with the Seismic Work and shall use good faith efforts to complete such work prior to Substantial Completion of the Leasehold Improvements, and shall in all events complete such Seismic Work by the date which is one (1) year after Substantial Completion. In the event Landlord, in its good faith judgment, determines that different or lesser seismic upgrades are required to address the structural deficiencies identified in the Tipping Mar Structural Engineering report, Landlord shall provide City with a written description of the proposed revised work plan, detailing the proposed deviations from the Seismic Work, together with evidence that (i) the structural deficiencies identified in the Tipping Mar Structural Engineering report will be appropriately addressed by the work to be performed under the revised work plan, and (ii) Landlord's election to substitute such work for the Seismic Work will not result in any greater a threat that any portion of the Building will be yellow- or red-tagged following a seismic event than would have would have resulted had Landlord performed the work recommended in the Tipping Mar Structural Engineering Report. Any such proposed deviations from the Seismic Work shall be subject to City's reasonable approval, and following such approval the term "Seismic Work" shall refer to approved modified work plan.

6.7. GOOD CONSTRUCTION PRACTICES

All construction with respect to the Leasehold Improvements and Base Building Improvements shall be accomplished expeditiously, diligently and in accordance with good construction and engineering practices and applicable Laws. City acknowledges that all

construction shall be performed in accordance with the CEWA Rules and the Building Rules and Regulations, and subject to Landlord's prior written approval of any tradesmen, in Landlord's sole discretion. The following provisions shall apply with respect to construction of Base Building Improvements and Leasehold Improvements in connection with First Offer Space: (i) Landlord shall undertake commercially reasonable measures to minimize damage, disruption or inconvenience caused by such work and make adequate provision for the safety and convenience of all persons affected by such work, (ii) dust, noise and other effects of such work shall be controlled using commercially reasonable methods customarily used to control deleterious effects associated with similar office construction projects (i.e., after-hours core drilling), and (iii) Landlord, while performing any construction, shall undertake commercially reasonable measures in accordance with good construction practices to minimize the risk of injury or damage to adjoining offices, or the risk of injury to members of the public, caused by or resulting from the performance of such construction.

6.8. CONSTRUCTION IMPROVEMENTS THAT DISTURB OR REMOVE EXTERIOR PAINT

If applicable, Landlord shall comply with all requirements of the San Francisco Building Code Section 3407 and all other applicable Laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior lead-based or "presumed" lead-based paint (as defined below). Landlord or its Agents shall give to City three (3) business days prior written notice of any disturbance or removal of exterior or interior lead-based or presumed lead-based paint. Further, Landlord and its Agents, when disturbing or removing exterior or interior lead-based or presumed lead-based paint, shall not use or cause to be used any of the following methods: (a) acetylene or propane burning and torching; (b) scraping, sanding or grinding without containment barriers or a High Efficiency Particulate Air filter ("HEPA") local vacuum exhaust tool; (c) hydro blasting or high-pressure wash without containment barriers; (d) abrasive blasting or sandblasting without containment barriers or a HEPA vacuum exhaust tool; and (e) heat guns operating above 1,100 degrees Fahrenheit. Paint on the exterior of buildings built before December 31, 1978 is presumed to be lead-based paint unless lead-based paint testing, as defined in Section 3407 of the San Francisco Building Code, demonstrates an absence of lead-based paint on the exterior surfaces of such buildings. Under this Section, lead-based paint is "disturbed or removed" if the work of improvement or alteration involves any action that creates friction, pressure, heat or a chemical reaction upon any lead-based or presumed lead-based paint on an exterior surface so as to abrade, loosen, penetrate, cut through or eliminate paint from that surface. Notice to City under this Lease shall not constitute notice to the City's Department of Building Inspection required under Section 3407 of the San Francisco Building Code.

6.9. LEED CI CERTIFICATION

Landlord shall reasonably cooperate (at no additional cost and without liability to Landlord) with City's efforts to seek a minimum of LEED Silver certification, as outlined by the U.S. Green Building Council, with respect to the Leasehold Improvements in the 7th Floor Premises. Landlord shall engage LEED professional(s) to consult with Landlord in connection with the design and construction of the Leasehold Improvements, provided that

City shall pay all fees and costs of such LEED professionals and all costs incurred in connection with LEED documentation and the filing of all LEED applications. Landlord shall provide to City, for City's approval or disapproval, a budget or other satisfactory estimate of the fees of such professionals prior to engaging them. The foregoing LEED costs may be paid out of the Allowance or Additional Construction Allowance, and the costs for improvements related to LEED certification shall be treated as part of the Leasehold Improvement Work, and shall be paid out of the Allowance or Additional Construction Allowance (to the extent funds are available therefor), regardless of the location of the improvement in the Building (including, but not limited to, improvements to the Common Areas or Building Systems); provided, with respect to Landlord's Base Building Improvements, Landlord shall use good faith efforts to perform such work in furtherance of the proposed LEED Silver certification to the extent commercially reasonable, but Landlord shall not be obligated to perform any specific work, install any material, or take any other action to the extent it would increase the cost of design or construction to Landlord unless City agrees to pay for the increased cost, and Landlord reasonably determines that sufficient funds are available from the applicable Allowance or Additional Construction Allowance authorized by the Board of Supervisors to pay such increased costs, in which event such costs shall be deducted from the Allowance or Additional Construction Allowance, as incurred. Further, the above notwithstanding, Landlord shall not be obligated to make improvements or changes to Building Systems or operations which directly and adversely impact Landlord's data center operations or other facilities, provided that Landlord hereby agrees to the work outlined in the Preliminary LEED-IDC Scorecard: Bank Of America Data Center, San Francisco, a copy of which is attached as ***Exhibit Q***, for the potential points designated thereof as "Y" (Yes, achievable). Any delay in Substantial Completion resulting from City's election to seek LEED certification shall constitute a Tenant Delay, except to the extent such delay results from a Landlord Delay. After Landlord becomes aware of any factor that will, or is likely to, result in a Tenant Delay due to City's election to seek LEED certification, Landlord shall use reasonable good faith efforts to promptly notify City of such occurrence, together with Landlord's then good faith estimate of the probable duration of such Tenant Delay, but failure to provide such notice shall not constitute a waiver of such Tenant Delay. Landlord shall cooperate with City to minimize, to the extent reasonably possible, the Tenant Delay resulting from City's election to seek LEED certification. Failure to obtain LEED certification shall not impose any liability on Landlord or diminish City's obligations under this Lease.

7. ALTERATIONS AND PERSONAL PROPERTY

7.1. ALTERATIONS BY CITY

(a) City shall not make or permit any alterations, installations, additions or improvements (collectively, "Alterations") to the Premises without first obtaining Landlord's written consent, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, City shall have the right, without Landlord's consent but following prior written notice to Landlord as provided below, to make any Alteration that meets all of the following criteria (a "Cosmetic Alteration"): (a) the Alteration is decorative in nature (such as paint, carpet or other wall or floor finishes, movable partitions or other such work) and will not

produce noxious fumes from VOC's or other chemicals; (b) at least ten (10) business days' prior to commencement of work with respect to such Alteration, City provides Landlord with reasonably detailed plans with respect thereto or, if the Alteration is of such a nature that formal plans will not be prepared for the work, City provides Landlord with a reasonably specific written description of the work; (c) such Alteration does not require any alteration in, or adversely affect, the Building Systems or any structural components of the Building or any part of the Building outside the Premises, and if after review of City's plans or description of the proposed work, Landlord, in Landlord's sole discretion, exercised in good faith, determines that the proposed work may affect any one or more of the Building Systems or any structural components of the Building or any part of the Building outside the Premises, then such proposed work shall not be deemed a Cosmetic Alteration, and must be performed in accordance with all of the requirements of this Article 7; (d) the work uses only new materials comparable in quality to those being replaced and is performed in a workmanlike manner and in accordance with all Laws; and (e) such Alteration does not, in the aggregate, cost more than One Hundred Thousand Dollars ($100,000.00), considering the project as an integral whole. Cosmetic Alterations shall comply with all of the other provisions of this Article 7, excluding only the requirement to obtain Landlord's prior written consent thereto. Any Alterations permitted hereunder shall be made at City's cost in compliance with applicable Laws and in accordance with reasonable procedures as then established by Landlord and the provisions of this Article 7. Landlord shall use commercially reasonable efforts to cooperate with City in securing building and other permits and authorizations needed in connection with any permitted Alterations; provided, however, Landlord shall not be required to expend any funds in connection therewith. In connection with all Alterations, Landlord shall be entitled to a fee equal to the greater of (i) five percent (5%) of the hard and soft costs of the Alterations or (ii) the out-of-pocket costs reasonably incurred by Landlord in reviewing the plans and specifications for City's proposed Alterations. City acknowledges that City must comply with the CEWA Rules and the Building Rules and Regulations, and with Landlord's approval of any tradesmen, in its sole discretion. In the event of any conflict between the CEWA Rules and the provisions of this Lease, the CEWA Rules shall govern. In no event shall any Alterations by City produce noxious fumes from VOC's or other chemicals.

(b) City shall be solely responsible for compliance with all applicable Laws in connection with all Alterations. Without limiting the generality of the foregoing, City shall be responsible for the cost of any additional alterations required by applicable Laws to any portion of the Building as a result of Alterations, including work in the Common Areas or elsewhere outside the Premises. Notwithstanding the foregoing, Landlord may elect to perform all such work outside the Premises, in which event City shall reimburse Landlord for the reasonable and actual cost thereof within thirty (30) days after written request accompanied by an invoice or other reasonable supporting documentation. Further, if Landlord estimates that the cost of the work to be performed outside the Premises will exceed Five Thousand Dollars ($5,000.00), Landlord may require City to deposit the estimated cost of such work with Landlord prior to the commencement thereof. Within thirty (30) days after the actual cost of such work is determined, Landlord shall refund any overpayment to City or City shall pay any shortfall to Landlord, as the case may be. City shall complete or cause completion of all Alterations with due diligence after commencement in order to cause the least disruption to Building operations and occupants.

(c) If required by Landlord in writing at the time Landlord provides consent to an Alteration (provided that at the time City submits its plans and specifications to Landlord for approval, City requests in bold typeface or all capital letters, that Landlord identify Alterations to be removed), City shall, prior to the expiration of the Term or earlier termination of this Lease, remove such Alteration at City's cost and expense and restore the Premises to the condition existing prior to the installation of such Alteration. If City fails so to do, then after written notice to City Landlord may remove such Alteration and perform such restoration and City shall reimburse Landlord for the cost and expense reasonably incurred by Landlord to perform such removal and restoration (which obligation of City shall survive the expiration or earlier termination of this Lease). City shall repair at its cost and expense all damage to the Premises or the Building caused by the removal of such Alteration. Notwithstanding the foregoing, in no event shall Landlord require the removal of Alterations which are not Extraordinary Improvements, as defined in Article 20. Subject to the foregoing provisions regarding removal, all Alterations remaining at the Premises at the expiration or earlier termination of this Lease shall be Landlord's property from and after the expiration or earlier termination of this Lease, without compensation to City.

7.2. TITLE TO IMPROVEMENTS

Subject to the provisions of Section 7.1 and Article 20, except for City's Personal Property, all appurtenances, fixtures, improvements, equipment, additions and other property permanently installed in the Premises as of the Commencement Date or during the Term shall be and remain Landlord's property. City may not remove such property unless Landlord consents thereto.

7.3. CITY'S PERSONAL PROPERTY; REMOVAL; EQUIPMENT WAIVER

All furniture, furnishings, equipment, trade fixtures and articles of movable personal property installed in the Premises by or for the account of City and that can be removed without structural damage to the Premises (collectively, "City's Personal Property") shall be and remain City's property. City's Personal Property shall include, without limitation, the Existing Personal Property and Other Transferred Property described in Section 22.2. At any time during the Term or at the expiration thereof, City may remove any of City's Personal Property provided City shall repair any damage to the Premises resulting from such removal. Upon the expiration or earlier termination of this Lease, City shall remove City's Personal Property from the Premises in accordance with Section 20 (Surrender of Premises), to the extent required thereunder. Landlord acknowledges that some of City's Personal Property may be financed by an equipment lease financing or otherwise be subject to a security interest, or owned by an equipment company and leased to City. Landlord, upon City's reasonable request, shall execute and deliver a waiver, in a form reasonably approved by Landlord, of certain rights Landlord may have or acquire with respect to City's Personal Property, so long as the supplier, equipment lessor or lender agrees to terms and conditions reasonably requested by Landlord. Landlord shall recognize the rights of a supplier, lessor or lender who has an interest in any items of City's Personal Property to enter the Premises and remove such property at any time during the Term or within a reasonable time thereafter, subject to such terms, conditions and restrictions as Landlord reasonably and customarily imposes, and provided that City shall reimburse Landlord for any attorneys' fees or other

costs reasonably and actually incurred by Landlord in negotiating an agreement with such supplier, lessor or lender within thirty (30) days after written request accompanied by an invoice or other reasonable supporting documentation.

7.4. ALTERATION BY LANDLORD

Landlord shall use commercially reasonable efforts to minimize interference with or disruption to City's use and occupancy of the Premises during the performance of any alterations, installations, additions or improvements to the Building, including, without limitation, any leasehold improvement work for other tenants in the Building. Landlord shall take commercially reasonable steps to remedy any such interference or disruption upon receiving City's notice thereof.

8. REPAIRS AND MAINTENANCE

8.1. LANDLORD'S REPAIRS

(a) Landlord shall repair and maintain, in good condition, in a manner consistent with maintenance standards for privately-owned, comparable N-2 data center facilities (subject to ordinary wear and tear consistent with such standard and Landlord's obligations following damage and destruction as set forth in Article 12 (Damage and Destruction)), at Landlord's cost, all portions of the Building including without limitation, the roof and roof decks, foundation, bearing and exterior walls and subflooring, elevators, current Building systems including lighting, heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, back-up power, back-up water, security and control systems, and other current mechanical, electrical and communications systems of the Building (collectively, the "Building Systems") and the Common Areas, other than (i) the Premises (except as otherwise provided in this Lease), (ii) the premises of other tenants or occupants of the Building, and (iii) non-Building standard systems installed by or at the request of City or any other tenant of the Building (unless City or such other tenant directly reimburses Landlord for the entire amount of such costs). Without limiting the foregoing, Landlord shall maintain the Building and the Building Systems in a manner generally consistent with comparable tiered facilities (subject to ordinary wear and tear consistent with such comparable facilities and Landlord's obligations following a Casualty). City acknowledges that, without relieving Landlord of its obligations hereunder, Landlord shall be entitled to delegate its repair and maintenance responsibilities to a qualified third party selected by Landlord in Landlord's reasonable discretion. Landlord shall use commercially reasonable efforts not to permit any other tenants or occupants of the Building to disturb or interfere with City's use of the Premises or permit to be done in or about the Building or anything that is illegal, is dangerous to persons or property or constitutes a nuisance.

8.2. CITY'S REPAIRS

Subject to any construction warranties or guaranties received in connection with Landlord's completion of the Leasehold Improvements and Landlord's repair and maintenance obligations hereunder, City shall keep the interior of the Premises and non-Building standard

systems installed by or at the request of City in good working order and in a safe and sanitary condition, except for ordinary wear and tear and damage by Casualty. City shall make any required repairs and replacements (i) at City's cost, (ii) by City employees or by contractors or mechanics selected by City and reasonably approved by Landlord, (iii) so that same shall be at least substantially equal in quality, value and utility to the original work or installation prior to damage thereof, (iv) in a manner and using equipment and materials that will not materially interfere with or impair the operations, use or occupation of the Building or the Building Systems, and (v) in compliance with all applicable Laws, including, without limitation, any applicable contracting requirements under City's Charter and Administrative Code and, to the extent applicable, the provisions of Article 7 of this Lease, including, but not limited to, the CEWA Rules. Notwithstanding the foregoing, City acknowledges that Landlord, at City's expense, shall be responsible for maintaining and repairing the CRAC units, UPS units and other specialty equipment located within the Premises as provided in Section 9.3(b) below. At all times during the Term, Landlord shall, subject to terms and conditions that Landlord may reasonably impose, upon reasonable notice by City, afford City and its Agents with access to those portions of the Building which are necessary to maintain or repair the telecommunications and data and computer cabling facilities and equipment installed by City (other than those which are to be maintained by Landlord pursuant to this Lease). Similarly, at all times during the Term, City shall afford Landlord access to those portions of the Premises which are necessary to install, maintain, repair or replace cabling and facilities serving Landlord or tenants or occupants of the Building, provided that Landlord shall give City reasonable advance notice of the proposed work and shall take all reasonable steps to cause all such work to be done in such a manner as to cause as little interference to City as possible. Except as explicitly set forth to the contrary in this Lease, City hereby waives all rights, including those provided in California Civil Code Section 1941 or any successor statute, to make repairs which are Landlord's obligation under this Lease at the expense of Landlord or to receive any setoff or abatement of Rent or in lieu thereof to vacate the Premises or terminate this Lease.

8.3. LIENS

City shall keep the Premises and the Building free from liens arising out of any work performed, material furnished or obligations incurred by or for City. Landlord shall have the right to post on the Premises any notices permitted or required by Law or that Landlord deems are needed for the protection of Landlord, the Premises, or the Building, from mechanics', material suppliers' or other liens and to take any other action at the expense of City that Landlord deems necessary or appropriate to prevent, remove or discharge any such lien, provided that Landlord shall first allow the City the reasonable opportunity to contest such lien or take other appropriate action to remove or bond over the lien for a period of not less than thirty (30) days (or such shorter period as may be required in connection with any financing or sale of the Building). City shall Indemnify Landlord for all Claims which may be asserted against or incurred by Landlord as a result of City's failure to comply with the obligations of this Section 8.3 (which Indemnity obligation shall survive the Expiration Date or earlier termination of this Lease). City shall give Landlord at least ten (10) business days prior written notice of commencement of any repair or construction by City on the Premises to allow Landlord to post a Notice of Non-Responsibility with respect to the work.

9. UTILITIES AND SERVICES

9.1. LANDLORD'S PROVISION OF UTILITIES AND SERVICES FOR THE ENTIRE PREMISES

(a) General. Subject to limitations, if any, imposed by applicable Laws, Landlord shall, at Landlord's cost (as an Operating Cost, to the extent applicable), furnish the following utilities and services to the office portion Premises: (i) heating, air conditioning and ventilation in amounts required for City's comfortable use and occupancy of the Premises, twenty-four (24) hours per day, seven (7) days per week ("Daily Basis"); (ii) passenger elevator service on a Daily Basis; (iii) water from the municipal water distribution system for lavatory, kitchen and drinking purposes on a Daily Basis; and (iv) freight elevator service upon City's reasonable request, subject to Landlord's scheduling rules and the rights of other tenants to use the freight elevator. During the Term, City shall have access to the Premises at all times on a Daily Basis, subject to City's compliance with Landlord's reasonable access procedures and Landlord's right to prevent access in the case of an emergency. For purposes of item (i) above, Landlord shall be conclusively deemed to have provided heating, air conditioning and ventilation in amounts required for City's comfortable use and occupancy if Landlord operates the heating, air conditioning and ventilation system in a manner consistent with the applicable ASHRAE standards.

(b) Electrical Service. Subject to the conditions described in Exhibit O attached hereto, Landlord shall also provide (or arrange with the appropriate utility to provide) electric current in amounts required for the intended operation of the equipment in the Premises, including computers, air conditioning units, electrified furniture, personal computers, servers and other normal office machines and equipment, along with emergency back-up power, provided that City's electrical loads must not exceed a 1000 KW maximum total electrical load. Landlord shall install submeters to measure the electrical use to the 7th Floor Premises (but not the Bike Room Premises and the Locker Room Premises), provided that if the cost to Landlord to install any submeters in the Building for City exceeds Fifteen Thousand Dollars ($15,000.00), the excess cost of such submeter installation shall be included in the cost of the Leasehold Improvements. Electrical service to the 7th Floor Premises shall be provided at City's direct cost (and not as an Operating Cost); electrical services to the Bike Room Premises and Locker Room Premises shall be provided at Landlord's cost (as an Operating Cost, to the extent applicable).

(c) After-Hours HVAC and Excess Services. In the event that City requests HVAC, janitorial, security or other services in addition to the services provided by Landlord pursuant to Sections 9.2, 9.3, 9.4, or 9.7, or if City's use requires additional security services, then City shall pay to Landlord the Landlord's standard fees (as charged to other tenants requesting such additional services, if applicable) for providing such HVAC, janitorial, security or other services. City shall keep Landlord informed in advance of any public meetings in the Building, through use of a monthly calendar or otherwise, that are scheduled outside of the period of 7:30 a.m. to 5:30 p.m., Monday through Friday), or are scheduled on New Year's Day, Martin Luther King Day, Memorial Day, Fourth of July, or Labor Day, so that Landlord and City can agree upon the potential need for additional security services. Notwithstanding the foregoing, if Landlord reasonably determines that additional security services not

previously agreed upon are required at any time, it shall notify City of such fact as soon as possible, and City shall either discontinue the meetings, change the time of the meetings, or agree to pay for the additional security services.

(d) Billing Requirements. All costs billed to City under this Article 9 shall be based on Landlord's actual costs without markup.

9.2. SERVICES FOR THE COMMON AREAS AND BUILDING

(a) Common Area Janitorial Service. Landlord shall provide at its cost (as an Operating Cost, to the extent applicable) janitorial service to the Common Areas in accordance with the specifications contained in ***Exhibit G*** attached hereto. Landlord reserves the right to reasonably revise the janitorial services from time to time during the Term, provided that such revised service is sufficient to maintain the Common Areas in a clean and orderly condition, is consistent with the janitorial service provided from time to time in comparable first class highrise office buildings, and, with respect to services provided to the 7th Floor Common Areas, is subject to City's reasonable approval.

(b) Building Security Service. Landlord shall provide at its cost (as an Operating Cost, to the extent applicable) security for the Building in accordance with the specifications contained in Exhibit H attached hereto. Landlord reserves the right to reasonably revise the security services from time to time during the Term, consistent with security provided from time to time in comparable first class highrise office buildings, and in no event for fewer than twenty-four (24) hours per day. Subject to Landlord's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed, City may install and operate its own access control to the Premises, provided that City's access control system shall not interfere with Landlord's access control system of the Building. City acknowledges and agrees that Landlord shall at all times have access to the Premises in the event of an emergency and as reasonably necessary to provide the services to be furnished by Landlord under this Lease.

(c) Building Graffiti Removal. Landlord, during normal business hours, shall promptly remove graffiti at its cost (as an Operating Cost, to the extent applicable) from Building surfaces outside the Premises.

9.3. LANDLORD'S PROVISION OF SPECIAL UTILITIES AND SERVICES FOR 7TH FLOOR PREMISES

(a) CRAC Units. Subject to limitations imposed by applicable Laws, periods of regular and emergency maintenance and Casualties, Landlord shall provide, at City's cost, chilled water on a 24 hour, seven day a week basis for running Computer Room Air Conditioning ("CRAC") units in the 7th Floor Premises that require chilled water. Landlord, at Landlord's expense, shall install flow meters to measure water usage by such CRAC units. In addition, Landlord shall, subject to the cap set forth in Section 9.1(b) above, install submeters to measure electrical usage by CRAC units in the Premises. Charges for chilled water shall be reasonably and equitably determined by the engineer of record for the Building or such other third party engineer reasonably designated by Landlord and shall be payable by City within thirty (30) days after demand, as additional Rent. If City shall replace the function of CRAC units with other technology, City shall reimburse Landlord for the utility costs associated

with City's usage of such other technology, as reasonably determined by Landlord, without mark-up.

(b) Equipment Maintenance. Landlord shall provide, at City's cost (and not as an Operating Cost), maintenance and repair on a regular basis pursuant to OEM standards of certain systems within the Premises connected to the Building Systems such as Pre-Action Sprinkler Systems, Fire Suppression Systems, CRAC systems, UPS and emergency systems. All costs billed to City under this Section 9.3 shall be based on Landlord's actual costs without markup. City shall install its own automated supervisory and control functions for its CRAC, computer server and UPS systems. Landlord shall utilize the existing automated supervisory and control functions for the Building Systems in the Premises.

9.4. JANITORIAL SERVICES

Landlord shall provide, at City's direct cost (and not as an Operating Cost) janitorial services to the Premises in accordance with the specifications contained in ***Exhibit G*** attached hereto. All costs billed to City under this Section 9.4 shall be based on Landlord's actual costs without markup. City shall not have the right to contract for janitorial services for the Premises. City reserves the right to revise the janitorial service provided to the Premises from time to time during the Term, provided that such revised service is not unduly onerous or unreasonable and is sufficient to maintain the Premises in a clean and orderly condition and is consistent with the janitorial service provided from time to time in comparable first-class high-rise office buildings to premises with 24/7 operations.

9.5. CONSERVATION; SCHEDULE E-BASE INTERRUPTIBLE PROGRAM

Landlord may establish reasonable measures to conserve energy and water, including automatic light shut off after hours and efficient lighting forms, so long as these measures do not unreasonably interfere with City's use of the Premises. In addition, City acknowledges that the Building participates in a Schedule E-Base Interruptible Program that under certain conditions requires the Building to transfer loads to its emergency generators. Landlord shall at all times satisfy the Schedule E-Base Interruptible Program conditions set forth in ***Exhibit R***.

9.6. DISRUPTION IN ESSENTIAL UTILITIES OR SERVICES

In the event of any failure, stoppage or interruption of any utilities or services to be furnished by Landlord hereunder, Landlord shall use reasonable efforts to restore service as promptly as possible and shall keep City apprised of its efforts.

9.7. ADDITIONAL SERVICES

City reserves the right to request that the Landlord, at City's cost, perform minor Lease related services or incur additional expenses not covered under this Lease that the City may require from time to time as reasonably requested by the City and approved by the Real Estate Division, acting through the Director of Property or his or her designee, or by SFMTA, acting through the Senior Manager of SFMTA's Real Estate Section or his or her

designee "Additional Services"), provided that if Landlord, in its sole and absolute discretion, agrees to perform such services or incur such additional expenses, City shall reimburse Landlord for the pre-approved cost for such expenses as additional Rent within thirty (30) days after receipt of Landlord's invoice therefor, which cost shall be at the rates customarily charged by Landlord to other tenants or occupants of the Building (if applicable). Landlord shall provide City with invoices for all Additional Services in a format reasonably approved by City, which format shall in all events include a reference to the suite or City department to which such Additional Services were provided.

10. COMPLIANCE WITH LAWS; PREMISES CONDITION

10.1. COMPLIANCE WITH LAWS; COVENANTS OF LANDLORD

Landlord shall make, at Landlord's at its cost (as an Operating Cost, to the extent applicable, and at its sole cost, to the extent not applicable), any and all modifications to the Premises, the Building or the Building Systems as may be required by applicable Laws for use for use of the Premises for general office purposes. Landlord shall at all times during the Term cause the Property, the Building, the Common Areas and the Building Systems serving the Premises to be in compliance with applicable present or future federal, state, local and administrative laws, rules, regulations, orders and other governmental requirements, the requirements of any board of fire underwriters or other similar body, any directive or occupancy certificate issued pursuant to any law by any public officer or officers acting in their regulatory capacity (collectively, "Laws"), including, without limitation, Disabilities Laws, Seismic Safety Laws, and Life Safety Laws. Notwithstanding the foregoing, if and to the extent (a) City's status as a governmental entity or (b) City's proposed or actual use of the Premises for other than general office use, requires changes or upgrades to the Building or special services in the Building in order to comply with applicable Law, (i) Landlord shall provide City with prior written notice of the required additional changes, upgrades or services and Landlord's good faith estimate of the cost thereof, (ii) City shall be responsible for the cost of the additional changes, upgrades or services that result from City's status as a governmental entity or City's proposed or actual use of the Premises for other than general office use, and (iii) City shall reimburse Landlord, promptly upon demand accompanied by an invoice and supporting documentation, as additional Rent, for any costs or expenses that Landlord reasonably incurs arising from such additional changes, upgrades or services, provided that prior to incurring such costs or expenses Landlord shall provide City, for City's reasonable approval or disapproval, with written notice of the required Building changes or upgrades and a budget or other satisfactory estimate of the costs and expenses to be incurred in connection therewith. If Landlord is required to make Building changes or upgrades due to a use by City which is not a general office use, City shall have the option of terminating such use and instead using the space as general office space, provided that such termination shall not reduce or eliminate the City's obligations with respect to any additional changes, upgrades or services that arose prior to such termination becoming effective. Nothing contained herein shall prevent Landlord from contesting any alleged violation of Laws in good faith, including, but not limited to, the right to apply for and obtain a waiver or deferment of compliance, the right to assert any and all defenses allowed by applicable Laws,

and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by applicable Laws.

10.2. CITY'S COMPLIANCE WITH LAWS

City shall use the Premises during the Term in compliance with applicable Laws, the provisions of all recorded documents affecting any portion of the Building and all life safety programs, procedures and rules implemented or promulgated by Landlord, and shall not do or permit to be done, or bring or keep or permit to be brought or kept, in or about the Premises, or any other portion of the Building, anything that is prohibited by or will in any way conflict with any Law, the provisions of any recorded documents affecting any portion of the Building and all life safety programs, procedures and rules implemented or promulgated by Landlord; provided, however, that City shall not be required to make any alterations, additions or other modifications to the Premises or the Building in order to comply therewith, including, without limitation, structural alterations, except to the extent that such modifications are necessary because of: (a) any Alterations to the Premises made by City pursuant to Section 7.1 (Alterations by City), any Communications Equipment or Additional Equipment installed by City pursuant to Section 2.4 (Communications Equipment) or City's Connections installed pursuant to Section 2.5 (Muni Connection and City's Server Connection); or (b) City's use of the Premises for other than general office purposes; or (c) City's status as a government entity (by way of example, but not limitation, modifications that would not be necessary if the Premises were leased exclusively to private general office users instead of City). Without limiting the generality of the foregoing, City shall be responsible for complying with any requirement of the Disabilities Laws relating to the placement of City's furniture or other City Personal Property and the operation of any programs in the Premises, other than any requirement relating to the path of travel to the Premises, which is Landlord's obligation to the extent provided in Section 10.1 (Landlord's Compliance with Laws) and City's obligation to the extent provided in Section 7.1. Without limiting Section 16.1 (City's Indemnity), City shall Indemnify Landlord against any and all Claims arising out of City's failure to comply with all applicable Laws as provided in this Section 10.2.

10.3. CITY'S COMPLIANCE WITH INSURANCE REQUIREMENTS

City shall not conduct or permit any activity or any use in or about the Premises, and shall not conduct or permit any activity or use in any other portion of the Building by City or City's Agents (and shall use commercially reasonably efforts to prevent any such activity or use by any City Invitee) that would: (a) invalidate or be in conflict with any fire or other casualty insurance policies covering the Building or any property located therein, (b) result in a cancellation of any existing policy or insurance or a refusal by fire insurance companies of good standing to insure the Building or any such property in amounts reasonably satisfactory to Landlord or the holder of any mortgage or deed of trust encumbering the Building, (c) cause an increase in the fire insurance premium for the Building unless City agrees to pay such increase, or (d) subject Landlord to any liability or responsibility for injury to any person or property by reason solely of any activity being conducted or permitted by City or any employee, officer, Agent, board, commission or invitee of any of them in the Premises;

provided, however, Landlord shall use commercially reasonable efforts to provide City with reasonable prior written notice of any applicable insurance requirements.

11. SUBORDINATION

11.1. EXISTING ENCUMBRANCES

Landlord represents and warrants to City that as of the Effective Date, the Property is not subject to any Encumbrance other than the deed of trust held by Barclays Bank PLC (the "Existing Lender") recorded on December 16, 2010 as Document No. 2010-J103661 in the Office Records of the County of San Francisco, California. As used in this Lease, the term "Encumbrance" shall mean: (i) any ground leases or other underlying leases affecting Landlord's interest in the Property, or any portion thereof, (ii) the lien of any mortgage or deed of trust in any amount for which any part of the Property owned by Landlord, any ground leases or underlying leases, or Landlord's interest or estate therein, is specified as security, and (iii) any other interest in the Property that could, upon foreclosure or other exercise of rights by the holder of such interest, terminate this Lease. Concurrently with the mutual execution and delivery of this Lease, Landlord shall obtain from Existing Lender, a subordination, nondisturbance and attornment agreement ("SNDA") substantially in the form of ***Exhibit I*** attached hereto or in such other commercially reasonable form as may be reasonably acceptable to the City and Existing Lender.

11.2. SUBORDINATION TO FUTURE ENCUMBRANCES

In the event Landlord desires to make this Lease subject and subordinate to a future Encumbrance, then as a condition of City's willingness to subordinate its Lease to such Encumbrance, Landlord shall obtain for City from the holder of the Encumbrance a SNDA in the form of Exhibit I attached hereto or in such other commercially reasonable form as may be reasonably acceptable to the City, such holder, and Landlord, provided that nothing in such document shall deprive City of any material rights or entitlements specifically provided in this Lease. Landlord shall not require any subordination of this Lease that violates the terms of any existing SNDA. In the event that any ground lease or underlying lease terminates for any reason or any mortgage or deed of trust is foreclosed or a conveyance in lieu of foreclosure is made for any reason, City shall pay subsequent Rent and attorn to and become the tenant of such successor Landlord provided that City has received proper written notice of such succession and the name and address of the successor landlord. From and after the date of written notice from Landlord providing the identity and address of the holder of an Encumbrance, City shall give the holder of the Encumbrance a copy of any notice of default under this Lease served upon Landlord at the same time as such notice is given to Landlord.

12. DAMAGE AND DESTRUCTION

12.1. WAIVER OF CIVIL CODE SECTIONS

Landlord and City intend that this Lease fully govern all of their rights and obligations in the event any fire, earthquake or other casualty (collectively, a "Casualty") damages or destroys the Premises or the Building. Accordingly, Landlord and City each hereby waives the provisions of Sections 1932(2) and 1933(4) of the California Civil Code, and the provisions of any similar law, statute or ordinance now or hereafter in effect, as such sections may from time to time be amended, replaced, or restated, to the extent such rights are inconsistent with the provisions hereof.

12.2. LANDLORD REPAIR OBLIGATIONS

If the Premises, the Leasehold Improvements or Alterations in the Premises, portions of the Building necessary for access to or use of the Premises or any Building Systems serving the Premises are damaged by a Casualty, subject to the provisions of this Article 12, Landlord shall repair the same with commercially reasonable diligence so as to make the Building or Building Systems at least equal in condition to the condition existing immediately prior to the occurrence of the Casualty and as similar to it in character as is practicable and reasonable (i) but only the extent possible with the available insurance proceeds (so long as Landlord has maintained the insurance described in Section 17(a) of this Lease, and provided that the amount of Landlord's deductible shall be deemed included in the available insurance proceeds), and (ii) in accordance with then-applicable Laws (including, but not limited to, any required code upgrades necessary for the Building to be used for the Permitted Use and for general office uses and subject to any then-existing zoning requirements). Notwithstanding the foregoing, City shall pay the costs of repairing any Leasehold Improvements and any Alterations. City may also replace or repair, at City's cost and expense, City's Personal Property.

12.3. LANDLORD'S AND CITY'S TERMINATION RIGHTS

Upon the occurrence of a Casualty affecting the Premises or portions of the Building or Building Systems impacting City's access to or use of the Premises, Landlord shall notify City ("Casualty Notice") as soon as practical, but in no event later than forty-five (45) days following the Casualty, of Landlord's contractor's reasonable estimate of (i) the hard and soft costs to repair or restore the damage or destruction and (ii) the time required to repair or restore the damage or destruction (when such repairs or restoration are made without the payment of overtime or other premiums) measured from the date of such damage (the "Projected Repair Time"). As used in this Lease, the term "Major Damage or Destruction" shall mean that (A) the Building is damaged by a peril covered by Landlord's property insurance (or which would have been covered if Landlord had maintained the property insurance coverage described in Section 17(a) of this Lease) and the hard costs and soft costs to repair or restore the damage or destruction are reasonably estimated by Landlord's contractor to exceed twenty percent (20%) of the cost of replacing the Building in its entirety (whether or not the Premises are affected), or (B) the Building is damaged by an uninsured peril, and the hard costs and soft costs to repair or restore the damage or destruction are

reasonably estimated by Landlord's architect and contractor to exceed ten percent (10%) of the cost of replacing the Building in its entirety (whether or not the Premises are affected), or (C) the Projected Repair Time reasonably estimated by Landlord's architect and contractor to exceed eighteen (18) months measured from the date of such damage. In the event of Major Damage or Destruction, Landlord may elect, by written notice to City delivered within twenty-one (21) days after delivery of the Casualty Notice to City, to terminate this Lease. In the event the Projected Repair Time exceeds nine (9) months, City may elect, by written notice to Landlord delivered within twenty-one (21) days after delivery of the Casualty Notice to City, to terminate this Lease. If neither party terminates this Lease as provided above, this Lease shall remain in full force and effect, and Landlord shall use commercially reasonable diligence to repair and restore the damage or destruction to the Premises and/or portions of the Building or Building Systems impacting City's access to and use of the Premises, subject to Unavoidable Delays.

12.4. REMOVAL OF CITY'S PERSONAL PROPERTY AND RENT ABATEMENT RIGHTS

In the event of any Lease termination, City shall be given a reasonable period of time to remove all of City's Personal Property from the Premises, and Rent shall be abated for such part of the Premises rendered unusable by City in the conduct of its business during the time prior to termination that such part is so unusable.

12.5. ABATEMENT OF RENT DURING REPAIRS OR RESTORATION

During any repair or restoration, this Lease shall remain in full force and effect, except that to the extent such damage or destruction did not result from the negligence or willful act or omission of City or City's subtenants or any of their respective Agents or licensees, Base Rent and City's obligation to pay City's Percentage Share of Operating Costs and Real Estate Taxes shall abate for such part of the Premises rendered unusable by City in the conduct of its business during the time such part is so unusable, in the proportion that the rentable area contained in the unusable part of the Premises bears to the total rentable area of the Premises.

12.6. LENDER'S CLAIM TO INSURANCE PROCEEDS

Notwithstanding anything to the contrary contained in this Article 12, Landlord shall have no obligation to repair or restore the damage or destruction, and Landlord may instead elect to terminate this Lease, in the event the hard costs and soft costs to repair or restore the damage or destruction are reasonably estimated by Landlord's contractor to exceed the insurance proceeds available for the repair by ten percent (10%) of the cost of replacing the Building in its entirety due to the exercise of its rights by any holder of a mortgage or deed of trust, provided that (i) such holder is not an Affiliate of Landlord (or if such holder is an Affiliate of Landlord, the retention of insurance proceeds by such party is then common practice in the State of California for similar losses and such party consistently retains insurance proceeds in connection with similar losses), (ii) Landlord has used best efforts to obtain the insurance proceeds.

12.7. DAMAGE NEAR END OF TERM

Notwithstanding anything to the contrary contained in this Article 12 and in addition to Landlord's right to terminate this Lease in accordance with the provisions of Section 12.3 or Section 12.6 above, if all or any material portion of the Premises or portions of the Building that impact City's access to or use of the Premises are damaged or destroyed by a Casualty during the last eighteen (18) months of the applicable Term, then Landlord shall have the right, in its sole discretion, to terminate this Lease by notice to City if Landlord cannot reasonably expect to complete the repair or restoration within ninety (90) days after the date of the Casualty. Such termination shall be effective on the date specified in Landlord's notice to City, but in no event sooner than ninety (90) days after Landlord's delivery of the termination notice. Notwithstanding the foregoing provisions of this Section 12.7, if City has an unexpired Extension Option with respect to the Premises, and within ninety (90) days following City's receipt of the termination notice, City completes all steps necessary to exercise any Extension Option cause City's and to cause the Extension Exercise Notice to become binding and enforceable against the City, then Landlord's notice of termination under this Section 12.7 shall be deemed cancelled and rights and obligations of the parties shall be determined in accordance with Section 12.3 and Section 12.6 above.

13. EMINENT DOMAIN

13.1. DEFINITIONS

(a) "Taking" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under Law. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

(b) "Date of Taking" means the earlier of (i) the date upon which title to the portion of the Property taken passes to and vests in the condemnor or (ii) the date on which City is dispossessed.

(c) "Award" means all compensation, sums or anything of value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

13.2. GENERAL

If during the Term or during the period between the execution of this Lease and the Commencement Date, there is any Taking of all or any part of the Premises or any interest in this Lease, the rights and obligations of the parties hereunder shall be determined pursuant to this Section. City and Landlord intend that the provisions hereof govern fully in the event of a Taking and accordingly, the parties each hereby waive any right to terminate this Lease in whole or in part under Sections 1265.110, 1265.120, 1265.130 and 1265.140 of the California Code of Civil Procedure or under any similar law now or hereafter in effect.

13.3. TOTAL TAKING; AUTOMATIC TERMINATION

If there is a total Taking of the Premises, then this Lease shall terminate as of the Date of Taking.

13.4. PARTIAL TAKING; ELECTION TO TERMINATE

(a) If there is a Taking of any portion (but less than all) of the Premises, then this Lease shall terminate in its entirety if all of the following exist: (A) the partial Taking, in City's reasonable judgment, renders the remaining portion of the Premises untenantable or unsuitable for continued use by City for its general office uses or otherwise materially adversely affect City's normal general office operations in the Premises, (B) the condition rendering the Premises untenantable or unsuitable either is not curable or is curable but Landlord is unwilling or unable to cure such condition, and (C) City elects to terminate.

(b) In the case of a partial Taking of a substantial portion of the Building, and if subsection (a) above does not apply, City and Landlord shall each have the right to terminate this Lease by written notice to the other within thirty (30) days after the Date of Taking, provided that, (i) as a condition to City's right to terminate, the portion of the Building taken shall, in City's reasonable judgment, render the remaining Premises unsuitable for continued use by City for general office purposes or otherwise materially adversely affect City's normal operations in the remaining Premises, and (ii) as a condition to Landlord's right to terminate, the portion taken must include a portion of the Premises and City must be unwilling to decrease the size of the Premises to eliminate the portions taken.

(c) Either party electing to terminate under the provisions of this Section 13.4 shall do so by giving written notice to the other party before or within thirty (30) days after the Date of Taking, and thereafter this Lease shall terminate upon the later of the thirtieth (30th) day after such written notice is given or the Date of Taking.

13.5. RENT; AWARD

Upon termination of this Lease pursuant to Section 13.3 (Total Taking: Automatic Termination) or an election under Section 13.4 (Partial Taking; Election to Terminate), then: (i) City's obligation to pay Rent shall continue up until the date of termination, and thereafter shall cease, except that Rent shall be reduced as provided in Section 13.6 (Partial Taking: Continuation of Lease) for any period during which this Lease continues in effect after the Date of Taking, and (ii) any Award made in connection with the Taking shall be allocated as follows:

(a) first, to either Landlord or City, as applicable, for reimbursement of the actual costs of collecting the Award;

(b) second, if this Lease is not terminated as a result of such Taking, to the costs of any repair or restoration to the Building or Premises as a direct result of the Taking; and

(c) third, Landlord (subject to the rights of any holder of any Encumbrance) and City shall each be allocated the value of their respective interests in the Building and the Premises (to the extent Taken), together with interest thereon from the Taking Date to the date of payment at the rate paid on the Award, and attorneys' fees and costs, to the extent awarded. The values of Landlord's and City's respective interests in the Building and the Premises shall be

established by the same court of law that establishes the amount of the Award. Factors to be considered in determining the value of City's interest shall include, but not be limited to (a) the remaining Lease Term including the Extension Options, (b) the value of City's leasehold interest in the Premises, and (c) the then-unamortized cost of Leasehold Improvements paid by Landlord which would have been recovered by Landlord as a component of the Base Rent payable under this Lease.

13.6. PARTIAL TAKING; CONTINUATION OF LEASE

If there is a partial Taking of the Premises under circumstances where this Lease is not terminated in its entirety under Section 13.4 (Partial Taking; Election to Terminate), then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the parties shall be as follows: (a) Rent shall be reduced pro rata based upon the lost rentable square footage of the Premises (by comparing the area of the Premises taken to the area of the Premises prior to the Date of Taking with the same per rentable square foot rent amount), and (b) Landlord shall be entitled to the entire Award in connection therewith, provided that City shall receive any separate Award made specifically for City's relocation expenses or the interruption of or damage to City's business or damage to City's Personal Property.

13.7. TEMPORARY TAKING

Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to the Premises for a limited period of time not in excess of ninety (90) consecutive days, this Lease shall remain unaffected thereby, and City shall continue to pay Rent and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive that portion of any Award representing compensation for the use or occupancy of the Premises during the Term up to the total Rent owing by City for the period of the Taking.

14. ASSIGNMENT AND SUBLETTING

14.1. USE BY OTHER CITY DEPARTMENTS

Provided City remains liable for the performance of City as Tenant under this Lease, City shall have the right from time to time, upon written notice to Landlord but without the consent of Landlord, to allow employees of City departments other than the SFMTA to use all or any part of the Premises solely for the Permitted Use and not for any Prohibited Use or Banking Use. Any such notice shall identify the applicable City department(s) and provide a description of the portion of the Premises to be utilized by such employees. City's rights under this Section 14.1 shall apply only to City and shall not inure to the benefit of any assignee, sublessee or other transferee of City's interest in this Lease.

14.2. SPACE SHARING WITH AGENCIES, CITY VENDORS, CONTRACTORS AND/OR NONPROFIT BUSINESSES

City shall have the right from time to time, without Landlord's consent, to permit the use and occupancy of all or any of the Premises by (a) any vendor or contractor of City as part of a contract with and in connection with services to be provided to City, or (b) any nonprofit agency, public service organization, governmental agency, or joint power board with whom City is working on particular projects or with whom City has strategic alliances or as part of a contract with and in connection with services to be provided by or to City (each of (a) and (b), a "City Program Affiliate"), and such use shall not be deemed to be a sublease pursuant to the terms of this Lease for any purpose (including the determination of the percentage of the Premises subject to sublease) provided that (i) such City Program Affiliate shall use the Premises solely for the Permitted Use and not a Prohibited Use or Banking Use, and (ii) City does realize a profit with respect to the space so used by any non-governmental City Program Affiliate (and at Landlord's request, City shall represent and warrant to Landlord that City is not realizing a profit with respect to the occupancy of such space by such party). City must notify Landlord of such space sharing arrangement at least fifteen (15) days before the effective date of such agreement, which notice must specify in reasonable detail the specific identity of such City Program Affiliate and such City Program Affiliate's specific business use of the Premises. City shall cause each City Program Affiliate to comply with all of the terms and conditions of this Lease, including, without limitation, the insurance provisions set forth in Article 17 and ***Exhibit M*** of this Lease (provided that with respect to City Program Affiliates the required limits of liability for contractual liability coverage shall be One Million Dollars ($1,000,000) per occurrence and in the aggregate, and provided further that any governmental entity shall be entitled to self insure). City shall supply Landlord with a certificate of insurance evidencing such compliance no later than five (5) business days prior to the occupancy of any such City Program Affiliate. Notwithstanding use of the Premises by any City Program Affiliate, City shall remain liable for the performance of City as Tenant under this Lease, City's insurance obligations set forth in Article 17 and ***Exhibit M*** of this Lease shall be applicable and unmodified by such use, and City shall be responsible for the acts or omissions of any Agents or Invitees of any City Program Affiliate as if they were the acts or omissions of City's Agents or Invitees. City's rights under this Section 14.2 shall apply only to City and shall not inure to the benefit of any assignee, sublessee or other transferee of City's interest in this Lease.

14.3. ASSIGNMENT AND SUBLETTING TO FOR PROFIT BUSINESSES; LANDLORD'S RIGHT OF FIRST REFUSAL

(a) Except as provided in Sections 14.1 and 14.2 above, City shall not directly or indirectly sell, assign, encumber, pledge or otherwise transfer or hypothecate all or any part of its interest in or rights with respect to the Premises or its leasehold estate hereunder, permit all or any portion of the Premises to be occupied, or sublet all or any portion of the Premises, without Landlord's prior written consent in each instance, which consent shall not be unreasonably withheld or delayed. Without limiting other circumstances in which it is reasonable for Landlord to refuse consent, it shall be deemed reasonable for Landlord to refuse to consent to any sublet or assignment to (i) any transferee who will use all or any part of the Premises for a Prohibited Use or Banking Use, (ii) any transferee whose use or identity would create a materially increased security risk to the occupants of the Building, (iii) any

transferee whose use would place a materially greater burden on Building Systems or services provided under this Lease, (iv) any transferee whose use or identity would materially decrease the marketability, financeability, leasability or value of the Building, or (v) any existing tenant in the Building or in any other building owned and controlled by Landlord in San Francisco or any prospective tenant that Landlord has shown comparable space to in the Building during the preceding six (6) months, provided that in each case described in this item (v), (A) Landlord has been actively and continuously negotiating with such party regarding space in the Building since a date prior to the date City offered such space to Landlord pursuant to Section 14.3(b), and (B) Landlord has or will have available space in the Building that is comparable to the Premises or the portion thereof subject to such subletting, as applicable, or that otherwise meets such tenant's or prospective tenant's needs. No sublease or assignment by City hereunder shall relieve City of any obligations under this Lease, except to the extent expressly set forth in Landlord's consent. Whether or not Landlord shall grant consent, City shall pay, within thirty (30) days after written request by Landlord accompanied by an invoice or other reasonable supporting documentation, all reasonable legal fees incurred by Landlord in connection with any proposed Transfer, not to exceed $2,500.

(b) In the event City should decide to sublet or assign all or part of the Premises to an unaffiliated third party not permitted under Section 14.2 above, City shall first offer the part of the Premises that City intends to sublet or assign (the "Sublet Premises") to Landlord at the rent and on the terms that the Sublet Premises will be offered to the real estate market. The rent and other terms shall be contained in a written notice ("Sublet Notification") from City to Landlord. Landlord shall have thirty (30) days following delivery of the Sublet Notification date to: (i) offer to take back the Sublet Premises permanently and remove the Sublet Premises from this Lease for all purposes hereunder (a "Recapture"); or (ii) offer to sublet or assume the Sublet Premises on the terms set forth in the Sublet Notification.

(c) If Landlord offers to Recapture the Sublet Premises, the parties shall prepare an addendum to this Lease to memorialize the Recapture. The addendum shall permanently remove the Sublet Premises from the Premises for all purposes hereunder, and City and Landlord shall be relieved of all of their respective rights and obligations hereunder with respect to the Sublet Premises, except to the extent the same would, by their express terms or by their nature, survive the expiration or termination of this Lease. The addendum shall not include any additional terms other than the deletion of the Sublet Premises from the Premises and the corresponding reduction in Base Rent and City's Percentage Share, corresponding changes to the applicable Amortization Schedules, if applicable, and other appropriate modifications resulting from such deletion of the Sublet Premises.

(d) If Landlord offers to sublet or assume the Sublet Premises on the terms set forth in the Sublet Notification, the parties shall negotiate in good faith to reach agreement on a sublease or an assignment and assumption on such terms. If the parties fail to agree upon the form of the sublease or assignment within sixty (60) days after City's receipt of Landlord's offer to sublet or assume the applicable Sublet Premises, subject to such extensions as may be agreed to by the parties, then Landlord's offer to sublet or assume the Sublet Premises on the terms set forth in the applicable Sublet Notification shall be null and void. Any such sublease or assignment and assumption shall be subject to the approval of the City's Board of Supervisors by resolution, and the approval of Landlord, each in their sole discretion, and the sublease or assignment shall not be effective until such approval have been obtained. If such

approvals shall not have been obtained within ninety (90) days following the parties agreement on the form of the sublease or assignment, subject to such extensions as may be agreed to by the parties, then Landlord's offer to sublet or assume the Sublet Premises on the terms set forth in the applicable Sublet Notification shall be null and void, and the applicable Sublet Premises shall remain part of the Premises.

(e) If Landlord does not elect a Recapture, or if the parties are not able to agree on the terms of the sublease or assignment or to obtain approval of the sublease or assignment within the time periods specified above, then City shall have the right to enter into the sublet or assignment on the terms set forth in the Sublet Notification (as modified during any negotiations with Landlord) or on terms more favorable to City than those set forth in the Sublet Notification, subject to Landlord's prior written approval of the proposed assignee or subtenant (the "Transferee") and the form of the sublease or assignment documentation, which approval shall not be unreasonably withheld or delayed. City shall furnish Landlord with financial statements of the proposed Transferee for the two (2) fiscal years immediately preceding the date of the Transfer Notification, if available, which financial statements shall be certified by an officer, partner or owner thereof, and any other information reasonably requested by Landlord to evaluate the proposed Transferee. A "Transfer Premium" equal to forty percent (40%) of any net subleasing or assignment "profits" realized by City under any such assignment or sublease in excess of the Base Rent and Additional Charges (including any costs relating to the Leasehold Improvements payable by City under this Lease) payable hereunder with respect to the Sublet Premises shall be paid to Landlord, after City has first recovered the following costs of entering into each particular sublease or assignment (with no requirement to amortize such costs): (i) the cost of tenant improvements made in connection with the particular transaction and any tenant improvement allowance paid by City in connection with the particular transaction, (ii) brokerage commissions, if any, (iii) advertising costs, and (iv) attorneys' fees (including the fees of deputy City attorneys calculated at the then applicable rate charged to City departments for such legal services). City shall promptly provide Landlord with such information regarding the assignment or sublease costs as Landlord may reasonably request. If City shall enter into multiple transfers, the Transfer Premium payable to Landlord shall be calculated independently with respect to each transfer. The Transfer Premium due Landlord hereunder shall be paid within forty-five (45) days after City receives any Transfer Premium from the Transferee. Landlord or its authorized representatives shall have the right at all reasonable times to audit the books and records of City relating to any transfer, and shall have the right to make copies thereof. If the Transfer Premium respecting any transfer shall be found to be understated, City shall pay the deficiency within thirty (30) days after demand.

(f) In the event City is not able to sublet or assign the Sublet Premises on the terms set forth in the Sublet Notification (as modified during any negotiations with Landlord) or terms more favorable to City, then City shall give another Sublet Notification with a reduced rent or such other terms as City is then willing to offer to the real estate market, and Landlord's right to a Recapture and Landlord's first right of refusal as set forth above shall be repeated with respect to the revised terms.

(g) Notwithstanding the foregoing, if any Event of Default by City is outstanding hereunder at the time of City's Sublet Notification, then Landlord may elect by notice to City to refuse to consent to City's proposed sublet or assignment and, following any required cure period under this Lease, pursue any of its right or remedies under this Lease.

(h) Notwithstanding anything to the contrary in this Lease, in the event City at any time sublets or assigns more than twenty-five percent (25%) of the rentable area of the Premises (as the same may be expanded from time to time) to an unaffiliated third party (not including any use under Sections 14.1 or 14.2 above), then City's remaining Extension Options under Section 3.4 and City's remaining First Offer Right under Section 22.1 shall all automatically terminate, and upon request by Landlord, City shall promptly execute and deliver an addendum to this Lease, memorializing the termination of such rights.

(i) Any Transfer made without complying with this Article 14 shall, at Landlord's option, be null, void and of no effect, or shall, following written notice and an opportunity to cure, constitute an Event of Default under this Lease. Landlord's consent to a transfer shall not be deemed consent to any further transfer by either City or the Transferee. City shall deliver to Landlord promptly after execution, an original executed copy of all documentation pertaining to a transfer in form reasonably acceptable to Landlord. If this Lease shall be terminated during the term of any sublease, Landlord shall have the right to: (i) treat such sublease as cancelled and repossess the Sublet Premises by any lawful means, or (ii) require that the subtenant attorn to and recognize Landlord as its landlord under any such sublease.

14.4 CERTAIN TRANSFERS

For purposes of this Lease, a "transfer" shall include: (a) if Tenant is a partnership, the withdrawal or change, voluntary, involuntary or by operation of law, of a general partner or a majority of the partners, or a transfer of a majority of partnership interests, or the dissolution of the partnership; (b) if Tenant is a limited liability company, the withdrawal or change, voluntary, involuntary, or by operation of law, of a majority of members, or a transfer of a majority of the membership interests, or the dissolution of the limited liability company; and (c) if Tenant is a corporation, the dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of more than an aggregate of fifty percent (50%) of the voting shares of Tenant (other than (i) sales on a public stock exchange or (ii) transfers to immediate family members by reason of gift or death), or the sale, mortgage, hypothecation or pledge of more than an aggregate of fifty percent (50%) of Tenant's net assets. Upon request by Landlord from time to time, Tenant shall deliver to Landlord a list of all of its shareholders (if Tenant's stock is not publicly traded), members, or partners, as the case may be.

15. DEFAULT; REMEDIES

15.1. EVENTS OF DEFAULT BY CITY

Any of the following shall constitute an event of default ("Event of Default") by City hereunder (following the applicable notice and grace period provided):

(a) City's failure to make any timely payment of Rent and to cure such nonpayment within five (5) business days after receipt of written notice thereof from Landlord, provided that for the first payment of Rent at the beginning of the Term and for the monthly payment of Rent after the beginning of each new fiscal year for City, City shall have thirty (30) days to cure any such nonpayment after written notice thereof from Landlord;

(b) City's abandons the Premises (within the meaning of California Civil Code Section 1951.3); or

(c) City's failure to perform any other covenant or obligation of City hereunder (not involving the payment of money) and to cure such non-performance within thirty (30) days of the date of receipt of notice thereof from Landlord, provided that if more than thirty (30) days are reasonably required for such cure, no Event of Default shall occur if City commences to cure within such period and diligently prosecutes such cure to completion.

15.2. LANDLORD'S REMEDIES

Upon the occurrence of any Event of Default by City that is not cured within the applicable grace period as provided above, Landlord shall have all rights and remedies available pursuant to law or granted hereunder, including the following:

(a) The rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate City's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that City proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2.

(b) The rights and remedies provided by California Civil Code Section 1951.4 (continuation of lease after breach and abandonment), which allows Landlord to continue this Lease in effect and to enforce all of its rights and remedies under this Lease, including the right to recover Rent as it becomes due, for so long as Landlord does not terminate City's right to possession, if City has the right to sublet or assign, subject only to reasonable limitations.

(c) City waives redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, or under any other present or future law, if City is evicted or Landlord takes possession of the Premises by reason of any default of City hereunder.

(d) During the continuance of any Event of Default, Landlord may, at its option, after written notice to City, take any reasonable action to cure the Event of Default, without waiving its rights and remedies against City or releasing City from any of its obligations hereunder. All reasonable out-of-pocket costs actually paid by Landlord in performing City's obligations as set forth in this Section 15.2(d) shall be deemed additional Rent hereunder.

15.3. LANDLORD'S DEFAULT

City agrees that Landlord shall not be liable for damages for failure to furnish or delay in furnishing any service (including telephone and telecommunication services), or for any diminution in the quality or quantity thereof except to the extent such failure or diminution is caused by Landlord or its Agents, and, subject to City's rights under Section 4.14, such failures or delays or diminution shall never be deemed to constitute an eviction of City's use and possession of the Premises. Furthermore, in no event shall Landlord be liable for a loss of, or injury to, or interference with, City's business, including, without limitation, loss of profits, resulting from a failure to furnish any services or utilities.

15.4 LIMITATION ON REPRESENTATIONS AND WARRANTIES

Notwithstanding anything to the contrary in this Lease, (i) all representations and warranties by Landlord shall survive the expiration or termination of this Lease for a period of one (1) year following the date the Effective Date, and (ii) in the event of a breach of a representation or warranty in this Lease, the Landlord's liability to City for all such breaches, in the aggregate, shall not exceed One Million Dollars ($1,000,000).

15.5 NON-RECOURSE

City shall look solely to Landlord's interest in the Property for recovery of any damages for breach of this Lease by Landlord or execution on any judgment in connection therewith, except to the extent provided in the next sentence. City in seeking recovery of any damages for breach of this Lease by Landlord or execution on any judgment in connection therewith, shall be entitled to look to Landlord's assets in addition to Landlord's interest in the Property, up to the amount, if any, that the Financing Liens exceed the Permitted LTV Ratio, as determined at the time that the Financing Lien was recorded. As used in this Section 15.5, the term "Financing Lien" shall mean any monetary lien encumbering the Property that was created by recordation with Landlord's permission, of a mortgage, deed of trust, financing statement or similar documentary encumbrance to secure repayment by Landlord of a loan, and the "Permitted LTV Ratio" shall be eighty percent (80%) of the appraised value of the Building, as determined by the beneficiary of the Financing Lien in its sole discretion (so long as the beneficiary is not an Affiliate of Landlord). None of the persons or entities comprising or representing Landlord (whether partners, shareholders, officers, directors, trustees, employees, beneficiaries, Agents or otherwise) shall ever be personally liable under this Lease or liable for any such damages or judgment and City shall have no right to effect any levy of execution against any assets of such persons or entities on account of any such liability or judgment. Any lien obtained by City to enforce any such judgment ("Judgment Lien"), and any levy of execution thereon, shall be subject and subordinate to any Financing Liens (except to the extent such Financing Liens exceed the Permitted LTV Ratio if the limitation on Permitted LTV Ratio described in the second sentence of this Section 15.5 is applicable at such time) now or hereafter affecting or encumbering the Property or any part thereof or interest therein that was recorded before the recordation of the Judgment Lien, and to any and all advances made on the security thereof or Landlord's interest therein, and to all renewals, modifications, consolidations and extensions thereof, provided such Judgment Lien shall not be subject or subordinate to the Excess Portion (as defined below) of any monetary lien encumbering the Property that was created by recordation with Landlord's permission after recordation of the Judgment Lien by the City. As used herein, "Excess Portion" means the amount by which such monetary lien exceeds the amount secured by any monetary lien as of the date that the Judgment Lien was recorded against the Property.

16. INDEMNITIES

16.1. CITY'S INDEMNITY

City shall indemnify, defend and hold harmless ("Indemnify") Landlord and its Agents from and against any and all claims, cause of action, obligation, liability, costs and expenses,

including, without limitation, reasonable attorneys' fees, (collectively, "Claims"), incurred as a result of (a) City's use of or activities in or on the Premises or Property, including, but not limited to, City's installation, maintenance, repair, replacement and removal of the Communications Equipment on the roof of the Building and the installation, maintenance, repair, replacement and removal of the Additional Equipment or City's Connections, (b) any default by City in the performance of any of its material obligations under this Lease or any breach of any representations or warranties made by City under this Lease, or (c) any negligent acts or omissions of City, City's Program Affiliates. or City's Agents or Invitees, or in, on or about the Premises or the Property; provided, however, City shall not be obligated to Indemnify Landlord or its Agents to the extent any Claim arises out of the negligence or willful misconduct of Landlord or its Agents. In any action or proceeding brought against Landlord or its Agents by reason of any Claim Indemnified by City hereunder, City may, at its sole option, elect to defend such Claim by attorneys in City's Office of the City Attorney, by other attorneys selected by City, or both. City shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that Landlord shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. City's obligations under this Section shall survive the termination of this Lease.

16.2. LANDLORD'S INDEMNITY

Landlord shall Indemnify City and its Agents against any and all Claims incurred as a result of (a) Landlord's activities on the Premises or Property that cause injury or damage to person or property, (b) any default by Landlord in the performance of any of its material obligations under this Lease or any breach of any representations or warranties made by Landlord under this Lease, or (c) any negligent acts or omissions or willful misconduct of Landlord or its Agents in, on or about the Premises or the Property; provided, however, Landlord shall not be obligated to Indemnify City or its Agents to the extent any Claim arises out of the negligence or willful misconduct of City, City's Program Affiliates. or City's Agents or Invitees. In any action or proceeding brought against City or its Agents by reason of any Claim Indemnified by Landlord hereunder, Landlord may, at its sole option, elect to defend such Claim by attorneys selected by Landlord. Landlord shall have the right to control the defense and to determine the settlement or compromise of any action or proceeding, provided that City shall have the right, but not the obligation, to participate in the defense of any such Claim at its sole cost. Landlord's obligations under this Section shall survive the termination of this Lease.

16.3. DUTY TO DEFEND

Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision, even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee and continues at all times thereafter.

16.4. WAIVER

City agrees that neither Landlord nor its Agents shall be liable to City or City's Program Affiliates, or City's Agents or Invitees, and City waives all claims against Landlord and its Agents, for any injury to or death of any person or for loss of use of or damage to or destruction of property in or about the Premises, the Building or the Property by or from any cause whatsoever, including but not limited to, earthquake or earth movement, explosion, gas, fire, oil, electricity or water leakage from the roof, walls, basement or other portion of the Premises, the Building or the Property, and including any such injury, death or damage caused by any active or passive act, omission or neglect of Landlord or its Agents, except to the extent such injury, death or damage is caused by the gross negligence or willful misconduct of Landlord or its Agents and except acts or omissions for which strict liability may be imposed or to the extent such limitation on liability is prohibited by law.

17. INSURANCE

17.1. CITY'S SELF-INSURANCE

(a) Landlord acknowledges that City maintains a program of self-insurance and agrees that City shall not be required to carry any third-party insurance with respect to this Lease. At all times during the Term (and periods prior to or after the Term that City has access to or occupies the Premises), City's self-insurance shall include such coverage as would have been covered by (a) a standard Commercial General Liability Insurance with respect to the Premises with limits of liability not less than Ten Million Dollars ($10,000,000) per occurrence and in the aggregate, and (b) causes of loss – special form "All Risk" Property Insurance for City's Personal Property, the Leasehold Improvements and Alterations. For purposes of the waiver of subrogation provision in Section 17.5 below, the amount of any deductible shall be deemed included in the proceeds City receives. City's self-insurance shall also equal the coverage per the attached ***Exhibit M***. If City assigns this Lease or sublets some or all of the Premises to a third party, Landlord may require as a condition to Landlord's consent to any such assignment or sublease (or if Landlord consent is not required, the City shall require in the applicable sublease) an amendment to be executed to this Lease requiring the assignee to carry such insurance as is consistent with Landlord's insurance requirements for other comparable tenants in the Building and otherwise as Landlord deems necessary, as determined by Landlord in Landlord's reasonable discretion. The Director of Property shall be authorized to sign any such amendment without the need for commission or other governmental approvals.

(b) For the purposes of this Section 17.1, "self-insure" shall mean that City is itself acting as though it were the insurance company providing the insurance required under the provisions hereof and City shall pay amounts due in lieu of insurance proceeds because of self-insurance, which amounts shall be treated as insurance proceeds for all purposes under this Lease. City's program of self-insurance shall provide Landlord with the same rights and privileges to which Landlord is otherwise entitled under the terms of this Lease when there is a third-party insurer.

(c) All amounts which City pays or is required to pay and all loss or damages resulting from risks for which City has elected to self-insure shall be subject to the waiver of subrogation provisions hereof and shall not limit any of City's indemnification obligations under this Lease.

17.2. CERTIFICATE OF SELF-INSURANCE

In the event City elects to self-insure, City shall provide Landlord and Landlord's mortgagee and any ground lessor with certificates of self-insurance specifying the extent of self-insurance coverage hereunder and containing waiver of subrogation provisions reasonably satisfactory to Landlord. Any insurance coverage provided by City shall be for the benefit of City, Landlord, the first mortgagee and any ground lessor, as their respective interests may appear, and shall name mortgagee under a standard mortgagee provision.

17.3. LANDLORD'S INSURANCE

(a) At all times during the Term, Landlord shall keep the Building (excluding the land upon which it is located and foundations, footings and other underground improvements, the Leasehold Improvements and Alterations) insured against damage and destruction by fire, vandalism, malicious mischief, sprinkler damage and other perils customarily covered under a causes of loss-special form property insurance policy in an amount equal to one hundred percent of the full insurance replacement value (replacement cost new, including, debris removal and demolition and code upgrades) thereof, provided that Landlord may carry a deductible of not more than $1,000,000 for the property insurance coverage required under this Section 17.3(a), and (B) for purposes of applying the waiver of subrogation provisions of Section 17.5 below, the amount of Landlord's deductible shall be deemed included in the net insurance proceeds Landlord receives from Landlord's insurance company in connection with the loss. Landlord shall, upon request by City, provide to City a certificate of insurance issued by the insurance carrier, evidencing the insurance required above.

(b) In addition, Landlord shall procure and keep in effect at all times during the Term minimum insurance as follows: (i) Commercial general liability insurance with limits not less than Two Million Dollars ($2,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, fire damage legal liability (of not less than Fifty Thousand Dollars ($50,000)), personal injury, products and completed operations, and explosion, collapse and underground (XCU); and (ii) Worker's Compensation Insurance as required by applicable Laws and Employer's Liability with a limit not less than $1,000,000 each accident with respect to employees engaged on-site in connection with the operation or management of the Building and (iii) Excess Coverage with respect to Commercial General Liability and Employer's Liability with a per occurrence limit of Ten Million Dollars ($10,000,000).

(c) Notwithstanding the foregoing, so long as Landlord is an affiliate of Hudson Pacific Properties, Inc. ("Hudson"), or a successor Landlord having a net worth of at least Five Hundred Million Dollars ($500,000,000), Landlord shall be entitled to self-insure for any or all of the foregoing coverage; that (i) the self-insurance program, in the reasonable judgment of City, City's Risk Manager and the City Attorney, provides adequate, enforceable, sufficiently funded and long-term coverage for the risks to be insured against, (ii) Landlord warrants and represents it is adequately self-insured, which warranty and representation shall

be a continuing one throughout the Term hereof, for all purposes under this Lease for the particular risk, and (iii) such program of self-insurance shall provide City with the same rights and privileges to which City is otherwise entitled under the terms of this Lease when there is a third-party insurer. At City's written request, Landlord shall provide to City's Risk Manager all documents that City requests that are necessary to permit a complete review and analysis of the self-insurance program. If, as a supplement to Landlord's self-insurance program, Landlord obtains an insurance policy or policies from an insurance company, the provisions of Section 17.3 shall apply in full to such insurance policy or policies and if Landlord ceases to self-insure Landlord shall give notice thereof to City and shall immediately comply with the provisions of this Section 17.3 relating to the policy of insurance required. This right to self insure is personal to Hudson or a successor Landlord having a net worth of at least Five Hundred Million Dollars ($500,000,000), and shall not otherwise inure to the benefit of any successor or assign of Landlord.

17.4 SELF-INSURANCE CLAIM PROCESS

In the event that either party elects to self-insure and an event or claim occurs for which a defense and/or coverage would have been available from the insurance company, such party shall:

(a) undertake the defense of any such claim, including a defense of the other party if applicable, at the self-insuring party's sole cost and expense, and

(b) use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been paid by the insurer under the circumstances had such party purchased the insurance required under this Article 17 instead of electing to self-insure.

17.5. WAIVER OF SUBROGATION

Notwithstanding anything to the contrary contained herein, Landlord hereby waives any right of recovery against City for any loss or damage sustained by Landlord with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of City, to the extent such loss or damage is covered by property insurance which Landlord is required to purchase under this Lease or is otherwise actually recovered from valid and collectible insurance covering the Landlord. Landlord agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Building or the Premises, provided Landlord's failure to do so shall not affect the above waiver. For purposes of this Section 17.5, Landlord shall be deemed to be carrying the insurance policies that it is are required to carry pursuant to Section 17.4 but does not actually carry, including in such deemed coverage any policies not carried because Landlord has elected to self-insure. Notwithstanding anything to the contrary contained herein, City for itself and for its Agents and Invitees hereby waives any right of recovery against Landlord for any loss or damage sustained by City or such subtenant or assignee other person or entity with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of Landlord, to the extent such loss or damage would have been covered by property insurance which City would have been required to provide under this Article 17 had City not been entitled to self-insure. With respect to subtenants or assignees of City, if such persons are required to obtain

insurance hereunder, City's waiver shall apply to the extent such loss or damage is covered by insurance they are required to purchase under this Lease or is otherwise actually recovered from valid and collectible insurance covering such subtenants or assignees. If City, or any successor to City, obtains any policy of insurance with respect to the Building or the Premises or any portion thereof or the contents of the same or any operation therein City, for itself and its successors, agrees to obtain a waiver of subrogation endorsement from each insurance carrier issuing policies relative to the Building or the Premises, provided City's or its successors' failure to do so shall not affect the above waiver.

18. ACCESS BY LANDLORD

Landlord reserves for itself and any designated Agent the right to enter the Premises at all reasonable times and, except in cases of emergency (in which event Landlord shall give any reasonable notice) or to provide routine janitorial services, after giving City at least twenty four (24) hours' advance written or oral notice, for the purpose of (i) inspecting the Premises, (ii) supplying any service to be provided by Landlord hereunder, (iii) showing the Premises to any prospective purchasers, mortgagees, or investors, or (iv) showing the Premises to prospective tenants during the last nine (9) months of the Term, (v) posting notices of non-responsibility, and (vi) altering, improving or repairing the Premises and any portion of the Building, and Landlord may for that purpose erect, use and maintain necessary structures in and through the Premises where reasonably required by the character of the work to be performed, provided that the entrance to the Premises shall not be blocked thereby, and further provided that City's use shall not be interfered with. Landlord shall exercise its rights under this Article 18 in a manner which is designed to minimize interference to City's operations in the Premises, and Landlord shall comply with City's reasonable security regulations of which Landlord has been advised in writing and which do not unreasonably interfere with Landlord's rights hereunder.

19. ESTOPPEL CERTIFICATES

City, from time to time during the Term, within thirty (30) days after written request from Landlord, shall execute, acknowledge and deliver to Landlord, or such persons or entities reasonably designated by Landlord, a certificate substantially in the form of ***Exhibit S*** attached hereto. Similarly, from time to time during the Term, within thirty (30) days after written request by City, Landlord shall execute, acknowledge and deliver to City, or such other persons or entities reasonably designated by City, a certificate substantially in the form of ***Exhibit S*** attached hereto, reasonably modified to reflect the fact that Landlord (and not City) is making the certification.

20. SURRENDER OF PREMISES

Upon the expiration or sooner termination of this Lease, City shall surrender the Premises to Landlord in good order and condition, reasonable use and wear and damage by fire or other casualty excepted, and City shall remove from the Premises and the Building all of City's Personal Property, City's telecommunications, data and computer cabling and facilities, and any Alterations City desires or is required to remove from the Premises pursuant to the provisions of Section 7.1 (Alterations by City) or Section 7.3 (City's Personal Property; Removal; Equipment Waiver), above (collectively, the "Removal Items"). City shall repair and restore in a good and workmanlike manner, to the condition existing prior to the installation of the Removal Items, any damage to the Premises or the Building resulting from the removal of the Removal Items, provided that, at Landlord's election, City may pay to Landlord the actual, reasonable cost of performing such repair and restoration in lieu of performing such work provided that City has first approved written estimates for such work and provided further that Landlord provides invoices or other satisfactory documentation of the cost of such work. Without limiting the generality of the foregoing, City shall demolish cabling and related equipment back to its source (*e.g.,* back to the network room or MPOE) and seal openings made in the Building to accommodate City's Connections with fireproof sealant and in accordance with all applicable Laws, and shall restore the Building to the condition existing prior to the installation of City's Connections. Notwithstanding anything to the contrary in this Lease, the parties agree that (a) at Landlord's election made by written notice to City delivered at least sixty (60) days prior to the expiration of the Term, City shall not remove its server racks and non-reusable telecommunication, data and computer cabling, and (b) City shall not be required to uninstall or remove from the Premises any Existing Personal Property or Other Transferred Property that is of a specialized nature, such as CRAC units, server racks, fire suppression systems and the like, unless prior to delivery of such personal property Landlord notifies City in writing that such equipment or systems must be removed by City upon the expiration or earlier termination of this Lease, with a description of the scope of required removal and restoration. Further, City shall not be required to remove any Leasehold Improvements from the Initial Premises or the First Offer Spaces unless Landlord notifies City in writing of such removal requirement at the time Landlord approves of the plans for such Leasehold Improvements (provided that with respect to Leasehold Improvements in First Offer Spaces, at the time City submits its plans and specifications to Landlord for approval, City requests in bold typeface or all capital letters, that Landlord identify the Leasehold Improvements to be removed from the First Offer Space upon the expiration or earlier termination of the Term thereof) and such Leasehold Improvements are specialized and have no useful purpose for general office use as reasonably determined by Landlord (*e.g.*, an internal stairway, a cafeteria, concrete vaults, safes, or dumb waiters, but not service counters, kitchens or coffee rooms, bathroom facilities, partitions or modular walls) (such improvements, collectively "Extraordinary Improvements"). If removal of any Leasehold Improvements in the First Offer Spaces is required by Landlord, City shall remove such Leasehold Improvements at City's cost and expense and restore the Premises to the condition existing prior to the installation of such Leasehold Improvements, and repair any damage to the Premises or the Building caused by the removal of such Leasehold Improvements. If City fails to do so, then after providing written notice to City of the required work together with a budget or other satisfactory

estimate of the costs and expenses to be incurred in connection therewith, Landlord may remove such Leasehold Improvements and perform such restoration and upon receipt of an invoice and supporting documentation for such work City shall reimburse Landlord for Landlord's cost and expense reasonably incurred to perform such removal and restoration. City's obligations under this Section shall survive the expiration or earlier termination of this Lease.

21. HAZARDOUS MATERIALS

21.1. DEFINITIONS

As used in this Lease, the following terms shall have the meanings hereinafter set forth:

(a) "Environmental Laws" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Material, whether now in effect or hereafter adopted.

(b) "Hazardous Material" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. Hazardous Material includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.), or pursuant to Section 25316 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of the Building or are naturally occurring substances on or about the Property; and petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids.

(c) "Release" when used with respect to Hazardous Material shall include any actual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, or under the Property.

21.2. LANDLORD'S REPRESENTATIONS AND COVENANTS

Landlord represents and warrants to City that the following statements are true and correct and will be true and correct as of the Commencement Date except as otherwise disclosed in a supplemental disclosure to City dated on or before the Commencement Date:

(a) Landlord represents and warrants to City that to Landlord's actual knowledge, Landlord has provided City with the most recent environmental audit, including asbestos survey, of the Building performed approximately on or around August 2008 for Landlord's predecessor-in-interest in the Building. As used in this Section 21.2(a), the term "actual knowledge" (whether or not capitalized) of Landlord or terms of similar meaning means the actual knowledge, without duty of investigation, of Christopher J. Barton, Executive Vice President, Operations & Development, of Landlord.

(b) Subject to City's obligations under this Section below, Landlord shall maintain the Property throughout the Term in compliance with all Environmental Laws applicable to the health, safety and welfare of City's employees or City's use, occupancy or enjoyment of the Premises for general office uses. Landlord shall have the right to contest any alleged violation of Environmental Laws in good faith, including, without limitation, the right to apply for and obtain a waiver or deferment of compliance, the right to assert any and all defenses allowed by Laws, and the right to appeal any decisions, judgments or rulings to the fullest extent permitted by Laws.

21.3. LANDLORD'S ENVIRONMENTAL INDEMNITY

Without limiting Landlord's Indemnity in Section 16.2 (Landlord's Indemnity), Landlord shall Indemnify City and its Agents against any and all Claims arising during or after the Term of this Lease (a) as a result of any breach of any of Landlord's representations, warranties or covenants in the preceding Section 21.2, or (b) in connection with any presence or Release of Hazardous Material in the Building or on, or under the Property which was caused by Landlord or its Agent's , except to the extent City, City's Program Affiliates, or City's Agents or Invitees caused or contributed to such Release.

21.4. CITY'S COVENANTS

Neither City nor its Program Affiliates, Agents of Invitees shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Property, or transported to or from the Premises or the Property, in violation of any Environmental Laws, provided that City may use such substances in such limited amounts as are customarily used in offices so long as such use is in compliance with all applicable Environmental Laws and manufacturer recommendations.

21.5. CITY'S ENVIRONMENTAL INDEMNITY

Without limiting City's Indemnity in Section 16.1 (City's Indemnity), if City breaches its obligations contained in the preceding Section 21.4 (City's Covenants), or if City, City's Program Affiliates, or City's Agents or Invitees cause the Release of Hazardous Material from, in, on or about the Premises or the Property, then City shall Indemnify Landlord against any and all Claims arising during or after the Term of this Lease as a result of such Release, except to the extent Landlord or its Agents caused or contributed to such Release. The foregoing Indemnity shall not include any Claims resulting from the non-negligent aggravation by City, City's Program Affiliates, or City's Agents or Invitees of physical conditions of the Premises, or other parts of the Property, existing prior to City's occupancy.

22. SPECIAL PROVISIONS

22.1. CITY'S RIGHT OF FIRST OFFER TO LEASE

(a) First Offer Right; First Offer Space. Subject to the terms and conditions of this Section 22.1, during the Initial Term City shall have a right of first offer ("First Offer Right") to lease

two increments of space on the seventh 7th Floor of the Building comprised of not less than 3,000 rentable square feet of space not designated hereunder as Initial Premises ("First Offer Space") at such time as any First Offer Space becomes available for lease to third parties. For purposes of this Section 22.1, space in the Building shall not be "available for lease to third parties" if Landlord leases such space to the tenant or subtenant under an expiring or terminated lease of such space (regardless of whether such tenant or subtenant shall now or at such time have a right or option to so renew or extend), without regard as to whether such lease is characterized by the parties as an "extension," "renewal" or "new lease."

(b) Availability Notice. Commencing on the first anniversary of the Commencement Date and continuing throughout the Initial Term until two (2) such notices have been given, Landlord shall give City written notice of the prospective availability of any First Offer Space (the "Availability Notice") when Landlord determines that First Offer Space is likely to become available for lease under this Section within the following fifteen (15) months. The Availability Notice shall specify the location and approximate rentable square footage of the applicable First Offer Space and the anticipated date upon which vacant possession of the First Offer Space will be available (provided that Landlord shall not be liable to City for any damages resulting from any unauthorized holding over by an existing occupant of space, so long as Landlord exercises commercially reasonable efforts to regain possession).

(c) Exercise of First Offer Right. City shall have the right to lease the First Offer Space identified in the Availability Notice by delivering conditional written notice to Landlord (the "Exercise Notice") not later than thirty (30) days after receipt of the Availability Notice, which Exercise Notice may be conditioned only on subsequent approval by the Board of Directors of the SFMTA and/or by City's Board of Supervisors, as then required by City's Charter and Administrative Code. If City desires to preserve its right to reimbursement for Landlord for holdover rent on account of a Landlord Delay in the delivery of the First Offer Space, then at the time City delivers its Exercise Notice with respect to a First Offer Space, City must provide Landlord with written notice of the user-group to be relocated to the First Offer Space and the holdover provisions in the applicable Existing Lease, including, but not limited to, the date on which the holdover rent would commence and the amount of the holdover rent, as provided in Section 3.3(c) above.

(d) Exercise With Respect to Part of First Offer Space. If the First Offer Space comprises more than 10,000 square feet, City may at its election exercise the First Offer Right with respect to all or a portion of such space, provided that the space so leased by City (i) shall be contiguous to the then-existing Premises if contiguous space is available, and (ii) must contain a minimum of 10,000 square feet. City's Exercise Notice shall indicate the approximate size and configuration of the space which City elects to lease. The exact size and configuration of the space will be reasonably determined by Landlord during the preparation of the schematic design drawings described below, and shall fairly take into account City's requirements and Landlord's reasonable requirements regarding exiting and code compliance and any other matters that could adversely affect Landlord's ability to lease the remainder of the First Offer Space. Landlord and City shall use good faith efforts to resolve any dispute regarding the configuration of the First Offer Space. The space shown on the approved schematic design drawings is hereafter referred to as the First Offer Space.

(e) Preparation of Schematic Plans and ROM Budget. On or before the date which is ten (10) days after City's Exercise Notice, City shall provide Landlord with sufficient planning

and programming information for Landlord's architect to prepare schematic design drawings for the First Offer Space, which drawings will be sufficiently detailed to prepare a rough order of magnitude budget (the "ROM Budget"). City and Landlord shall cooperate in good faith to prepare schematic design drawings and a ROM Budget for the First Offer Space similar to those prepared for the Initial Premises, at Landlord's expense (subject to City's reimbursement obligation described below), so that the information from such drawings and estimates may be promptly provided to City's legislative body or bodies, with the goal of completing and approving the schematic design drawings and ROM Budget at a staff level within sixty (60) days after City's Exercise Notice.

(f) Legislative Approval. Upon City's exercise of its right to lease the First Offer Space and Landlord's and SFMTA staff's and City's Department of Real Estate staff's agreement regarding the schematic design drawings and the ROM Budget, such City staff shall promptly seek and diligently pursue approval of required authorizing legislation by the Board of Directors of the SFMTA and/or by City's Board of Supervisors, as then required by City's Charter and Administrative Code.

(g) Failure to Lease First Offer Increment. If (i) City does not deliver an Exercise Notice within the thirty (30) day exercise period, or (ii) City does not provide sufficient planning and programming information to prepare schematic design drawings sufficiently detailed to prepare a ROM Budget within ten (10) days of City's Exercise Notice, or (iii) Landlord and City do not each approve the schematic design drawings and the ROM Budget within ninety (90) days of City's Exercise Notice (such period to be extended by any unreasonable delay by Landlord in responding to City's inquires or incorporating City's comments) (the "Planning Deadline"), or (iv) the required legislative bodies do not approve the option exercise within ninety (90) days of City staff's approval of the schematic design drawings and the ROM Budget (the "Legislative Approval Deadline"), (subject to the provisions of Section 23.15 below), then, except to the extent Landlord in its sole discretion elects to extend any such deadline by written notice to City, City shall have no further rights with respect to the First Offer Space identified in Landlord's Availability Notice, any Exercise Notice delivered by City with respect to such space shall be void, and Landlord shall thereafter be entitled to lease all or any portion of such First Offer Space to any person or entity on terms that are satisfactory to Landlord, in its sole discretion. If the First Offer Space described in the Availability Notice was comprised of 3,000 or more rentable square feet, then Landlord's offer of such space shall satisfy one of the occasions that Landlord must notify City of First Offer Space comprised of 3,000 or more rentable square feet.

(h) Effect of Other City Leases or Lease Amendment Adding Space. If City leases additional space in the Building for the SFMTA that is 3,000 rentable square feet or more other than through the provisions of this Section 22.1, each such expansion shall reduce the number of occasions that Landlord must provide City with an Availability Notice with respect to First Offer Space comprised of 3,000 or more rentable square feet. If (i) City leases additional space in the Building for the SFMTA that is less than 3,000 rentable square feet, or (ii) City leases additional space in the Building for a department other than SFMTA pursuant to a separate lease, then such expansions shall not reduce the number of occasions that Landlord must provide City with an Availability Notice with respect to First Offer Space comprised of 3,000 or more rentable square feet.

(i) City's Obligation to Reimburse Certain Costs. If the First Offer Space is not added to the Premises under the Lease either because Landlord and City do not reach agreement regarding schematic design drawings and the ROM Budget by the Planning Deadline or the legislative bodies do not approve the option exercise by the Legislative Approval Deadline, City shall reimburse Landlord for the reasonable and actual preapproved cost of preparing the schematic design drawings and the ROM Budget.

(j) Terms and Conditions. If City timely exercises its First Offer Right to lease a First Offer Space, City's occupancy of the First Offer Space shall be on the same terms and conditions as contained in the Lease with respect to the 7th Floor Premises, to the extent reasonably applicable and prorated as reasonably applicable, subject to the following:

(i) Landlord and City shall cooperate to promptly complete a work letter for the First Offer Space substantially in the form attached as Exhibit F-1, with appropriate changes to reflect the approved schematic design drawings and ROM Budget for the First Offer Space (the "First Offer Space Work Letter"). Base Building Improvements described in such First Offer Space Work Letter shall be consistent with the scope of the Base Building Improvements being performed by Landlord in connection with the 7th Floor Premises except for (i) any 7th Floor Common Area Work (which is being completed in connection with the Initial Premises) and (ii) any improvements or work which is specific to the 7th Floor Premises (e.g. the installation and replacement of windows).

(ii) The Allowance and Additional Construction Allowance provided by Landlord for the First Offer Space shall be calculated as provided in the First Offer Space Work Letter (which provides for an equitable proration of the Allowance rate per rentable square foot and the Additional Construction Allowance rate per square foot based on the number of months remaining in the Initial Term after the Target Occupancy Date for such First Offer Space, divided by 120 months). For example, if the Target Occupancy Date for a First Offer Space is seventy-two (72) months prior to the Expiration Date of the Initial Premises, the Allowance for such First Offer Space would be Twenty-Six and 40/100 Dollars ($44.00 x 72/120) and the Additional Construction Allowance would be Twenty-One Dollars ($21.00) ($35.00 x 72/120).

(iii) There will be no City Required Contribution with respect to the First Offer Space.

(iv) Landlord shall use commercially reasonable and diligent efforts to deliver possession of the First Offer Space with all of the applicable Base Building Work and Leasehold Improvements Substantially Completed on or before the applicable Target Occupancy Date specified in the First Offer Space Work Letter.

(v) The Commencement Date with respect to the First Offer Space shall be the date on which the applicable Leasehold Improvements and Base Building Improvements are Substantially Complete or such earlier date as the Leasehold Improvements and Base Building Improvements would have been Substantially Complete, but for Tenant Delay (but in no event earlier than any agreed up delivery date for the First Offer Space).

(vi) The sixty (60) day period between the Initial Premises Commencement Date and the Initial Premises Rent Commencement Date shall be equitably prorated for the First Offer Space by multiplying the 60 days by a fraction, the numerator of which is the number of full calendar months between the Target Occupancy Date for such First Offer Space and the Initial Term Expiration Date and the denominator of which is the 120 months of Initial Term,

then rounding the product up to the nearest whole number (such number, the "Prorated Abatement Days"). The Rent Commencement Date with respect to the First Offer Space shall be the date which is the number of days of Prorated Abatement Days after the Commencement Date with respect to such space. For example, if the Target Occupancy Date for a First Offer Space is seventy-two (72) months prior to the Expiration Date of the Initial Premises, the Rent Commencement Date for such First Offer Space would be thirty-six (36) days after the Commencement Date (60 x 72/120).

(vii) Base Rent for the First Offer Space shall be at the rate then in effect for the 7th Floor Premises and shall be subject to the same annual adjustments.

(viii) Effective as of the Rent Commencement Date with respect to the First Offer Space, City's Percentage Share shall be increased to reflect the rentable square footage of the First Offer Space, calculated in accordance with Section 2.1(c).

(k) Effect of Late Delivery. Landlord shall use reasonable efforts to keep City apprised of Landlord's estimate of the date that the First Offer Space will be delivered by Landlord to City. If Landlord does not deliver possession of the First Offer Space to City within one hundred twenty (120) days after the Target Occupancy Date for such First Offer Space (as such period may be extended due to Tenant Delays) (the "Rescission Trigger Date"), the following provisions of this Section 22.1(k) shall apply.

(i) City's Right to Request Update or Rescind. City shall have the right, by written notice to Landlord given not later than twenty (20) business days after the Rescission Trigger Date, to either (A) rescind the exercise of the First Offer Right with respect to such First Offer Space (subject to Landlord's right in Section 22.1(k)(iii) below), or (B) require Landlord to provide City with written notice (an "Update Notice") of Landlord's contractor's reasonable, good-faith estimate of the projected completion date (the "Projected First Offer Completion Date"). Landlord shall provide City with the Update Notice within five (5) business days after City's request.

(ii) City's Right to Accept Delay or Rescind. If City requests an Update Notice, then by written to Landlord given at any time prior to the date which is five (5) business days after City's receipt of the Update Notice, City shall have the right to agree to a delay in delivery of the First Offer Space until the Projected First Offer Completion Date set forth in such Update Notice or to rescind City's exercise of the First Offer Right with respect to such First Offer Space. (If City does not rescind the exercise of the First Offer Right by such deadline, City shall be deemed to have agreed to a delay in delivery of the First Offer Space until the Projected First Offer Completion Date.) If City agrees or is deemed to agree to the Projected First Offer Completion Date and Landlord does not thereafter actually deliver possession of the First Offer Space to City in the condition required hereunder on or before the date which is ten (10) business days after the Projected First Offer Completion Date (as extended after the date of the Update Notice for Tenant Delays), then City shall have the right rescind the exercise of the First Offer Right with respect to such First Offer Space by written to Landlord given at any time prior to the date Landlord actually delivers the First Offer Space to City in the condition required hereunder.

(iii) Landlord's Right to Suspend Initial Rescission. If City rescinds City's exercise of the First Offer Right in accordance with the provisions of Section 22.1(k)(i) above, and Landlord's contractor's Projected First Offer Completion Date is not later than sixty (60) days

after the Outside Delivery Date, Landlord shall have the right to suspend City's rescission of the exercise of the First Offer Right until the Projected First Offer Completion Date, unless construction of the required improvements has not commenced as of the Target Occupancy Date. In order to suspend the rescission of the exercise of the First Offer Right pursuant to the foregoing, Landlord must deliver to City, within three (3) business days after receipt of City's rescission notice, notice of such suspension, which notice shall include Landlord's contractor's reasonable, good-faith estimate of the Projected First Offer Completion Date. If Landlord timely delivers such suspension notice and actually delivers the First Offer Space to City in the condition required hereunder not later than the Projected First Offer Completion Date set forth in such notice (as extended by the number of days of delay following such notice due to Tenant Delay), then City's rescission notice shall be null and void and of no force or effect. Landlord shall have no right to suspend City's rescission given under Section 22.1(k)(ii) above.

(l) Limitation on First Offer Right. City's First Offer Right shall be personal to City and shall terminate upon City's assignment of this Lease to any party, and shall only apply so long as City has not sublet more than twenty-five percent (25%) of the Premises (as the same may be expanded from time to time) to an unaffiliated third party (excluding agreements with City Program Affiliates as allowed under Section 14.2 above). Notwithstanding anything to the contrary contained herein, if a material Event of Default exists at the time Landlord would otherwise be obligated to deliver an Availability Notice, Landlord shall have no obligation to deliver an Availability Notice. City's Exercise Notice shall be effective only if City delivers City's Exercise Notice prior to the applicable deadline (subject to the provisions of Section 23.15).

22.2 EXISTING PERSONAL PROPERTY

Landlord shall deliver the Initial Premises to City with the furnishings, equipment and other personal property listed on the attached ***Exhibit P*** (the "Existing Personal Property") in place. If City desires to acquire and Landlord desires to convey personal property in connection with the delivery of any increment of First Offer Space added to the Premises, the parties shall execute a supplemental schedule (a "Supplemental Property Schedule") of personal property to be so transferred by Landlord ("Other Transferred Property"). Except as otherwise agreed by the Senior Manager of SFMTA's Real Estate Section, prior to delivery of the Initial Premises or any increment of First Offer Space added to the Premises to City, Landlord shall cause to be removed all furnishings, equipment and other personal property not listed on ***Exhibit P*** or a Supplemental Property Schedule. Notwithstanding the foregoing, any personal property of Landlord located in the Initial Premises or in First Offer Space on the date of delivery thereof to and acceptance by City shall, at City's sole election, be deemed City's Personal Property, whether or not such personal property is listed on ***Exhibit P*** or a Supplemental Property Schedule. Except as otherwise provided in ***Exhibit P*** or any Supplemental Property Schedule, City agrees to accept all personal property from Landlord in its then existing "as is" condition, with all faults, and Landlord makes no representations or warranties, express or implied, regarding the value, condition, suitability or fitness for City's purposes of any such personal property. Further, Landlord shall not be liable, nor shall City's obligations under this Lease be affected, if the personal property delivered by Landlord is minimally less than or different from that listed on ***Exhibit P***.

23. GENERAL PROVISIONS

23.1. NOTICES

Except as otherwise specifically provided in this Lease, any notices, requests, approvals or consents given under this Lease shall be in writing and given by delivering the notice, request, approval or consent in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or Express Mail, return receipt requested, with postage prepaid, to: (a) City at City's address(es) set forth in the Basic Lease Information; or (b) Landlord at Landlord's address(es) set forth in the Basic Lease Information; or (c) such other address(es) as either Landlord or City may designate as its new address for such purpose by notice given to the other party in accordance with this Section. Any notice hereunder shall be deemed effective on the date it is personally delivered or, in all other cases, on the date upon which delivery is actually made at the party's address for notices (or attempted if such delivery is refused or rejected). For convenience of the parties, copies of notices may also be given be telefacsimile to the telefacsimile number set forth in the Basic Lease Information or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

23.2. NO IMPLIED WAIVER

No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No acceptance of full or partial Rent by Landlord while City is in default hereunder shall constitute a waiver of such default by Landlord. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Landlord or City given in one instance under the terms of this Lease shall not relieve the other party of any obligation to secure the consent to any other or future instance under the terms of this Lease.

23.3. AMENDMENTS

Neither this Lease nor any terms or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. No waiver of any breach shall affect or alter this Lease, but each and every term, covenant and condition of this Lease shall continue in full force and effect with respect to any other then-existing or subsequent breach thereof. Whenever this Lease requires or permits the giving by City of its consent or approval, the Director of Property, or his or her designee shall be authorized to provide such approval, except as otherwise provided by applicable Law, including the City's Charter. Any amendments or modifications to this Lease, including, without limitation, amendments to or modifications to the exhibits to this Lease, shall be subject to the mutual written agreement of City and Landlord, and City's agreement may be made upon the sole approval of the Director

of Property, or his or her designee; provided, however, material amendments or modifications to this Lease (i) changing the legal description of the Premises, (ii) increasing the Term, (iii) increasing the Rent, and (iv) any other amendment or modification which materially increases City's liabilities or financial obligations under this Lease shall additionally require the approval of the San Francisco Municipal Transportation Agency's Board of Directors or City's Board of Supervisors as required under applicable Law.

23.4. AUTHORITY

Landlord represents and warrants to City that the execution and delivery of this Lease by Landlord has been duly authorized and, to Landlord's actual knowledge, does not violate any provision of any agreement to which Landlord or the Property is subject as of the Effective Date.

23.5. PARTIES AND THEIR AGENTS; APPROVALS

If applicable, the word "Landlord" as used in this Lease shall include the plural as well as the singular. As used in this Lease, the term "Agents" when used with respect to either party shall include the agents, employees, members, officers and contractors of such party, and when used with respect to the City shall include City Program Affiliates and City's subtenants and assignees and each of their respective agents, employees, members, officers and contractors. The term "Invitees" when used with respect to City shall include the clients, customers, invitees, guests and licensees of City, its assignees, and subtenants and City Program Affiliates. All approvals, consents or other determinations permitted or required by City under this Lease shall be made by or through City's Director of Property unless otherwise provided in this Lease, subject to any applicable limitations in City's Charter and Administrative Code.

23.6. INTERPRETATION OF LEASE

The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intent and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Except as otherwise specifically provided herein, wherever in this Lease Landlord or City is required or requested to give its consent or approval to any matter or action by the other, such consent or approval shall not be unreasonably withheld or delayed and the reasons for disapproval of consent shall be stated in reasonable detail in writing. Provisions in this Lease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or City holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to be restrictive, and lists following such words shall not be interpreted to be exhaustive or limited to items of the same type as those enumerated, whether or not language of non-limitation,

such as "without limitation" or similar words, are used. Use of the words "shall," "will," or "agrees" are mandatory, and "may" is permissive.

23.7. SUCCESSORS AND ASSIGNS

Subject to the provisions of Section 14 (Assignment and Subletting) relating to assignment and subletting, the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Landlord and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Lease.

23.8. BROKERS

Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein, except for the brokers identified in the Basic Lease Information, whose commission, if any is due, shall be the sole responsibility of Landlord pursuant to a separate written agreement between Landlord and such broker, and City shall have no liability therefor and Landlord shall Indemnify City for any claims by such brokers against City. In the event that any other broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Claims incurred by the indemnified party in defending against the same. Landlord acknowledges and agrees that City shall have no liability for, and Landlord shall indemnify City for, any commissions, fees or claims made by any brokers claiming to have represented Landlord's predecessor-in-interest in the Building in connection with this Lease. The provisions of this Section shall survive any termination of this Lease.

23.9. SEVERABILITY

If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

23.10. GOVERNING LAW

This Lease shall be construed and enforced in accordance with the laws of the State of California and City's Charter.

23.11. ENTIRE AGREEMENT

The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous

written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

23.12. ATTORNEYS' FEES

In the event that either Landlord or City fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Similarly, for purposes of this Lease, reasonable fees of attorneys of Landlord's in-house a shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which Landlord's in-house attorneys' services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by Landlord's Legal Department.

23.13. HOLDING OVER

Should City hold over in possession of the Premises after the expiration or earlier termination of the Term with Landlord's consent, such holding over shall not be deemed to extend the Term or renew this Lease, but such tenancy thereafter shall continue as a month-to-month tenancy. Such tenancy shall be on all the terms and conditions set forth in this Lease and at such rent as Landlord and City may mutually agree in writing as a condition to Landlord's consent to such holding over, and City shall continue as a month-to-month tenant until the tenancy shall be terminated by Landlord giving City or City giving Landlord at least thirty (30) days' prior written notice of termination. Should City hold over without Landlord's consent, City's continued occupancy shall be on all of the terms and conditions contained herein, except that (i) during the first sixty (60) days (or any portion thereof) of such holdover, the Base Rent payable by City shall be one hundred twenty-five percent (125%) of the Base Rent in effect during the last month of the Term and (ii) the Base Rent payable by City thereafter shall be two hundred percent (200%) of the Base Rent in effect during the last month of the Term. Nothing contained in this Section 23.13 shall be construed as consent by Landlord to any holding over by City.

23.14. CUMULATIVE REMEDIES

All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

23.15. TIME OF ESSENCE

Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified. Notwithstanding anything to the contrary set forth in this Lease, (i) in the event that City fails to exercise an Extension Option before the applicable expiration date, Landlord shall provide City notice of such failure and City shall have a period of twenty (20) days following such notice in which to exercise the Expansion Option, and (ii) in the event City has submitted an item for Board of Supervisor approval under this Lease and continues to seek such approval in good faith but has not yet received such approval within ninety (90) days as contemplated by this Lease, then City shall have a period of an additional thirty (30) days in which to obtain such Board of Supervisor approval.

23.16. SURVIVAL OF INDEMNITIES

Termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it effect any provision of this Lease that expressly states it shall survive termination hereof.

23.17. SIGNS

City may erect or post signs inside the Premises subject to Landlord's prior approval. Landlord reserves the right to review the placement, design, and plan for any such sign prior to its erection or posting and agrees that the approval thereof shall not be unreasonably withheld or delayed.

23.18. QUIET ENJOYMENT AND TITLE

Landlord covenants and represents that, as of the Effective Date, it has fee title to the Property, with the full right, power and authority to grant the leasehold estate hereunder, and covenants that, subject to the provisions of Article 11, City, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term as against all persons or entities claiming by and through Landlord. Without limiting the provisions of Section 16.2 (Landlord's Indemnity), Landlord agrees to Indemnify City and its Agents against Claims arising out of any assertion that would interfere with City's right to quiet enjoyment as provided in this Section.

23.19. BANKRUPTCY

Landlord represents and warrants to City that, as of the Effective Date, Landlord has neither filed nor been the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the Landlord's actual knowledge, no such filing is threatened. Landlord and City agree that City's leasehold estate created hereby includes, without limitation, all rights to receive and enjoy all services, facilities and amenities of the Premises and the Building as provided herein, and that if any of such services, facilities or amenities are terminated, or materially limited or restricted on account of any such case or

proceeding, City shall have the right to (i) contract directly with any third-party provider of such services, facilities or amenities to obtain the same, and (ii) offset against the Base Rent or other charges payable hereunder any and all reasonable costs and expenses incurred by City in obtaining such services, facilities or amenities.

23.20. TRANSFER OF LANDLORD'S INTEREST

Landlord shall have the right to transfer its interest in the Property to any other person or entity; provided Landlord simultaneously assigns, and such transferee assumes, all of Landlord's obligations under this Lease arising after the date of such transfer. In the event of any such transfer and assumption, Landlord shall be relieved, upon notice to City of the name and address of Landlord's successor, of any obligations accruing hereunder from and after the date of such transfer and assumption.

23.21. NON-LIABILITY OF CITY OFFICIALS, EMPLOYEES AND AGENTS

Notwithstanding anything to the contrary in this Lease, no elective or appointive board, commission, member, officer, employee or Agent of City shall be personally liable to Landlord, its successors and assigns, in the event of any default or breach by City or for any amount which may become due to Landlord, its successors and assigns, or for any obligation of City under this Lease.

23.22. MACBRIDE PRINCIPLES - NORTHERN IRELAND

The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Landlord acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

23.23. CONTROLLER'S CERTIFICATION OF FUNDS

The terms of this Lease shall be governed by and subject to the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Lease, there shall be no obligation for the payment or expenditure of money by City under this Lease unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Without limiting the foregoing, if in any fiscal year of City after the fiscal year in which the Term commences, sufficient funds for the payment of Rent under this Lease (including Base Rent and any other payments required hereunder) are not appropriated, then City may terminate this Lease, without penalty, liability or expense of any kind to City, as of the last date on which sufficient funds are appropriated. SFMTA and City's Real Estate Division Staff shall use reasonable efforts to give Landlord at least nine (9) months advance notice of any such projected termination. In no event shall City give less than thirty (30) days advance notice of any such actual termination. SFMTA staff and

management shall, as part of City's budgetary process, seek to obtain the necessary appropriation of funds from the SFMTA Board of Directors and City's Board of Supervisors and certification of the availability of funds from the Controller. If City terminates this Lease due to lack of appropriated funds under this Section 23.23, then City shall not appropriate funds in the fiscal year that such termination occurs, or the subsequent fiscal year, for the purpose of purchasing a building, or renting new or additional space in any other privately-owned building, to operate any of the City programs that were located in the Premises in the fiscal year that this Lease terminated.

23.24. PREVAILING WAGES FOR CONSTRUCTION WORK

Landlord agrees that any person performing labor in the construction of the Leasehold Improvements or other improvements to the Premises which Landlord provides under this Lease shall be paid not less than the highest prevailing rate of wages and that Landlord shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord further agrees that, as to the construction of such improvements in the Premises under this Lease, Landlord shall comply with all the applicable provisions of and sections 6.22(E) of the San Francisco Administrative Code (as the same may be amended, supplemented or replaced) that relate to payment of prevailing wages. Landlord shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of any Leasehold Improvements or other improvements to the Premises.

23.25. NON DISCRIMINATION IN CITY CONTRACTS AND BENEFITS ORDINANCE

(a) Covenant Not to Discriminate

In the performance of this Lease, Landlord agrees not to discriminate against any employee of, any City employee working with Landlord, or applicant for employment with Landlord, 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

Landlord shall include in all subcontracts relating to the Premises a non-discrimination clause applicable to such subcontractor in substantially the form of subsection (a) above. In addition, Landlord shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Landlord's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease. Notwithstanding the foregoing, Landlord and City acknowledge and agree that the provisions of this Section 23.25(b) shall not apply to any subcontracts relating to the Building or the

Premises that are held by or were entered into by Bank of America, National Association prior to the Commencement Date. Further, at Landlord's written request made from time to time, the Executive Director of the SFMTA shall direct SFMTA staff to seek a waiver from HRC (as defined below) with respect to subcontracts with Bank of America, National Association, or sub-subcontracts to be entered into by Bank of America, National Association.

(C) Non-Discrimination in Benefits

Landlord does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco, on real property owned by City, or where the work is being performed for the City elsewhere within 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 Section 12B.2(b) of the San Francisco Administrative Code.

(D) HRC Form

As a condition to this Lease, Landlord 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 (the "HRC"). Landlord hereby represents that prior to execution of this Lease: **(a)** Landlord executed and submitted to the HRC Form HRC-12B-101 with supporting documentation, and **(b)** the HRC approved such form.

(E) Incorporation of Administrative Code Provisions by Reference

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

23.26. TROPICAL HARDWOOD AND VIRGIN REDWOOD BAN

(a) Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environmental Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

(b) The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood product, virgin redwood, or virgin redwood wood products.

(c) In the event Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environmental Code, Landlord shall be liable for liquidated damages for each violation in any amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

23.27. BICYCLE STORAGE FACILITIES

Article 1.5, Section 155.1, of the San Francisco Planning Code ("Code") requires the provision of bicycle storage at City leased buildings at no cost to Landlord and if funds are available. In the event public or private donations, grants or other funds become available, at any time during the Term including any extension thereof, City may, by giving sixty (60) days advance written notice to Landlord, install compliant bicycle storage in the Building garage. City shall pay the monthly rent value for any such parking spaces used for such bicycle parking or Landlord also agrees that City may install bicycle racks in other location(s) in front of the Building which are required to meet the Class 1 or Class 2 requirements of the Code. Landlord, at no cost to Landlord, shall reasonably cooperate with City regarding the location of such spaces in furtherance of the implementation of such requirements of the Code, provided that Landlord shall have the right to reasonably relocate any such bicycle storage area at Landlord's sole cost in the event the same interferes with the efficient operation of the Building's parking facilities. City acknowledges and agrees that the Bike Room Premises, if constructed and delivered in accordance with the terms of this Lease, satisfy the applicable requirements of the Code.

23.28. RESOURCE-EFFICIENT CITY BUILDINGS AND PILOT PROJECTS; PRESERVATIVE-TREATED WOOD

(a) Landlord acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 707 relating to resource-efficient City buildings and resource-efficient pilot projects. Landlord hereby agrees that it shall comply with all applicable provisions of such code sections as of the Effective Date of this Lease provided that such agreement is made on reliance of City's representation, warranty and covenant that neither the Building nor any part thereof is required to achieve any LEED certification level or the equivalent under any City Law. To the extent that (i) City wants or requires, or (ii) the status of the City as a tenant or any use to which the Premises is put by the City imposes any obligation on Landlord to make or take: (A) any improvement, alteration or modification to the Building or any part thereof; or (B) any procedures or retention of any consultants, contractors, advisors or Agents; to achieve LEED certification or other energy efficiency standards, City shall specify and pay for (subject to application of the Allowance to the extent funds are available therefor) such improvements, alterations, modifications, procedures or retention in the Leasehold Improvement Work subject to the provisions of Article 6 and the applicable Work Letter.

(b) Landlord acknowledges that Landlord may not purchase preservative-treated wood products containing arsenic in the performance of this Lease unless an exemption from the requirements of Environment Code, Chapter 13 is obtained from the Department of Environment under Section 1304 of the Environment 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, ammoniac copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Landlord may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of Environment. This provision does not preclude Landlord 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.

23.29. COUNTERPARTS

This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

23.30. EFFECTIVE DATE

The date on which this Lease shall become effective (the "Effective Date") is the later of (i) the date upon which this Lease is executed and exchanged by the parties hereto, or (ii) the date on which the City's Board of Supervisors and Mayor, each in their sole discretion, enact a resolution approving this Lease in accordance with all applicable laws.

23.31. CERTIFICATION BY LANDLORD

By executing this Lease, Landlord certifies that neither Landlord nor any of its officers or members have been suspended, disciplined or disbarred by, or prohibited from contracting with any federal, state or local governmental agency. In the event Landlord or any of its officers or members have been so suspended, disbarred, disciplined or prohibited from contracting with any governmental agency, it shall immediately notify the City of same and the reasons therefor together with any relevant facts or information requested by City. Any such suspension, disbarment, discipline or prohibition may result in the termination or suspension of this Lease. Landlord acknowledges that this certification is a material term of this Lease.

23.32. CONFLICTS OF INTEREST

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

23.33. NOTIFICATION OF LIMITATIONS ON CONTRIBUTIONS

Through its execution of this Lease, Landlord acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the selling or leasing of any land or building to or from the City whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Landlord acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Landlord further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Landlord's board of directors, chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Landlord; any subcontractor listed in the contract; and any committee that is sponsored or controlled by Landlord. Additionally, Landlord acknowledges that Landlord must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Landlord further agrees to provide to City the names of each person, entity or committee described above.

23.34. ASBESTOS-CONTAINING MATERIAL

Landlord has advised City that there is asbestos-containing material ("ACM") in the Building. Attached hereto as ***Exhibit K*** is a disclosure statement regarding ACM in the Building. Landlord gives this notice in accordance with the requirements of Section 25915 *et seq.* and Section 25359.7 of the California Health and Safety Code.

23.35. BUILDING OCCUPANCY RESUMPTION PROGRAM

The City's Department of Building Inspection ("DBI") has developed a Building Occupancy Resumption Program ("BORP") whereby private building owners can pre-certify private inspectors to provide building safety assessment evaluations following an earthquake or other catastrophic event. The purpose of BORP is to allow a quick and thorough evaluation of possible damage to a structure by qualified persons so as to permit the re-occupancy of a building at the earliest possible date following such a catastrophic event. To participate in BORP, building owners must submit and maintain a BORP plan, and enter into an agreement with qualified inspectors, approved by DBI. Upon approval, DBI will send the building owner verification of BORP participation and will place the building on DBI's BORP list. Additional information about BORP can be found on the DBI section of City's website at http://www.sfgov.org/site/dbi_page.asp?id=11515. As a material part of the consideration for this Lease, Landlord covenants and agrees to participate in BORP and to keep and maintain the Building on DBI's BORP list throughout the Term.

23.36 CITY REQUIREMENTS

Landlord and City expressly agree that: (i) Landlord shall be obligated to comply, by reason of this Lease, with the provisions of the San Francisco Administrative Code expressly incorporated herein by reference (collectively the "City Requirements") as such City Requirements exist on the Effective Date, and, except as specifically provided in such City Requirements, shall not be subject to any amendments or supplements of such City Requirements, excepting only amendments, supplements or replacements to the City Requirements for the payment of prevailing wages for the construction of improvements in the Premises as set forth in Section 23.24 above; and (ii) Landlord's obligation to comply with City Requirements shall automatically terminate upon City's assignment of this Lease (provided that any successor Landlord shall be obligated to comply with such City Requirements). Notwithstanding the foregoing, nothing in this Lease shall preclude the City from applying provisions of the San Francisco Administrative Code, as amended, supplemented or replaced from time to time, to Landlord or to the Building if such provisions have generally applicability (as opposed to applicability to parties with whom the City enters into a contract or a lease).

23.37. MEMORANDUM OF LEASE

On the Effective Date, Landlord and City shall execute the memorandum of lease in the form attached hereto as ***Exhibit L*** (the "Memorandum of Lease"), and Landlord shall cause the Memorandum of Lease to be recorded in the Official Records of the City and County of San Francisco within five (5) business days after the Effective Date.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS LEASE, LANDLORD ACKNOWLEDGES AND AGREES THAT NO OFFICER OR EMPLOYEE OF CITY HAS AUTHORITY TO COMMIT CITY HERETO UNLESS AND UNTIL THE BOARD OF DIRECTORS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY AND CITY'S BOARD OF SUPERVISORS SHALL HAVE DULY ADOPTED A RESOLUTION OR ENACTED AN ORDINANCE APPROVING THIS LEASE AND AUTHORIZING CONSUMMATION OF THE TRANSACTION CONTEMPLATED HEREBY. THEREFORE, ANY OBLIGATIONS OR LIABILITIES OF CITY HEREUNDER ARE CONTINGENT UPON ADOPTION OF SUCH A RESOLUTION, AND THIS LEASE SHALL BE NULL AND VOID UNLESS THE BOARD OF DIRECTORS OF THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY AND CITY'S MAYOR AND BOARD OF SUPERVISORS APPROVE THIS LEASE, IN THEIR RESPECTIVE SOLE AND ABSOLUTE DISCRETION, AND IN ACCORDANCE WITH ALL APPLICABLE LAWS. APPROVAL OF THIS LEASE BY ANY DEPARTMENT, COMMISSION OR AGENCY OF CITY SHALL NOT BE DEEMED TO IMPLY THAT SUCH RESOLUTION WILL BE ADOPTED NOR WILL ANY SUCH APPROVAL CREATE ANY BINDING OBLIGATIONS ON CITY.

Remainder of page intentionally left blank

Landlord and City have executed this Lease as of the date first written above.

LANDLORD:	HUDSON 1455 MARKET, LLC, a Delaware limited liability company By: Hudson Pacific Properties, L.P., a Maryland limited partnership, Its: Sole Member By: Hudson Pacific Properties, Inc., a Maryland corporation Its: General Partner By:_____ Name:_____ Its:_____
CITY:	CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation By: _____ NATHANIEL P. FORD SR. Executive Director/CEO San Francisco Municipal Transportation Agency
APPROVED BY: San Francisco Municipal Transportation Agency Board of Directors Resolution No: _____ Adopted: _____ Attest: _____ Secretary, SFMTA Board of Directors	
APPROVED AS TO FORM: DENNIS J. HERRERA, City Attorney By: _____ Anita L. Wood Deputy City Attorney	

EXHIBIT A

FLOOR PLANS OF INITIAL PREMISES

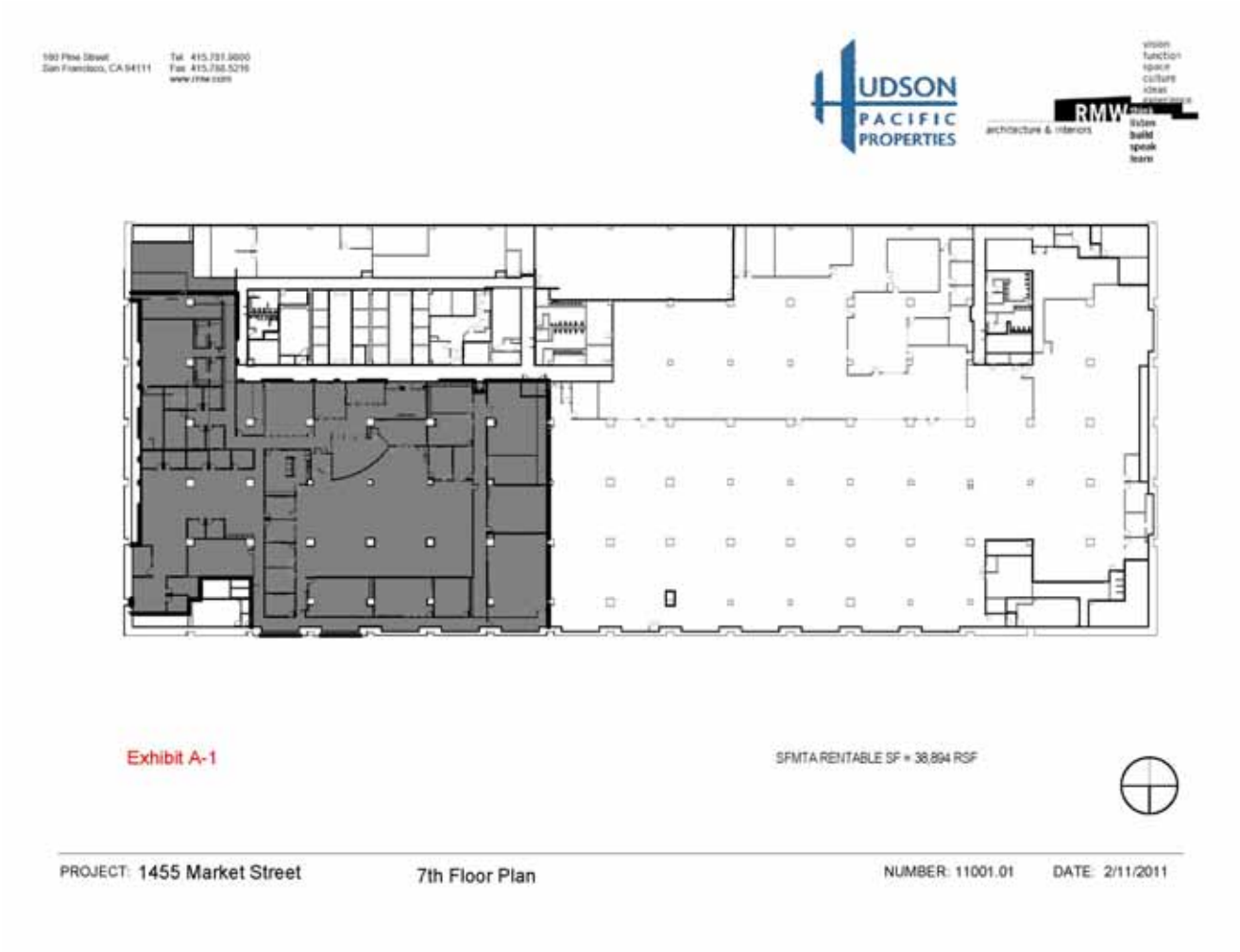


EXHIBIT A-1

7th FLOOR PREMISES

EXHIBIT A-2

BIKE ROOM PREMISES

EXHIBIT A-3

LOCKER ROOM PREMISES

EXHIBIT B-1

INITIAL TELECOMMUNICATIONS EQUIPMENT

SFMTA Radio Replacement Project

Dispatch Center 1455 Market Street

November 5, 2010

MACRO

A KEMA Company

Table of Contents

List of Exhibits:

1. Andrew TP-G412 – XX microwave antenna mounting structure
2. Andrew HP4-107 High Performance microwave antenna
3. EW90 Elliptical Waveguide
4. CNT-300R coaxial cable
5. Copper Ground Bus Bar Detail
6. Andrews 7/8 inch Heliax (AVA5RK-50)
7. Bird Technologies SMD Series antenna

1. General

The San Francisco Municipal Transportation Agency (SFMTA) is planning to establish their primary Dispatch Center on the 7th Floor of the 1455 Market Street building. This requires that the 1455 Market Street building be connected with microwave to 10 other remote sites in the City and the County of San Francisco (CCSF) to support the critical infrastructure of both SFMTA and the City Police/Fire agencies. In addition, during times of disaster it will be necessary to transmit in the 700/800 MHz band for low power RF connections to remote transmitter sites from Dispatch Consoles on the 7th Floor.

To accomplish this goal, SFMTA needs to:

- Install 2 microwave antennas on the roof of 1455 Market Street
- Install 2 small dipole antennas on the roof of 1455 Market Street
- Connect these antennas with transmission lines to radio equipment located within the 1455 Market Street building

2. Microwave

2.1 Requirements

Install two microwave antenna mounting structures complete with one antenna each on the roof of 1455 Market. Connect each antenna to the Radio Equipment located on the 7th Floor with coaxial cable.

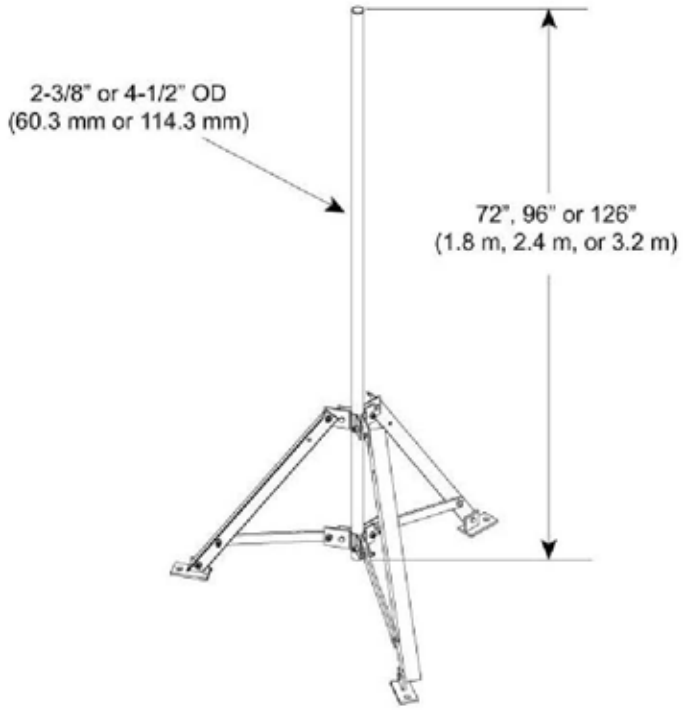
2.2 Equipment and Installation Material

All of the microwave equipment, installation hardware and tools are available from Andrew Corporation or its distributors.

2.3 Antenna Mounting Structures

Antenna mounting structures shall be Andrew Model TP-G412-XX Universal Tripod Mount or equivalent with a 4-1/2 inch OD pipe mount for the microwave antenna.

Typical details are exhibited hereunder: Model shall be chosen such that the bottom of the microwave antenna clears the main basket of the window washing carriage (not counting the two support posts) by at least 6 inches.



See Appendix "A" for typical mounting structure cut sheet.

One antenna mounting structure shall be located on the roof at a location farthest from Market Street near the stairway entrance (SE Corner) with the antenna facing Twin Peaks.

We would like to install the second microwave antenna on the same structure however; SFMTA Real Estate indicated that a building will be built next to 1455 Market on 10th Street of such a height and location that it will block any microwave path from the roof of 1455 Market to One Market Plaza. Based on this fact, a second antenna mounting structure is required and the location is undetermined at this time.

Our examination of the foot print of the new building on 10th Street indicates that, if the plans are correct; it may still be possible to have a microwave path to One Market Plaza which traverses between the two towers of the proposed structure on 10th Street. (This needs to be confirmed)

2.4 Antennas

Antennas shall be a maximum of 4 feet in diameter and in either the 11 GHz (10.7 – 11.7) or 18 GHz (17.7 – 19.7) band dependent upon FCC approval and frequency coordination.

See Appendix "A" for a typical cut sheet for a four foot 11 GHz High Performance

microwave antenna (HP4-107).

2.5 Transmission Lines

Transmission line requirements are:

- 11 GHz – One run of Andrews EW90 Elliptical waveguide
- 18 GHz – One run of Andrews Coaxial Cable CNT-300R

Due to the fact that the frequency band is unknown, both types of transmission lines shall be installed for each antenna location.

Transmission lines shall run from the antenna connection flange on the roof to the top of the microwave equipment rack located on the 7th Floor.

Transmission lines shall be installed in accordance with the manufacturer's installation practices for grounding, support hangars, and lightning protection. Connectors shall be installed to match the antenna flange and radio flange. Connectors located outside shall be taped and waterproofed in accordance with the manufacturer's installation practices.

A cut sheet for each type of transmission line is included in Appendix "A".

3. Control Stations

3.1 Requirements

Thirteen (13) consoles within the SFMTA Dispatch Center require access to a Control Channel Radio in times of emergency for RF access to one or more remote tower site transmitter/receivers. This is accomplished by the addition of control stations (racked up special edition mobile radios) at the Dispatch Center with one transmission line for all transmitters coupled together to one antenna and one transmission line for all receivers to the second antenna on the roof of 1455 Market Street.

3.2 Antenna Mounting Structures

The Bird Technologies SMD Series antenna is to be side mounted on a pipe of less than 2 inches OD. A short section of 2-inch OD galvanized pipe could be welded to the top of the microwave antenna support structure (4-1/2 inch OD pipe) and the Bird antenna mounted on this short section of pipe.

3.3 Antennas

This cannot be determined until SFMTA has awarded a contract for the replacement radio system, however it is likely that two antennas will be required – one for all transmitters and one for all receivers.

A typical antenna would be Bird Technologies SMD Series which is a side mounted

dipole.

A cut sheet for the Bird Technologies SMD antenna is attached in Appendix “A”.

3.4 Transmission Lines

Transmission lines will be 7/8 inch Andrews foam Heliax (AVA5RK-50A) with fire retardant jacket and DIN connectors on each end. One transmission line will connect all transmitters to one antenna and one transmission line will connect all receivers to the second antenna.

Transmission line cut sheet is included in Appendix “A”.

Transmission lines shall be installed in accordance with the manufacturer’s installation practices for support, grounding, lightning protection, waterproofing, and connector installations.

4. Grounding

4.1 Antennas

Microwave antennas and the mounting structure shall be grounded to the building grounding system in accordance with the manufacturer’s installation practices.

4.2 Transmission Lines

Transmission lines (microwave and coaxial) shall be grounded at both ends in accordance with the manufacturer’s installation practices.

4.3 Lightning Protection

Both microwave waveguide and coaxial transmission lines shall have lightning protection devices installed in accordance with the manufacturer’s installation practices.

4.4 Consoles and Racks

A grounding system shall be installed below the computer flooring such that each console and equipment rack can be connect to a common ground bus bar. This ground bus bar shall then be connected to the primary building ground at **“one”** location only with AWG 4/0 stranded green jacketed copper cable with double hole compression lugs on each end.

4.4.1 Ground Bus Bar Details

The ground bus bar to be installed under the computer flooring shall consist of ¼ inch by 1.25 inch solid copper bar punched every 2 inches with double lug holes 5/32 inch in diameter on 5/8 inch centers and mounted on insulated stand-offs which are in turn

fastened to the concrete with stainless steel brackets and hardware.

Bus bar runs less than 40 feet shall be continuous with no splices. Ninety degree connections shall contain 4 bolts on each side with silicone bronze or stainless steel fasteners.

Typical details are as exhibited hereunder:

http://site.electrical-insulators-and-copper-ground-bars.com/blog1/wp-content/uploads/2010/02/storm_copper-ground-bar1.jpg

4.4.2 Ground Bus Bar Layout

All consoles in the Dispatch Center and all racks in the equipment room shall have access to this common Ground Bus Bar.

Layout shall be similar to that exhibited hereunder:

5. Power Distribution

5.1 Console UPS Power Feeds

Each SFMTA console shall have two 120 VAC distribution power feeds each terminating in a quad box under the floor with two 20 amp circuits on each feed from the UPS distribution. Quad box receptacles shall have spec grade duplex receptacles with each one on a separate 20 amp circuit. Cables to the quad boxes shall not be BX or any other

cable with a metallic sheath that has the potential to short circuit the ground bus bar.

There shall be at least 6 feet of slack on each cable under the floor such that the quad box can be moved about within the console foot print.

5.2 Console Commercial AC Power Feeds

Each SFMTA console shall have one 120 VAC distribution power feed terminating in a quad box under the floor with two 20 amp circuits from the non-essential distribution. Quad box receptacles shall be spec grade with each duplex receptacle on a separate 20 amp circuit. Cables to the quad boxes shall not be BX or any other cable with a metallic sheath that has the potential to short circuit the ground bus bar.

There shall be at least 6 feet of slack on each cable such that the quad box can be moved about within the console foot print.

Copyrighted picture was removed. Please see web links in Appendix “A” for additional information.

Appendix “A”

Andrew TP-G412-96 Universal Tripod Mount Product Brief:
http://awapps.commscope.com/catalog/andrew/product_details.aspx?id=1896
Detailed Specifications:
http://awapps.commscope.com/catalog/andrew/product_details.aspx?id=1896&tab=1

Andrew MT-654-96 Plain End Pipe, 4-1/2 in OD x 96 In:
http://awapps.commscope.com/catalog/andrew/product_details.aspx?id=2078

Andrew Universal Tripod Mount, base only, pipe not included, Product Brief:
http://awapps.commscope.com/catalog/andrew/product_details.aspx?id=1897
Detailed Specifications:
http://awapps.commscope.com/catalog/andrew/product_details.aspx?id=1897&tab=1

Andrew HP4-107 or equivalent High Performance Point-to-Point Microwave Antenna, single-polarized high performance parabolic shielded antenna, Product Brief:
http://awapps.commscope.com/catalog/andrew/product_details.aspx?id=27683
Detailed Specifications:
http://awapps.commscope.com/catalog/andrew/product_details.aspx?id=27683&tab=1

Andrew EW90, HELIAX® Standard Elliptical Waveguide, 10.2–11.7 GHz, black PE jacket:
http://awapps.commscope.com/catalog/andrew/product_details.aspx?id=1398

Andrew CNT-300, CNT® 50 Ohm Braided Coaxial Cable, black fire retardant riser rated PVC jacket:
http://awapps.commscope.com/catalog/andrew/product_details.aspx?id=3018

Ground Bar: http://site.electrical-insulators-and-copper-ground-bars.com/blog1/wp-content/uploads/2010/02/storm_copper-ground-bar1.jpg

Andrew AVA5-50, HELIAX® Andrew Virtual Air™ Coaxial Cable, corrugated copper, 7/8 in, black non-halogenated, fire retardant polyolefin jacket
AVA5-50, HELIAX® Andrew Virtual Air™ Coaxial Cable, corrugated copper, 7/8 in, black non-halogenated, fire retardant polyolefin jacket:
http://awapps.commscope.com/catalog/andrew/product_details.aspx?id=14709

Bird Technologies Side Mounted Dipole Antenna 400-520 MHz & 746-870 MHz:
http://btgmotorola.securespsites.com/Antennas/SMD4-67.pdf

Copyrighted picture was removed. Please see web links in Appendix “A” for additional information.

Copyrighted picture was removed. Please see web links in Appendix “A” for additional information.

EXHIBIT B-2

INITIAL TELECOM SITE

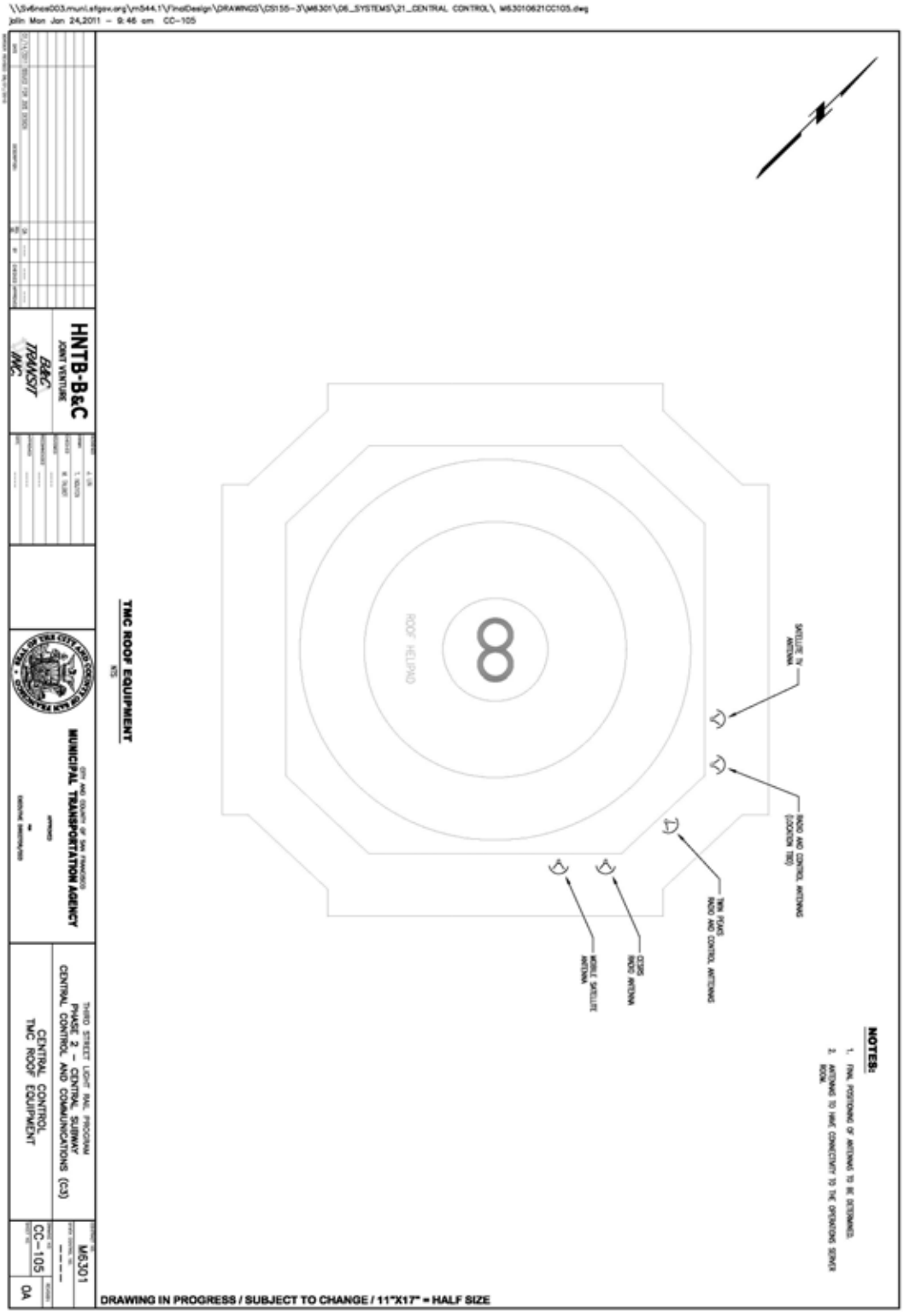


EXHIBIT C-1

NOTICE OF INITIAL PREMISES COMMENCEMENT DATE

[Insert Date]

SFMTA Real Estate Section
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103

Ms. Amy L. Brown
Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

RE: Acknowledgement of Commencement Date for Initial Premises, Lease Between HUDSON 1455 MARKET, LLC, a Delaware limited liability company ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO ("Tenant"), for premises known as _____ located at 1455 Market Street, San Francisco, California._____

Dear Sir or Madam:

In accordance with Section 3.2(a) of the Lease, this letter will confirm that for all purposes of the Lease, the Commencement Date for the Initial Premises is _____, 20__ and the Rent Commencement Date for the Initial Premises is _____, 20__ .

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

HUDSON 1455 MARKET, LLC, a Delaware limited liability company

By: Hudson Pacific Properties, L.P.,
a Maryland limited partnership,
Its: Sole Member
By: Hudson Pacific Properties, Inc.,
a Maryland corporation
Its: General Partner

By:_____
Name:_____
Its:_____

Accepted and Agreed:

By:_____
Executive Director/CEO
San Francisco Municipal
Transportation Agency

Dated:_____

EXHIBIT C-2

NOTICE OF FIRST OFFER SPACE COMMENCEMENT DATE

[Insert Date]

SFMTA Real Estate Section
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103

Ms. Amy L. Brown
Director of Property
Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102

RE: Acknowledgement of Commencement Date for First Offer Space, Lease Between HUDSON 1455 MARKET, LLC, a Delaware limited liability company ("Landlord"), and the CITY AND COUNTY OF SAN FRANCISCO ("Tenant"), for premises known as _____ _____located at 1455 Market Street, San Francisco, California. _____

Dear Sir or Madam:

In accordance with Section 3.2(b) of the Lease, this letter will confirm that for all purposes of the Lease, the First Offer Space Commencement Date is _____, 20__ and the First Offer Space Rent Commencement Date is _____, 20___.

Further, this letter shall confirm the following terms and conditions with respect to the First Offer Space:

1. The number of rentable square feet within the First Offer Space is _____ square feet. The total number of rentable square feet within the Premises (i.e. the Initial Premises and the First Offer Space collectively) is _____ square feet.

2. The Base Rent payable with respect to the First Offer Space is as follows: _____.

3. City Percentage Share, as adjusted based upon the number of total rentable square feet within the Premises, is _____%.

Please acknowledge your acceptance of this letter by signing and returning a copy of this letter.

Very truly yours,

HUDSON 1455 MARKET, LLC, a Delaware limited liability company

By: Hudson Pacific Properties, L.P.,
a Maryland limited partnership,
Its: Sole Member

By: Hudson Pacific Properties, Inc.,
a Maryland corporation
Its: General Partner

By:_____
Name:_____
Its:_____

Accepted and Agreed:

By:_____
Executive Director/CEO
San Francisco Municipal
Transportation Agency

Dated:_____

EXHIBIT D

EXCLUSIONS FROM OPERATING COSTS

The following shall be excluded from Operating Costs for the purpose of determining City's proportionate share of increases in Operating Costs:

1. Capital Costs. Capital Expenses, which for the purposes of this Exhibit shall be defined as any expenditure which (x) provides a benefit in excess of one year, (y) is a non-recurring expenditure (i.e., such that the subject expenditure is not expected to recur in a two (2) year period), and (z) cost, in the aggregate including all associated and related expenditures for consulting fees, permits, installment payments, etc., in excess of $10,000 ("Capital Expenses"), except as specifically included in items (i) and (ii) of this Item 1 and Item 2 below.

(i) Capital Costs for New Building Regulations. Operating Costs may include the cost of capital improvements required by Laws enacted or first amended or interpreted to apply to the Building on or after the date of the Lease (which shall not be interpreted to refer to Laws generally applicable to the Building but for which compliance was not previously triggered by the scope of alterations or improvements or the like), amortized over the useful life of the improvement, plus interest in the amount described below, except to the extent such capital improvements are attributable to or are made for the primary benefit of a tenant or occupant other than City.

(ii) Capital Costs Which Reduce Operating Costs. Operating Costs may include the cost of capital improvements installed to cause a reduction in other Operating Costs, amortized over the useful life of such improvements, plus interest in the amount described below, provided, however, that the costs of such capital improvements may only be included if, at the time such costs were incurred, Landlord reasonably estimated that the annual savings that would result from the applicable capital improvement (commencing with the first year after the completion of such improvement) would be equal to or exceed the annual amortized amount of the costs to be included in Operating Costs for the applicable capital improvement, and at City's request Landlord shall provide City with a written statement and explanation of Landlord's estimation.

Capital Expenses described in (i) or (ii) above included in Operating Costs shall be amortized over the useful life thereof (as reasonably determined by Landlord, provided that such period shall be within the range used to amortize such costs by landlords of first-class office buildings in the San Francisco financial district in accordance with generally accepted property management practices), together with (A) interest on the unamortized balance of the Capital Expense at the actual interest rate incurred by Landlord in connection with such Capital Expense if the funds for such Capital Expense are borrowed from a third party lender, or (B) presumed interest on the unamortized portion of such Capital Expense at the Bank of America Reference Rate plus two percent (2%) if the funds are not borrowed from a third party lender.

2. Capital Equipment Rental. Rentals and other related expenses for items which if purchased rather than rented, would constitute a Capital Expense (except when needed in connection with normal repairs and maintenance of permanent systems and further excepting equipment that is not affixed to the Building and is used in providing janitorial services or similar services).

3. Casualty Costs. Costs incurred by Landlord in the event any portion of the Building is made untenantable by fire or other casualty, including costs for the repair of the Building.

4. Eminent Domain Costs. Costs incurred as a result of the exercise of the right of eminent domain.

5. Tenant Improvement Costs. Costs, including, without limitation, interior improvements, base building improvements, code upgrades, permit, license and inspection costs, incurred with respect to the installation of improvements made for tenants or other occupants of the Building or incurred in renovating or otherwise improving, decorating, painting or redecorating space for tenants or other occupants in the Building.

6. Depreciation, Amortization and Interest. Depreciation, amortization and interest payments, except (i) depreciation on paintings, sculptures and other works of art located in the Building's common ground floor lobby, provided the cost of depreciation of such items included in Operating Costs does not materially exceed the cost for such items typically included by landlords of first-class office buildings in the San Francisco financial district), (ii) to the extent provided herein pursuant to items 1(i) and 1(ii) above, and (iii) on materials, tools, supplies and vendor-type equipment purchased by Landlord to enable Landlord to supply services Landlord might otherwise contract for with a third party where such depreciation, amortization and interest payments would otherwise have been included in the charge for such third party's services, provided that when depreciation or amortization is permitted or required, the item shall be amortized over its useful life (as reasonably determined by Landlord, provided that such period shall be within the range used to amortize such costs by landlords of first-class office buildings in the San Francisco financial district in accordance with generally accepted property management practices).

7. Marketing and Leasing Costs. Advertising and promotional expenses, marketing costs, leasing commissions, attorneys' and other professionals' fees, space planning costs and all other costs and expenses in connection with negotiations with present or prospective tenants or other occupants in the Building.

8. Lease Enforcement and Dispute Costs. Litigation costs, attorneys' fees, costs of settlement, judgments and payments in lieu thereof, and other costs and expenses incurred in connection with: (i) lease enforcement; (ii) disputes or potential disputes with prospective, former or current Building tenants or occupants; (iii) disputes or potential disputes with any prospective, former or current employee, agent, contractor or vendor (except to the extent that Landlord reasonably anticipates that, for the majority of the tenants of the Building, the economic benefits of a successful outcome would exceed the costs incurred, in which event reasonable costs and expenses incurred in connection therewith may be included in Operating Costs on the condition that Landlord identify such cost, together with a description of the anticipated economic benefit to be realized, in Landlord's Expense Statement for the Expense Year in which such costs were included); (iv) disputes or potential disputes with any present or future ground lessors or holders of any mortgages or other encumbrances affecting any of the Building; (v) the defense of Landlord's title to the Building or the real property on which it is located; or (vi) other potential or actual disputes, claims, litigation or arbitration pertaining to Landlord or the Building (except to the extent that Landlord reasonably anticipates that, for the majority of the tenants in the Building the economic benefits of a successful outcome would exceed the costs incurred, such as tax disputes where the tenants of the Building would benefit if Landlord prevails, in which event reasonable costs and expenses incurred in connection

therewith may be included in Operating Costs on the condition that Landlord identify such cost, together with a description of the anticipated economic benefit to be realized, in Landlord's Expense Statement for the Expense Year in which such costs were included).

9. New or Additional Costs. Costs-for additional services of a type which were not included in the Base Year (except to the extent that the Base Year is adjusted to reflect such new expenses).

10. Costs of Violations of Rules, Laws or Contracts. Costs, including without limitation fines, penalties and damages, incurred by Landlord due to violation by Landlord or any tenant or other occupant of the Building of the terms and conditions of any lease, ground lease, mortgage or deed of trust, or other covenants, conditions or restrictions encumbering the Building or the real property on which it is located, except to the extent Landlord would have incurred such costs as an Operating Cost absent such violation.

11. Self-Dealing Costs. Overhead and profit increments paid to Landlord or to subsidiaries or affiliates of Landlord, for management or other services, supplies or materials, to the extent the same materially exceed the costs of such goods and/or services rendered by unaffiliated third parties providing the same quality and scope of services and with a comparable level of relevant experience and skill on a competitive, arms-length basis.

12. Concierge or other Concession Costs. Any compensation paid to clerks, attendants or other persons in commercial concessions operated by or for Landlord, including, without limitation, concierge service, athletic or recreation club or luncheon club.

13. Ground Lease. Any ground lease rental or rental under any other underlying leases.

14. Amortization and Interest. Except as specifically permitted by Items 1(i), 1(ii) and 6 above, interest, principal, points and fees on debts or amortization on any mortgage, deed of trust or any other debt instrument encumbering any of the Building or the real property on which it is located.

15. Property Management Fee Cap. Property management costs including wages, salaries, and management office expenses, to the extent that such costs exceed management costs normally payable for comparable management services in comparable buildings in the downtown San Francisco financial district.

16. Reimbursed Costs and Costs Benefitting Other Tenants. All items, services and benefits (i) for which City or any other tenant or occupant of the Building separately reimburses Landlord (other than through such tenant's or occupant's proportionate share of Operating Costs), or (ii) which are not offered to City (or for which City is charged directly), but which are provided to another tenant or occupant of the Building without reimbursement.

17. Signage. The costs of acquiring and installing signs in or on any of the Building identifying the owner of the Building or any tenant or other occupant of the Building.

18. Garage Operations. Services provided, taxes attributable to, and costs incurred in connection with the operation of the parking garage in the Building other than reasonable repair and maintenance of the parking garage (including, without limitation, payroll for clerks, attendants, book keeping, parking, insurance premiums, parking management fees, and parking tickets), except to the extent such costs exceed the greater of actual revenue or imputed revenue. If any entity receives free parking or parking at a reduced charge, the full value of such free or reduced charge parking shall be deemed revenue of the garage for the purposes hereof.

19. ADA Costs. Costs incurred in connection with upgrading the Building to comply with disabled access, life, fire and safety codes in effect prior to the date of the Lease, and costs incurred in connection with upgrading the Building to comply with the Americans with Disabilities Act of 1990 and Title 24 of the California Code of Regulations (or its successor), the San Francisco Sprinkler Ordinance and the San Francisco Unreinforced Masonry Building Ordinance.

20. Late Payment. Penalties or fees incurred as a result of Landlord's negligence, inability or unwillingness to make payments, including tax payments, when due.

21. Hazardous Materials Costs. Costs arising from the presence of or incurred in connection with the abatement or remediation of Hazardous Material in or about the Building, including, without limitation, groundwater or soil conditions ("Hazardous Materials Costs"); provided, however, Operating Costs may include minor costs attributable to those actions taken by Landlord to comply with any laws, rules and regulations or otherwise commonly performed pursuant to prudent property management practice, provided such actions are incidental to the ordinary operation and maintenance of the Building (and not triggered by or made in connection with tenant improvements or a particular special use by a tenant or occupant, such as a laboratory, dental or medical practice, cleaners or photo processing), including (i) costs of routine monitoring of and testing for Hazardous Material in or about the Building and (ii) costs incurred in removing and disposing of de minimis amounts of Hazardous Materials from the Building when such removal is directly related to such ordinary maintenance and operation of the Building.

22. Charitable and Political Contributions. Landlord's charitable or political contributions.

23. Available Warranties. Costs for repairs that are reimbursed by a contractor or manufacturer pursuant to a warranty.

24. Art. Costs for sculpture, paintings or other objects of art, other than de minimis costs of routine maintenance of and insurance premiums for art work and decorations on display in the Common Areas.

25. Sale and Financing Costs. All direct costs of financing, refinancing, selling, exchanging or otherwise transferring ownership of the Building or the real property on which it is located or any interest therein or portion thereof, including broker commissions, attorney's fees and closing costs.

26. Bad Debts and Reserves. Bad debt loss, rent loss, sinking funds or reserves for bad debts, rent loss, capital items or further Operating Costs.

27. Violation of Law. Costs, penalties or fines arising from the violation by Landlord or any tenant or other occupant of the Building of any applicable governmental rule, regulation, law or authority, except to the extent such costs reflect costs that would have been incurred by Landlord absent such violation.

28. Overhead. Landlord's general corporate overhead and general and administrative expenses not directly related to the operation or management of the Building.

29. Non-Customary Costs. Any other expense that would not customarily and in good faith be considered a maintenance or operating expense.

30. Special Service Expense Items. In addition to the foregoing, Landlord shall make good faith efforts (i) to exclude from Operating Costs those items, services or benefits ("Special Service Expense Items") that are incurred solely for the direct benefit of specific types of tenants or users in the Building ("Special Service Users"), or (ii) to equitably reduce Operating Costs to reflect materially disproportionate use of Special Service Expense Items by Special Service Users (when compared to the typical Building tenant). Special Service Users may include, but shall not be limited to retail tenants, medical or dental offices, server farms or co-location facilities.

EXHIBIT E-1

RULES & REGULATIONS

RULES AND REGULATIONS
1455 MARKET STREET

Tenant shall faithfully observe and comply with the following Rules and Regulations. Landlord shall not be responsible to Tenant for the nonperformance of any of these Rules and Regulations by any other Tenants or Occupants of the Property; provided, however, that if such nonperformance unreasonably disturbs or interferes with Tenant's use or enjoyment of the Premise, upon request by Tenant, Landlord shall exercise reasonable efforts to enforce the Rules and Regulations against Other Tenants or Occupants. In the event of any conflict between these Rules and Regulations and the other provisions of the Lease, the Lease shall control.

1. Landlord will furnish Tenant with up to 200 card access keys to the Building and the Premises, free of charge. No additional locking devices shall be installed without the prior written consent of Landlord. Landlord may make reasonable charge for any additional lock or any bolt installed on any door of the Premises without the prior consent of Landlord. Tenant shall in each case furnish Landlord with a key for any such lock. Tenant, upon the termination of its tenancy, shall deliver to Landlord all keys to doors in the Project and the Premise that shall have been furnished to Tenant together with security codes for security systems installed by Tenant in accordance with the Lease. The Tenant shall bear the cost of any lock changes or repairs required by Tenant.

2. Wherever the word "Tenant" occurs in these Rules and Regulations, it is understood and agreed that it shall mean Tenant and all of Tenant's employees, agents, contractors, licensees, invitees, representatives, officers, directors, shareholders, partners, and members.

3. Any Tenant, its employee, agents or any other persons entering or leaving the Building at any time may be required to sign in and out at the Security Station in the Main Lobby. Access to the Building may be refused unless the person seeking access has proper identification or has a previously arranged pass for access to the Building. Landlord will furnish passes to persons for whom Tenant requests same in writing. All requests must be received twenty-four (24) hours in advance. Tenant shall be charged Landlord's actual costs for the replacement of lost building access cards. Tenant shall be responsible for all persons which Tenant requests passes for and shall be liable to Landlord for all acts of such persons. The Landlord and its agents shall in no case, be liable for damages for any error with regard to the admission to or excluding from the Building or any person, except to the extent caused by the gross negligence or willful misconduct of Landlord or its agents.

4. In case of invasion, mob, riot, public excitement, or other commotion, Landlord reserves the right to reasonably prevent access to the Building or the Property during the continuance thereof by any means it deems necessary for the safety and protection of life and property.

5. Tenant shall comply with all safety, fire protection and evacuation procedures and regulations established by Landlord or any government agency.

6. The common area of the Property shall not be obstructed by Tenant or used for any purpose other than for ingress to and egress from the Premises. No loitering shall be permitted in the common area for the purpose of smoking or for any other purpose. Landlord shall in all cases retain the right to control and prevent access to the common areas of all persons whose presence in the judgment of Landlord would be prejudicial to the safety, character, reputation and interests of the Project and its tenants, provided that nothing herein contained shall be construed to prevent such access to persons with whom Tenant normally deals in the ordinary course of its business, unless such persons are engaged in illegal activities or, in Landlord's judgment, are intoxicated or under the influence of liquor or drugs. Tenant shall not go upon the roof of the Project, except in areas that Landlord may designate as "common area" from time to time or otherwise in accordance with the specific requirements of such Tenant's lease.

7. Landlord reserves the right to exclude or expel from the Property any person who, in the judgment of Landlord, is intoxicated or under the influence of liquor or drugs, or who shall in any manner do any act in violation of any of these Rules and Regulations.

8. Tenants, its employees and agents shall not loiter in or on the entrances, corridors, sidewalks,
   Lobbies, courts, halls, stairways, elevators, vestibules or any Common Areas for the purpose of smoking tobacco products or for any other purpose, nor in any way obstruct such areas, and shall use them only as a means of ingress and egress for the Premises.

9. The Premises shall not be used for manufacturing or for the storage of retail merchandise except as such storage may be incidental to the use of the Premises provided Tenant has received approval from the Landlord.

10. All moving activity into and out of the Building shall be scheduled with Landlord and done only at such time and in such manner as Landlord reasonably designates. Landlord shall have the right to reasonably prescribe the weight, size and position of all safes and other heavy property brought into the Building and also the times and manner of moving the same in and out of the Building. Safes and other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly

distribute the weight; provided the Landlord shall have no right to require Tenant to move or re-install any such object from the place it is located as of the date of the Lease. Landlord will not be responsible for loss of or damage to any such safe or property in any case. Any damage to any part of the Building, its contents, occupants or visitors by moving or maintaining any such safe or other heavy property shall be the sole responsibility and expense of the Tenant.

11. The requirements of Tenant will be attended to only upon written request to the Building management office at the Property. Employees of Landlord shall not perform any work or do anything outside their regular duties unless under special instruction from Landlord.

12. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by Tenant in any public part of the Building or seen from outside the Premises without the prior written consent of the Landlord, provided that Landlord hereby approves all of the existing signage on the floors. Tenant shall not distribute, solicit, peddle, or canvass any other Tenant of the Property and shall reasonably cooperate with Landlord and its agents to prevent same.

13. No awnings or other projection shall be attached to the outside walls of the Building without the prior written consent of Landlord, and no curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises other than Landlord standard drapes or the curtains, blinds, shades or screens existing as of the date of the Lease. Neither the interior nor exterior of any windows shall be coated or otherwise unscreened after the date of the Lease without the prior written consent of Landlord. Tenant shall abide by Landlord's reasonable regulations concerning the opening and closing of window coverings which are attached to the windows in the Premises, if any, which have a view of any interior portion of the Building or Common Areas.

14. Except for within the designated cafeteria of the building, no cooking shall be done or permitted on the Premises, nor shall the Premises be used for the storage of merchandise, for lodging or for any improper, objectionable or immoral purposes. Notwithstanding the foregoing, Underwriters' Laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar items for Tenant and its employees in compliance with all applicable Requirements.

15. Tenant's use of the Project elevators for freight shall be subject to such reasonable scheduling as Landlord shall deem appropriate. The persons employed by Tenant to move equipment or other items in or out of the Project must be acceptable to Landlord. Landlord shall have the right to prescribe the weight, size and position of all equipment, materials, supplies, furniture or other property brought into the Project. Heavy objects shall, if considered necessary by Landlord, stand on wood strips of such thickness as is

necessary to properly distribute the weight of such objects. Landlord will not be responsible for loss of or damage to any such property from any cause, and all damage done to the Project by moving or maintaining Tenant's property shall be repaired at the expense of Tenant.

16. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises.

17. All loading and unloading of merchandise, supplies, materials, garbage and refuse and delivery of same to the Premises shall be made only through such entryways and elevators and at such time as Landlord shall designate. In its use of the loading areas, Tenant shall not obstruct or permit the obstruction of said building areas, and at no time shall Tenant park vehicles therein except for loading and unloading in Building Designated Areas, keeping the Armored Car Area of the Loading Dock unobstructed at all times.

18. Tenant shall not throw anything out of doors, windows, skylights or down passageways.

19. Tenant shall not use in any space, or in the common areas of the Project, any hand trucks except those equipped with rubber tires and side guards or such other material handling equipment as Landlord may approve. No bicycles, motorcycles, or other vehicles of any kind shall be brought by Tenant into the Project or kept in or about the Premises except in areas of the Project specifically designated for such purpose.

20. Tenant shall not bring into or keep within the Property, the Building or the Premises any animals (other than service animals), birds, aquariums, or except in areas designated by Landlord.

21. Tenant shall not use or keep in the Premises or Property any kerosene, gasoline or hazardous material, flammable or combustible fluid or materials or use any method of heating or air conditioning other than that supplied by Landlord. Tenant shall not use, keep or permit or suffer the Premises to be occupied or used in a manner offensive or objectionable to Landlord or other occupants of the Property by reason of noise, odors, and/or vibrations, or interfere in any way with other Tenants or those having business on the Property.

22. Trash shall store all its trash and garbage within the Premises until daily removal of same by Tenant to such location in the Project as may be designated from time to time by Landlord. No material shall be placed in the Project trash boxes or receptacles in such material is or such nature that it may not be disposed of in the ordinary and customary manner of removing and disposing of trash and garbage in the City of San Francisco

without being in violation of any law or ordinance governing such disposal. Further, Tenant shall sort and separate its trash and recycling into such categories as required by legal requirements or Landlords sustainability practices. Landlord reserves the right to refuse to collect trash from any Tenant that is not properly separated and sorted. To the extent that any costs, fines, penalties or damages are imposed on Landlord or Tenant by reason of Tenant's failure to comply with the foregoing, Tenant shall pay all such amounts.

23. No auction, liquidation, fire sale, going-out-of-business or bankruptcy sale shall be conducted in the Premises without the prior written consent of Landlord.

24. Canvassing, soliciting, peddling or distribution of handbills or any other written material in the Project is prohibited and Tenant shall cooperate to prevent same.
25. Except with prior consent of Landlord, Tenant shall not sell, or permit the sale from the Premises of, or use or permit the use of any common area adjacent to the Premises for the sale of, newspapers, magazines, periodicals, theatre tickets or any other goods, merchandise or service, nor shall Tenant carry on, or permit or allow any employee or other person to carry on, business in or from the Premises for the service or accommodation of occupants or any other portion of the Project, nor shall the Premises be used for manufacturing of any kind, or for any business or activity other than that specifically provided for in the Lease.

26. Tenant must comply with the State of California "No-Smoking" law set forth in California Labor Code Section 6404.5, and any local "No-Smoking" ordinance which may be in effect from time to time and which is not superseded by such State law.

27. Tenant shall not permit the use or the operation of any coin operated machines on the Premises, including, without limitation, vending machines, video games, pinball machines, or pay telephones without the prior written consent of Landlord.

28. Tenant shall immediately, upon request from Landlord (which request need not be in writing) reduce its lighting in the Premises for temporary periods designated by Landlord, when required in Landlord's judgment to prevent overloads of the mechanical or electrical systems of the Project. Tenant shall not waste electricity, water or air conditioning, shall cooperate with Landlord to ensure the most effective operation of the Project's heating and air conditioning systems, and shall not attempt to adjust any controls not specifically made available to Tenant for such purpose.

29. Upon notice to Tenant of the requirements of such programs imposed by the City and County of San Francisco with respect to the Project, Tenant shall comply with Landlord's transportation management program, parking management brokerage agreement program and similar programs.

30. Tenant shall have the right to connect the telephone system in the Premises to the telephone cable distribution system serving the Project at the location of the telephone cable terminal on the floor on which the Premises are situated, provided that no connection shall be made and no work otherwise affecting the telephone cable terminal or distribution system shall be undertaken without reasonable prior notice to Landlord. Landlord or Landlord's contractor with responsibility for maintenance of the telephone distribution system may require supervision of the connection by Landlord or the maintenance contractor, and may impose such other reasonable conditions as may be necessary to protect the telephone cable terminal or distribution system. Any damage to the telephone cable terminal or distribution system caused by the act or omission of Tenant shall be repaired at the expense of Tenant.

31. Tenant must comply with requests by Landlord concerning the informing of its employees of items of importance to Landlord.

32. The toilet rooms, urinals, wash bowls and other apparatus shall not be used for any purpose other than that for which they were constructed, and no foreign substance of any kind whatsoever shall be thrown therein. The expense of any breakage, stoppage or damage resulting from the violation of this rule shall be borne by the Tenant who, or whose employees, agents, visitors or licensees shall have caused.

33. These Rules and Regulations are in addition to, and shall not be construed in any way to modify, alter or amend, in whole or part, the terms, covenants, agreements and conditions of any lease of premises in the Project.

Landlord reserves the right at any time to change or rescind any one or more of these Rules and Regulations, or to make such other and further reasonable Rules and Regulations as in Landlord's reasonable judgment may from time to time be necessary for the management, safety, care and cleanliness of the Premises, Building, the Common Area and the Property, and for the preservation of good order therein, as well as the convenience of other occupants and tenants therein, provided that such modifications and additions are consistent with the provisions of the Lease, and do not increase Tenant's costs or materially impair Tenant's rights or materially increase Tenant's obligations under the Lease. Tenant shall not be required to abide by any new or changed Rules and Regulations unless Tenant has received written notice of and a copy of such new or change Rules and Regulations at least thirty (30) days before Landlord seeks to enforce them. The Rules and Regulations shall not discriminate against, or be enforced so as to discriminate against, Tenant or its employees, agents or invitees.

EXHIBIT E-2

CRITICAL AWARENESS PROGRAM

The mechanical, electrical and plumbing ("MEP") and automation systems of the Building must be maintained and operated in a manner to provide optimal reliability and availability, while mitigating the risk of incidents resulting from human error. To facilitate such operation and maintenance, the Building is subject to certain processes and procedures as set forth in the Building's Critical Awareness Program ("CAP").

The Building's CAP processes and procedures include the following:

1. **Critical Environment Work Authorization (CEWA)**. This process must be followed if construction or maintenance activities may affect MEP or automation systems supporting the data center operations within the Building. It includes:

- Documenting the scope of work and detailing the parties involved and the steps to be performed.
- Identifying associated risk and steps taken to mitigate that risk.
- Providing technical documentation (*e.g.*, drawings, methods of procedure, schematics).
- Documenting date and time schedules.
- Outlining approval procedures.

2. **Identification of Critical Equipment**. Equipment such as switches, circuit breakers, valves and automation systems that support the data center operations must be clearly identified. This equipment will not be operated, repaired or replaced without the approval of Landlord or its representative.

3. **Maintenance Personnel and Contractors**. All maintenance personnel and tradesmen performing work at the site must attend critical awareness training provided by the Landlord (if required by Landlord) and must follow CAP requirements when working on MEP or automation systems supporting the data center operations in the Building.

4. **Communication of Incidents**. Events that impact the MEP or automation systems supporting the data center operations must be communicated to Landlord within specific time periods. These events include, but are not limited to, power disturbances, equipment failures, accidents during maintenance or construction, and fire alarms.

5. **Construction or Maintenance Activities**. Construction or maintenance activities that produce vibration or airborne particulates or that release water that may migrate into areas of the Building containing data center equipment or operations or the MEP or automation systems supporting them, must be communicated in advance to Landlord. Landlord will have the opportunity to demonstrate the potential impact is significant and to develop alternative approaches to the proposed activities.

6. **False Fire Alarms**. Building evacuations resulting from false fire alarms impact data center operations in the Building. Policies and procedures for securing the fire alarm system during certain activities must be followed.

EXHIBIT F-1

INITIAL PREMISES WORK LETTER

(1455 Market Street, San Francisco)

This Work Letter is part of the Office Lease dated as of _____, 2011 (the "Lease"), executed concurrently herewith, by and between Hudson 1455 Market, LLC, as Landlord, and the City and County of San Francisco, as Tenant, covering certain Premises described in the Lease. All terms that are capitalized but not defined herein shall have the same meanings given to them in the Lease.

Landlord, at its sole cost and expense (except as otherwise specifically set forth herein or in the Lease), and through its general contractor, City Building Inc. (CBI) hereby approved by City or such other qualified general contractor selected by Landlord and reasonably approved by City (the "Contractor"), shall furnish and install within the Premises the improvements shown on the Construction Documents finally approved by City pursuant to paragraph 1 below (including any approved Change Orders) (the "Leasehold Improvements" or "Leasehold Improvement Work"), in accordance with the provisions of this letter and the Lease.

1. Plans and Specifications

a. Schematic Design Documents. Prior to Lease execution, Landlord and City, through City's consultant HNTB _B&C and its subcontractor Kwan Hemni Architecture Planning Inc. (the "City's Consultant") have prepared a mutually acceptable space plans and initial specifications in accordance with the program requirements of City; with sufficient detail to such space plans for the Contractor to provide a Rough Order of Magnitude ("ROM") construction budget for the work shown thereon (the "ROM Budget"). City and Landlord hereby approve the schematic design plans dated January 14, 2011 and specifications for the Leasehold Improvement Work, as modified, dated February 25, 2011 prepared by City's Consultant (together the "Schematic Design Documents). City and Landlord hereby approve the ROM Budget for the Leasehold Improvement Work of $9,899,153.00 dated 11/29/2010, prepared by Contractor. Such approvals of the Schematic Design Documents and the ROM Budget shall not limit City's or Landlord's obligations hereunder.

b. Design Development and Construction Documents. Landlord shall select the necessary architectural, engineering, consultant and/or vendor services (the "Design Team"), which shall be subject to City's reasonable approval, for the completion of the work contemplated herein and have approved contracts with each member of the Design Team for such work. In the unlikely event that additional services are required, Landlord and City shall in good faith work together to select such party and such additional contract(s) shall be subject to review, comment, and approval by City, which approval shall not be unreasonably withheld or delayed.

c. Design Development Documents. Based on the approved Schematic Design Documents and any adjustments approved by City and Landlord, Landlord shall promptly cause RMW Architects (the "Architect") and its qualified and licensed engineer reasonably approved by City (the "Engineer") to prepare and submit to City for its approval plans and specifications expanding in greater detail the representations of the Schematic Design Documents and fixing and describing the size and character of the Leasehold Improvements, including, without limitation, architectural, structural, mechanical, electrical, fire and life safety systems, materials and such other elements as may be appropriate, together with fully developed floor plans, interior elevations, reflected ceiling plans, wall and building sections (collectively,

the "Design Development Documents"). The Design Development Documents shall show, without limitation, the following:

i. location of all demolition;

ii. location and type of all partitions and treatment of remaining existing partitions;

iii. location and type of all doors, with door hardware specifications and treatment of remaining existing doors and hardware;

iv. location and work in all of telephone, risers, equipment rooms, and the like with all special electrical and cooling requirements, if required;

v. location and type of all electrical outlets, switches, telephone outlets and lights and treatment of remaining existing electrical components, if any;

vi. location and type of all computer rooms and other equipment requiring special electrical and cooling requirements;

vii. location, weight per square foot and description of any equipment or filing system which would exceed the buildings live and dead load capacity;

viii. requirements for special air conditioning or ventilation for the Premises;

ix. location of all heating and air conditioning zoning and supply and exhaust vents;

x. location and type of sound batting;

xi. location, type and color of floor covering;

xii. location, type and color of all window treatment;

xiii. ceiling plans including light fixtures;

xiv. location of sprinklers;

xv. location, type and color of wall coverings, if any;

xvi. location, type and color of paint or finishing;

xvii. all Building-standard and non standard signage;

xviii. location and type of plumbing;

xix. location and type of kitchen equipment;

xx. any modifications to the existing raised floor areas;

xxi. location, capacity and type of connections to Landlord’s water tower, chilling equipment, electrical service, and back up generator;

xxii. location, capacity and type of connections for an Uninterruptable Power Supply;

xxiii. location and type of all wiring for computers and telephones;

xxiv. location and type of all roof top equipment;

xxv. location type of all improvements and equipment to meet the City's Bike Ordinance requirements;

xxvi. location and type of all LEED or other sustainability improvements required by City and reasonably approved by Landlord;

xxvii. location and type of all work stations, furniture, copiers, printers and other equipment to be acquired or reused;

xxviii. any critical dimensions which are important to the cost of construction;

xxix. such other interior improvement work required by City;

xxx. disabled accessibility work, including any improvements to the entrance doors, lobbies, corridors, drinking fountains, telephone banks, elevators, elevator vestibules, stairs, stair vestibules and restrooms on all floors of the Building in which the Premises are located; and

xxxi. all Base Building Work required under this Work Letter.

The Design Development Documents shall be prepared in accordance with the provisions below.

d. Design in Accordance with City's Requirements. Landlord's Architect shall design the Premises and prepare all plans and specifications hereunder, including the Design Development Documents and Construction Documents, in conformity with the Schematic Design Documents and City's program requirements and Landlord's Building requirements, as described below. Landlord's Architect shall consult and hold periodic meetings with City and its architectural, equipment, furniture or design consultants and any LEED consultants and Landlord's project manager, building manager, building engineers and consultants as needed, in the preparation of the Design Development Documents and Construction Documents. In addition to routine and customary exchanges of information, Landlord's Architect shall submit the Design Development Documents to City, Landlord, and Contractor for comment when such plans and documents are fifty percent (50%) complete (the "50% Design Development Documents"). Landlord and City shall provide their respective comments to Architect within fifteen (15) business days of receipt of the 50% Design Development Documents. In addition, within fifteen (15) business days of Contractors' receipt of the 50% Design Development Documents, Contractor shall submit to City and Landlord for comment an update of the ROM Budget based on the 50% Design Development Documents. Such revised construction budget based on the 50% Design Development Documents shall hereinafter be referred to as the "Revised ROM Budget". In the event such Revised ROM Budget exceeds the ROM Budget, all parties shall cooperate in good faith to identify and implement changes to the Design Development Documents as required to satisfactorily reduce the cost of the work to that of the ROM Budget. Upon 100% completion of the Design Development Documents, Landlord's Architect shall submit the Design Development Documents to City, Landlord, and Contractor for comment. Landlord and City shall provide their respective comments to Architect within thirty (30) days of receipt of the 100% Design Development Documents. In addition, within thirty (30) days of Landlord's receipt of the 100% Design Development Documents, Landlord shall submit to City for review and comment an update of the Revised ROM Budget based on such 100% Design Development Documents. Such revised construction budget based on the 100% Design Development Documents shall include all costs both hard and soft and shall hereinafter be referred to as the "Estimated Construction Cost". In the event such Estimated Construction Cost exceeds the Revised ROM Budget, all parties shall cooperate in good faith to identify and implement changes to the Design

Development Documents which are required to satisfactorily reduce the cost of the work to that of the Revised ROM Budget, except as otherwise acceptable to City.

e. Design in Accordance with Landlord's Requirements. City acknowledges that the Building has certain requirements, including but not limited to tenant security, for the planning, construction and occupancy of the Premises. City and Landlord shall cooperate in the design and construction of the Leasehold Improvements to meet the Landlord's requirements for the Building and Landlord's obligations under other existing tenant leases.

f. Construction Documents. Based on the approved Design Development Documents and any further adjustments approved by City and Landlord, Landlord shall promptly cause its Architect and Engineer to prepare and submit to City for its approval final plans, specifications and working drawings for the Leasehold Improvements, setting forth in detail all aspects of the design, function and construction of the Leasehold Improvements, in form sufficient for bidding of all elements of construction and to obtain all required permits, and in conformity with all of the requirements of this Work Letter (collectively, the "Construction Documents"). Such Construction Documents shall be subject to approval by City and Landlord in accordance with Paragraph 1.g below.

g. Approval of Plans and Costs. The Construction Documents (and any Landlord Change Orders thereto, as described below) shall be subject to approval by City, which approval shall not be unreasonably withheld or delayed, in accordance with the following procedure. After submission of the Design Development Documents, the Estimated Construction Cost, Construction Documents or proposed Change Order by Landlord to City, City shall have fifteen (15) business days to disapprove any element thereof. If City does so disapprove of any element, then City shall notify Landlord within such period of its disapproval and of the revisions that City reasonably requires in order to approve such item consistent with the terms of this Work Letter. As soon as reasonably possible thereafter, but in no event later than fifteen (15) business days after receipt of such notice, Landlord shall submit to City documents incorporating the required revisions. Such revisions shall be subject to approval by City, which shall not be unreasonably withheld or delayed. Such revisions shall be deemed approved by City if City fails to notify Landlord of any objection within five (5) days after receipt of the revision. Landlord, through Contractor, shall obtain three (3) guaranteed maximum or lump sum construction bids from each trade subcontractor and/or vendor for work exceeding $25,000, unless the parties otherwise agree that fewer bids shall be obtained. Landlord shall submit to City a bid analysis and detailed guaranteed maximum price contact(s) for the Leasehold Improvements based on the Construction Documents, which bid shall include shall include all costs both hard and soft (including, without limitation, the Project Management Fee described below) and a Contractor's contingency ("Contingency") in amount equal to five percent (5%) of the aggregate amount of the construction costs (the "GMP Construction Cost") and such GMP Construction Cost shall be subject to approval by City, which approval shall not be unreasonably withheld or delayed.

h. Design in Accordance with ADA Requirements. Landlord acknowledges that City requires that the Construction Documents be reviewed by the City's Mayor's Office of Disability ("MOD") for compliance with the Americans With Disabilities Act of 1990 ("ADA") and other related laws prior to submittal to the Department of Building Inspection for construction permits. Upon completion of the (i) Construction Documents, and (ii) Landlord's Base Building Title 24 path of travel plans and specifications typically required for any tenant improvements with an estimated cost of $6,500,000, Landlord shall cause Architect to submit such plans and an application to MOD for review, comment and modification. If MOD requires revisions to the Construction Documents or modifications or additional improvements to the Premises or the Building, Landlord shall cause Architect to revise the Construction Documents and/or design and prepare all additional plans and specifications as required by such MOD

review, in conformity with ADA and other legal requirements and resubmit the revised Construction Documents to MOD for stamp before submittal for building permit. Such revised plans and additional plans shall thereafter be referred to as the "Construction Documents". Upon MOD's approval of the Construction Documents, Architect shall notify Landlord and City of such approval and shall identify the additional work, if any, specified therein as a result of the MOD review.

i. Payment for Plans. The costs of preparing the Schematic Design Documents, the ROM Budget, the Design Development Documents, the Construction Documents, and other related costs shall be paid by Landlord and shall be deducted from the Allowance (as defined in paragraph 5.a below), subject to City's prior reasonable approval of such costs as provided in paragraph 5.b below. Landlord shall evidence such costs by invoices and other substantiation as City may reasonably require.

j. Landlord's Project Management Services and Costs. Landlord or Landlord's agent shall provide professional project management services ("Project Management Services") for the entire Leasehold Improvement process including but not limited to (i) preparation and distribution of project scopes, budgets, and schedules, (ii) development and execution of various approved contracts, (iii) compliance and reporting for all Landlord's Building requirements, (iv) compliance and reporting for all Lease requirements, (v) monitoring of the project to ensure project stays on time and within budget, (vi) review and validation of invoices and/or contractor payments, (vii) preparation and/or review of meeting minutes and required reporting, (viii) review reports, contract drawings, specifications, estimates and other design deliverables to ensure designs are of high professional caliber and economically sound in design concept and provide Landlord or City information on potential construction and/or long term maintenance related issues, (ix) attend and manage all project meetings throughout the design and construction process, (x) serve as project representative for all interaction with user, architecture and engineering firms, material testing firms, code enforcement agencies, utilities agencies, etc, (xi) develop, prepare, review and negotiate fees and change orders with A-E consultants, testing/inspection firms, CEQA consultants, contractors, etc., and process and file all related contracts and documentation, (xii) facilitate the timely resolution of any planning, design, construction, and schedule issues and/or disputes, (xiii) supervise construction activities to insure Contractor(s) work meets the requirements of the Lease and this Work Letter and as is described on the plans (xiv) coordinate Substantial Completion deliverables and insure completion of punchlist items, and (xv) coordinate the delivery of final As- Built drawings and warranties for all work to both Landlord and Tenant. Landlord shall be compensated for the Project Management Services in the amount equal to (i) eight percent (8%) of the first $50.00 per rentable square foot of the cost of the Leasehold Improvements and the Additional Construction Allowance utilized by City in excess of $50.00 per rentable square foot, plus (ii) one percent (1%) of the cost of the Leasehold Improvements funded directly by City (without an allowance) up to $5 million, plus (iii) two percent (2%) of the additional cost of the Leasehold Improvements funded directly by City in excess of $5 million as shown in the ROM Budget, and (iv) then four percent (4%) of the additional cost of the Leasehold Improvements thereafter (the "Project Management Fee"). The Project Management Fee shall be included in the budget for the Leasehold Improvements.

The Project Management Fee shall also cover any construction operations costs such as electrical energy consumed in connection with the construction work, use of elevators, refuse removal, decommissioning of current operations, extraordinary costs associated with construction containment, construction signage, storage of construction and reuse materials, security, parking, and the like.

k. Changes to Approved Construction Documents.

i. City Change Orders. If following its approval of the Construction Documents, City inquires (orally or in writing) about any change, addition or alteration thereto relating to the design or specifications of the Leasehold Improvement Work, Landlord shall cause the Architect and Contractor to promptly supply a good faith ROM Change Order estimate of the change and any related Tenant Delay for such work. If City desires to further explore such change, addition or alteration to the Leasehold Improvement Work following receipt of the ROM Change Order estimate, City may request such change, addition or alteration by a written request to Landlord ("City Change Order"), and Landlord shall cause the Architect or Engineer, as applicable, to prepare plans and specifications with respect to such change, addition or alteration. Within fifteen (15) business days of City's request, Landlord shall notify City of the estimated incremental increase (or decrease) in the GMP Construction Cost that would be incurred by reason of such proposed City Change Order and any delay in the anticipated date of Substantial Completion that would result from such City Change Order. Within five (5) business days of receipt of such cost and delay estimates, City shall notify Landlord in writing whether City approves the proposed change. If City approves the proposed change within five (5) business day period, then Contractor shall proceed with such City Change Order as soon as reasonably practical thereafter. If City does not approve such cost within such five (5) business day period, construction of the Leasehold Improvement Work shall proceed in accordance with the original completed and approved Construction Documents. City shall be responsible for the reasonable cost actually incurred by Landlord in the preparation of the plans and specifications relating to any City Change Order, as evidenced by invoices or other substantiation reasonably required by City.

ii. Landlord Change Orders. If following City's approval of the Construction Documents, Landlord requests any change, addition or alteration thereto relating to the design or specifications of the Leasehold Improvement Work ("Landlord Change Order"), Landlord shall provide City with proposed plans and specifications with respect to such change, addition or alteration, together with notice of any delay in the anticipated date of Substantial Completion that would result from such Landlord Change Order. Any such Landlord Change Order shall be subject to City's prior written approval, in accordance with Paragraph 1.g above. No approval by City of any such Landlord Change Order shall relieve or modify Landlord's obligations hereunder to complete the construction of the Leasehold Improvements in accordance with the approved Construction Schedule (as defined below), nor shall any such approval limit any of City's rights or remedies hereunder or under the Lease. Landlord shall be solely responsible for the cost of the Landlord Change Order, including, without limitation, the costs of preparing the plans and specifications relating thereto and any work required to mitigate the impact of such Landlord Change Order on City's design requirements, and no such amount shall be paid or deducted from the Allowance.

iii. Appointment of Representatives. City and Landlord shall each designate and maintain at all times during the design and construction period a project representative ("Representative"), and an alternate for such Representative ("Alternate"), each of whom shall be authorized to confer and attend meetings and represent such party on any matter relating to this Work Letter. The initial Representatives and Alternates shall be:

City: Representative – Chris Nocon
Alternate – Frank Lau
Landlord: Representative – Dan Wright
Alternate – Chris Barton

Each party may at any time and from time to time change its Representative or Alternate by written notice to the other party. Each party's Representative or Alternate shall be available during ordinary business hours so that questions and problems may be quickly resolved and so

that the Leasehold Improvements may be completed economically and in accordance with the Construction Schedule. All approvals made by City's Representative or Alternate shall be made in writing.

2. Permits

a. Responsibility for Obtaining Permits. Landlord shall have the responsibility for obtaining all governmental permits and approvals required to commence and complete the Leasehold Improvement Work, and promptly upon receipt thereof shall deliver copies of all of such permits and approvals to City. Landlord shall use its best efforts to promptly obtain all such approvals and permits and Landlord shall have the responsibility of calling for all inspections required by City's Bureau of Building Inspection. The costs of any permits required or obtained by Landlord in connection with the Leasehold Improvements, but not the Base Building Work, shall be deducted from the Allowance.

b. First Source Hiring Ordinance. The City has adopted a First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98) which establishes specific requirements, procedures and monitoring for first source hiring of qualified economically disadvantaged individuals for entry level positions. Within thirty (30) days after the San Francisco Municipal Transportation Agency (SFMTA) adopts a First Source Hiring Implementation and Monitoring Plan in accordance with the First Source Hiring Ordinance, Landlord shall enter into a First Source Hiring Agreement meeting applicable requirements of Section 83.9 of the First Source Hiring Ordinance in connection with certain building permit applications.

3. Construction

a. Construction of Leasehold Improvements. Landlord shall promptly commence construction of the Leasehold Improvements after the later of the Effective Date and the date of approval of all required permits for construction in accordance with the approved Construction Documents, and shall diligently pursue construction to completion. Landlord shall cause the Leasehold Improvements to be constructed and installed in a good and professional manner in accordance with sound building practice and in conformity with the Construction Documents, as revised by any approved Change Orders, and the terms of this Work Letter. City shall not have any obligation with respect to any such work other than as provided herein.

b. Construction Schedule. Upon approval of the Construction Documents and GMP Construction Cost, Landlord shall promptly prepare and submit to City a construction schedule in sufficient detail for City to track progress and arrange the installation of equipment (the "Construction Schedule").

c. Status Reports; Inspections. Landlord shall keep City reasonably apprised of the status of permit approval and the progress of construction. Landlord or its construction manager shall keep City apprised during the weekly construction meetings with informal updates on the progress of all facets of the construction and any possible delays to Substantial Completion. Landlord or its Contractor shall furnish City with monthly written reports on such progress and the anticipated date of Substantial Completion. From time to time during the design and construction of the Leasehold Improvements, City shall have the right upon reasonable advance oral or written notice to Landlord to enter the Premises at reasonable times to inspect the Premises, provided such inspections do not unreasonably interfere with the construction. Landlord or its Representative may accompany City during any such inspection. In order to coordinate move in activities, Landlord shall provide at least fifteen (15) days advance written notice of the anticipated actual date of Substantial Completion. If Substantial Completion is delayed beyond the date contained in the fifteen day advance notice of Substantial

Completion for any other reason than Tenant Delay, then Landlord shall take all actions (such as storage of furniture and equipment) to mitigate and be responsible for all actual and reasonable, out-of-pocket costs incurred by City resulting from such delay in Substantial Completion. Landlord shall notify City at least 1 day in advance when the Leasehold Improvement Work is in fact Substantially Completed and the Premises are ready for occupancy by City, and City or its representatives shall be permitted to accompany Landlord or its architect on an inspection of the Premises on such date or other mutually agreeable date soon thereafter.

d. General Conditions. The performance of all Leasehold Improvement Work by Landlord shall be subject to the following terms and conditions:

i. All of the Leasehold Improvement Work shall be performed in compliance with all laws, codes, regulations and building requirements (collectively, "Laws") bearing on construction of the Leasehold Improvements;

ii. Without limiting the foregoing, the construction of the Leasehold Improvements shall comply with all requirements of the Americans With Disabilities Act of 1990 and Title 24 of the California Code of Regulations and all other applicable federal, state, local and administrative laws, rules, regulations, orders and requirements intended to provide equal accessibility for persons with disabilities (collectively, "Disabled Access Laws").;

iii. Landlord and its Contractor shall be responsible for all required insurance; and

iv. Landlord shall require at least three (3) competitive bids from subcontractors in each trade in connection with all work in excess of $25,000 performed by Landlord or its Contractor hereunder, unless the parties otherwise agree that fewer bid shall be obtained.

e. Cooperation. Landlord and City shall cooperate at all times in bringing about the timely completion of the Leasehold Improvements. Landlord shall resolve any and all disputes arising out of the construction of the Leasehold Improvements in a manner which shall allow work to proceed expeditiously.

f. Asbestos Related Work. In the event that Landlord or City, its consultants, contractors or subcontractors encounter any asbestos containing materials (ACM) in the Building in connection with the installation of Leasehold Improvements, Landlord agrees to be responsible for all legally required work or other work necessary relating to the proper containment, abatement, removal and disposal of such ACM and all costs thereof. In no event shall any such costs be deducted from the Allowance or otherwise be City's responsibility.

g. Construction Improvements that Disturb or Remove Exterior Paint. Landlord, on behalf of itself and its agents, employees, officers and contractors, shall comply with all requirements of the San Francisco Building Code Chapter 34 and all other applicable local, state, and Federal laws, including but not limited to the California and United States Occupational and Health Safety Acts and their implementing regulations, when the work of improvement or alteration disturbs or removes exterior or interior lead-based or "presumed" lead-based paint (as defined in the Building Code). Landlord agrees to be responsible for all legally required work or other work necessary relating to the proper containment, abatement, removal and disposal of such lead based paints and all costs thereof. In no event shall any such costs be deducted from the Allowance or otherwise be City's responsibility.

4. Base Building Work. Landlord shall be solely responsible for the base, core, shell of the Premises and provision of Building Systems stubbed into the Premises including, without

limitation, earthquake, fire and life safety and other work, and no portion of the Allowance shall be applied to any such costs except as otherwise provided herein. Landlord shall promptly commence construction of the following improvements to the Building ("Base Building Work" or "Base Building Improvements") after the later of the Effective Date and the date of approval of all required permits for construction in accordance with the Base Building construction documents reasonably approved by City, and shall diligently pursue construction to completion. Landlord shall cause the Base Building Improvements to be constructed and installed in a good and professional manner in accordance with sound building practice and in conformity with such approve Base Building construction documents, as revised by any approved Change Orders, and the terms of this Work Letter. City shall not have any obligation with respect to any such work other than as provided herein.

a. Accessibility Improvements. Landlord shall through its approved Contractor furnish and install all improvements that are required to bring the Premises and the Common Areas serving the Premises, including, without limitation, the lobbies, corridors, telephone banks, drinking fountains, elevators, elevator vestibules, stairs, stair vestibules and restrooms, and signage in all such areas, into full compliance with all Disabled Access Laws. All costs of such work shall be performed at Landlord's sole cost and expense, and no such costs shall be deducted from the Allowance. The above notwithstanding, the Leasehold Improvements shall include the work required to bring the interior portions of the Premises into compliance with all Disabled Access Laws and City shall be responsible for the compliance of its furniture and personal property.

b. Window Improvements. Landlord shall through its approved Contractor furnish and install up to five (5) new windows in the 7th Floor Premises of substantially the same size, quality and character as those located on the 5th Floor along the 11th Street side of the Building, according to construction plans and specifications reasonably approved by City and Landlord. The exact windows which shall be replaced shall be mutually determined by Landlord and City. All costs of such work shall be performed at Landlord's sole cost and expense, and no such costs shall be deducted from the Allowance.

c. 7th Floor Common Area Upgrade Improvements. Landlord shall through its approved Contractor furnish and install the improvements to bring the 7th Floor Common Areas serving the Premises, including, without limitation, the lobbies, corridors serving the 7th Floor Premises, elevator exteriors, elevator vestibules, lighting, paint, ceiling treatment, restrooms, card access control and signage in all such areas, to a condition of not less than the 14th Floor common areas. Landlord shall through its architect include the design and specifications for such upgrades in the 50% Design Development Drawings for City's reasonable approval. All costs of such work shall be performed at Landlord's sole cost and expense, and no such costs shall be deducted from the Allowance.

d. 1st and 3rd Floor Common Area Upgrade Improvements. Landlord shall through its approved Contractor furnish and install access control devices at the entrance to the City's Premises and elevator lobby directional signage to City's Locker Room Premises. All costs of such work shall be performed at Landlord's sole cost and expenses, and no such costs shall be deducted from the Allowance.

e. Demising and Decommissioning Improvements. Landlord shall through its approved Contractor furnish and install all improvements that are required to (i) demise the Premises, the path of travel and the Common Areas serving the Premises and (ii) decommission and remove any Bank of America's equipment, wiring, and other materials. All costs of such work shall be performed at Landlord's sole cost and expense, and no such costs shall be deducted from the Allowance.

f. Code Required Improvements. Landlord shall through its Contractor furnish and install all improvements that are required to bring the existing Premises below the raised floor, the Common Areas, and the Building Systems serving the Premises into full compliance with all Laws and Building Codes. By way of an example, if the existing raised flooring needs to be seismically braced to obtain a building permit, Landlord shall complete such work and all costs of such work shall be performed at Landlord's sole cost and expense, and no such costs shall be deducted from the Allowance.

g. Intentionally Omitted.

h. Separately Metering of Electricity. Landlord shall through its Contractor furnish and install load side separate electrical metering for the 7th Floor Premises. Such electrical metering shall be an E-Mon D-Mon Class 3000 or equivalent reasonably acceptable to City. Landlord shall complete such work and all costs of such work shall be performed at Landlord's sole cost and expense, provided, however, Landlord shall only be responsible for the actual costs (without mark up) for all submeters installed in the Building on behalf of City up to $15,000, and any excess costs shall be deducted from the Allowance.

5. Allowance, Costs and Payments

a. Payment for Leasehold Improvement Work; Allowance. Subject to paragraph 4.a above, Landlord shall pay for the cost of constructing and installing the Leasehold Improvements up to a total sum of $1,729,669.00 which is based on (Forty-Four Dollars ($44) per rentable square foot of 7th Floor Premises and Twenty Seven Dollars ($27) per rentable square foot of the Locker Room Premises) (the "Allowance"). In the event that the actual costs to construct and install the Leasehold Improvement Work incurred by Landlord exceed the amount of the Allowance, City shall pay such excess costs upon receipt of required documentation in accordance with paragraph 5.c below. City shall not be responsible for, and the Allowance shall not be applied to, any review, supervision, administration or management fees of any person or entity (other than the Project Management Fee).

b. City's Approval of Costs. The budget for the Leasehold Improvement Work shall be the sum of (i) the GMP Construction Cost approved by City (together with the cost of any approved City Change Orders), and (ii) the Project Management Fee. No Contingency included in the GMP Construction Cost shall be used by Contractor without the prior reasonable approval of City, and prior to Substantial Completion, Landlord shall submit to City a detailed costing of the use of the Contingency. Further, if the GMP Construction Cost includes allowances (for such items as permits) in the approved GMP Construction Cost, Landlord shall also submit to City a detailed costing of the use of any such allowances. If Landlord becomes aware that, through no fault of Landlord or Contractor, the Leasehold Improvements cannot be completed in strict conformity with the most recently approved construction budget, Landlord shall immediately submit to City for its approval a revised construction budget and shall identify to City changes in line items and the reasons for the changes. If further changes are required, Landlord shall seek City's approval, following the same procedures. No costs shall be paid from the Allowance, and City shall not be obligated to pay, any costs in excess of the GMP Construction Cost (together with the cost of any approved City Change Orders) and the Project Management Fee, unless and until City approves the construction budget and any revisions thereto. City shall have the right to approve or disapprove any construction budget or revisions in its reasonable judgment. No such approval or disapproval shall be unreasonably delayed. The most recently approved construction budget shall supersede all previously approved budgets.

c. Progress Payments. Landlord shall pay the approved costs of preparing the Schematic Design Documents, ROM Budget, Construction Documents and the GMP

Construction Cost from the Allowance. After the GMP Construction Cost has been approved, the GMP Construction Cost with a ten percent (10%) retention shall be compared to the Allowance to produce a progress payment ratio which will proportionally pay for the cost of the Leasehold Improvement Work from both the Allowance and from City - withholding 10% for final completion of construction. By way of example, if the total GMP Construction is $6,000,000, and the Allowance is $1,600,000, then City shall pay ("Progress Payments") seventy three percent (73%) of the construction costs as incurred ($6,000,000 less $1,600,000 divided by $6,000,000), less a ten percent (10%) retention, provided that the conditions set forth in Paragraph 5.d below with respect to documentation of costs have been met. City shall make such Progress Payments to Landlord within 30 days of Landlord's submittal of required documentation as provided below. Such applications may not include requests for payment of amounts Landlord does not intend to pay to Contractor because of a dispute or otherwise. Landlord shall promptly apply all such payments from City to the payment of the invoice or invoices to which the payment relates.

d. Required Documentation of Costs. Both prior to and following the exhaustion of the Allowance, Landlord shall promptly deliver to City each application for payment pursuant to paragraph 5.c, which shall include (i) copies of all invoices received by Landlord from Contractor in connection with the construction of the Leasehold Improvements, (ii) satisfactory evidence of payment of such invoices, including commercially reasonable lien waivers, or if such invoices have not been paid, conditional lien waivers, all such lien waivers being in the form prescribed by California Civil Code Section 3262, executed by each subcontractor and material supplier intended to be paid out of the particular disbursement and covering all labor, services, equipment and materials performed or supplied by the particular subcontractor or material supplier since the last previous disbursement (collectively, "Lien Waivers"), and (iii) such additional supporting data which substantiates the Contractor's right to payment as City may reasonably require, such as copies of requisitions from subcontractors and material suppliers.

e. Payment of Retention. City shall pay the remaining ten percent (10%) withheld from City's prorata share of the cost of the Leasehold Improvement Work upon: (i) expiration of the lien period and the absence of any unreleased mechanics' liens or stop notices; and (ii) Substantial Completion (as defined below) of the Leasehold Improvements and completion or correction of all punch list items.

f. No Waiver of Conditions. Each waiver by City of a condition of payment must be expressly made by City in writing. If City makes a payment before fulfillment of one or more required conditions, that payment alone shall not be a waiver of such conditions, and City reserves the right to require their fulfillment before making any subsequent payments. If all conditions are not satisfied, City, acting in its reasonable judgment, may make payment as to certain items or categories of costs and not others.

6. Substantial Completion

a. Construction by the Estimated Commencement Date. Landlord shall use its commercially reasonable efforts to complete the Leasehold Improvement Work on or before the date which is the Estimated Commencement Date contained in the Basic Lease Information. However, in no event shall construction of the Leasehold Improvements be Substantially Completed later than two hundred and seventy days after the Estimated Commencement Date, except as extended by Tenant Delays and Unavoidable Delays (as such terms are defined in Paragraph 7 below). Landlord shall notify City when the Leasehold Improvement Work is in fact Substantially Completed and the Premises are ready for occupancy by City, and City or its representatives shall be permitted to accompany Landlord or its architect on an inspection of the Premises on such date or other mutually agreeable date soon thereafter.

b. Substantial Completion. The Leasehold Improvements shall be deemed to be "Substantially Completed" for purposes hereof when the Base Building Improvements and Leasehold Improvements are sufficiently complete in accordance with the Construction Documents and the terms of this Work Letter so that City can occupy the Premises and conduct its business and (i) Landlord has delivered for City's review evidence that all necessary inspections required for occupancy of the Premises have been completed and signed off as approved by the appropriate governmental authorities, (ii) Landlord has completed a 72 hour "burn off" to dissipate fumes and dust, (iii) Landlord has delivered a HVAC balance report showing the HVAC system is performing as designed, and (iv) the Architect reasonably determines and certifies in writing to City that the Leasehold Improvements have been Substantially Completed in accordance with the Construction Documents to the extent necessary to enable City to occupy the Premises and to conduct its normal business operations therein without unreasonable impairment or interference, but subject to "punchlist" items, the completion of which will not unreasonably interfere with City's normal business operations therein. Landlord shall diligently pursue to completion all such details. Notwithstanding the foregoing, City shall have the right to present to Landlord within thirty (30) days after acceptance of the Premises, or as soon thereafter as practicable, a written "punchlist" consisting of any items that have not been finished in accordance with the Construction Documents and the terms of this Work Letter. Landlord shall promptly complete or cause Contractor to complete all defective or incomplete items identified in such punchlist to City's reasonable satisfaction, and in any event within thirty (30) days after the delivery of such list. City's failure to include any item on such list shall not alter Landlord's responsibility hereunder to complete all Leasehold Improvement Work in accordance with the Construction Documents and the provisions hereof, nor constitute a waiver of any latent defects.

7. Delays in Construction

a. Unavoidable Delays. For purposes hereof, "Unavoidable Delays" shall mean any delays by reason of acts of God, accidents, breakage, repairs, strikes, lockouts, other labor disputes, inability to obtain labor or materials after using diligent and timely efforts, enemy action, civil commotion, protests, riots, demonstrations, or by any other reason without fault and beyond the reasonable control of the party obligated to perform. In the event of any such delay, the party affected by such delay shall give prompt written notice to the other of the occurrence of such event and the projected delay in performance, and thereafter shall keep the other party regularly informed of the status of such Unavoidable Delay.

b. Tenant Delays. Subject to any Unavoidable Delay, City shall be responsible for any actual delay in the construction of the Leasehold Improvements due solely and directly to any of the following (collectively, "Tenant Delays"): (i) a delay by City as Tenant hereunder in granting its reasonable approval of the Construction Documents, the GMP Construction Cost or any other matters requiring City's approval hereunder(beyond the period granted therefor), (ii) City Change Orders to the Construction Documents, provided such delay shall be limited to the number of days consented to by City, (iii) a delay by City as Tenant hereunder in granting its reasonable approval where required to Landlord's Base Building Work (beyond the period granted therefor), or (iv) any material interference by City or City's agents, employees or contractors with the progress or completion of the Leasehold Improvements by Landlord. Such Tenant Delays in the completion of construction of the Leasehold Improvement Work shall extend the date for Substantial Completion hereunder, however City's obligation to pay Base Rent shall commence as of the date the Premises would have been Substantially Complete had it not been for the Tenant Delay. Notwithstanding the foregoing, City shall be responsible and the date for Substantial Completion shall be extended only to the extent any delays are actually caused by Tenant Delays.

8. General Provisions.

a. Notices. Except as may be otherwise specifically provided herein, any notice given under this Work Letter shall be in writing and given by delivering the notice in person, by commercial courier or by sending it by first class mail, certified mail with a return receipt requested, or Express Mail, return receipt requested, with postage prepaid, and addressed to the parties as follows:

City:	SFMTA Real Estate Section 1 South Van Ness Avenue, 8th Floor San Francisco, CA 94103 Re: 1455 Market Street, 7th Floor
Landlord: with a copy to:	c/o Hudson Pacific Properties, Inc. 11601 Wilshire Boulevard, Suite 1600 Los Angeles, California 90025 Attn: Asset Manager – 1455 Market Street c/o Hudson Pacific Properties, Inc. 1438 N. Gower Street, Box 2 Hollywood, California 90028 Attn: Dan Wright, AIA

or such other address as a party may designate to the others as its new address for such purpose by notice given to the others in accordance with the provisions of this paragraph. Any notice hereunder shall be deemed to have been given and received two (2) days after the date when it is mailed if sent by first class, certified mail, one day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. Neither party may give official or binding notice by facsimile.

b. Landlord's Duty to Notify City. Landlord shall promptly notify City in writing of (i) any written communication that Landlord may receive from any governmental, judicial or legal authority, giving notice of any claim or assertion that the Property, Building or Leasehold Improvements fail in any respect to comply with applicable laws, rules and regulations; (ii) any known material adverse change in the physical condition of the Property, including, without limitation, any damage suffered as a result of earthquakes; and (iii) any known material default by the Contractor or any subcontractor or material supplier, or any known material adverse change in the financial condition or business operations of any of them.

c. Prevailing Wages for Construction Work. Landlord agrees that any person performing labor in the construction of the Leasehold Improvements which Landlord is obligated to provide under this Work Letter shall be paid not less than the highest prevailing rate of wages and that Landlord shall include, in any contract for construction of the Leasehold Improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Landlord further agrees that, as to the construction of the Leasehold Improvements under this Work Letter, Landlord shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Section 6.22(E) of the San Francisco Administrative Code.

d. Tropical Hardwood and Virgin Redwood Ban. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment

Code, neither Landlord nor any of its contractors shall provide any items to City in the construction of the Leasehold Improvements or otherwise in the performance of this Lease which are tropical hardwood, tropical hardwood wood products, virgin redwood, or virgin redwood wood products.

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

In the event Landlord fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Landlord shall be liable for liquidated damages for each violation in any amount equal to Landlord's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greatest. Landlord acknowledges and agrees that the liquidated damages assessed shall be payable to the City and County of San Francisco upon demand and may be set off against any monies due to Landlord from any contract with the City and County of San Francisco.

e. Days. Unless otherwise provided herein, all periods specified by a number of days shall refer to business days. Saturdays, Sundays and recognized City holidays shall not constitute business days.

f. Approvals. Landlord understands and agrees that City is entering into this Work Letter in its proprietary capacity and not as a regulatory agency with certain police powers. Notwithstanding anything to the contrary herein, no approval by City of the plans for the Leasehold Improvements (including the Design Development Documents or Construction Documents), completion of the Leasehold Improvement Work nor any other approvals by City hereunder shall be deemed to constitute approval of any governmental or regulatory authority with jurisdiction over the Premises. All approvals or other determinations of City as tenant hereunder may be made by City's Director of Property unless otherwise specified herein.

9. Time of the Essence. Time is of the essence with respect to all provisions of this Work Letter in which a definite time for performance is specified, including, without limitation, the date for Substantial Completion.

EXHIBIT F-2

EXAMPLE OF CALCULATION OF CONSTRUCTION SUPERVISION FEE

Assumes	square foot	$/sf/year	Amount
Locker Rm Rentable Area	38,894	$30.50	$1,186,267.00
7th Floor Theater Rentable Area	679	$18.00	$12,222.00
Total:	39,573	$48.50	$1,198,489.00
Rent (net of Int Jan, Electricity, chilled water, and equipment maintenance)			
7th Floor	38,894	$30.50	$1,186,267.00
1st Floor	679	$18.00	$12,222.00
Total:	39,573	$48.50	$1,198,489.00
Allowance			
7th Floor	38,894	$44.00	$1,711,336.00
1st Floor	679	$27.00	$18,333.00
Total:	39,573		$1,729,669.00
ROM			
CBI Estimate Dated 11/29/10			$9,899,153.00
MOD Fees (allowance)			$3,000.00
Potential Structural (for equipment over 200 lbs psf)			$30,000.00
USGBC Fees (allowance)			$5,000.00
Subtotal			$9,937,153.00
Contingency @ 10%			$993,715.30
Subtotal			$10,930,868.30
Project management/Supervision (See below)			$287,117.37
ROM TOTAL			$11,217,985.67
Less Allowance			($1,729,669.00)
Projected City Cost			$9,488,316.67
Project Management/ Supervision Fees			
(i) eight percent (8%) of the first $50.00 per rentable square foot, plus			
(ii) one percent (1%) of the cost of the Leasehold Improvements funded directly by City (without an allowance) up to $5 million, plus			
(iii) two percent (2%) of the cost of the Leasehold Improvements funded directly by City in excess of $5 million as shown in the ROM Budget; and			
(iv) four percent (4%) of the cost of all Leasehold Improvements thereafter.			
Original Estimate at $50/sf times 39,500 sf.			$1,975,000.00
City Contribution			$5,000,000.00
Subtotal Costs			$6,975,000.00
Remaining ROM (ROM total = $6,975,000)			$3,955,868.30
Project management/Supervision			
8% of Original			$158,000.00
1% of City Contribution			$50,000.00
2% of Remaining ROM			$79,117.00
Total:			$287,117.00

EXHIBIT G

STANDARDS FOR JANITORIAL SERVICE

LANDLORD'S MINIMUM SCOPE OF WORK

The following Minimum Scope of Work is intended to define and describe the requirements for Janitorial Services for the Building's Common Areas to be provided by Landlord at Landlord's cost at 1455 Market Street.

I. MAIN FLOOR LOBBY and PUBLIC CORRIDORS - General Specifications

A. Nightly Services (Monday – Friday), except City holidays

1. Spot clean all glass including low partitions and the corridor side of all windows and glass doors
2. Spot clean all brightwork including, guard's desk, security monitors, swinging door hardware, kick plates, base partition tops, handrails, waste paper receptacles, planters, elevator call button plates, hose cabinets and visible hardware on the corridor side of the tenant entry doors

3. Mop and/ or vacuum lobby floors.
4. Spot clean and dust the directory board glass, signage, art, benches and ledges, as required
5. Empty, clean and sanitize all waste paper baskets and refuse receptacles as required.
6. Vacuum all carpets

B. Weekly Service (Once a week)

1. Thoroughly clean all door saddles of dirt and debris

C. Quarterly Services (Once per quarter)

1. Scrub and buff to a high luster Building lobby flooring.

II. PASSENGER ELEVATOR – General Specifications

A. Nightly Service (Monday – Friday), except City holidays

1. Spot clean cab walls and interior door
2. Spot clean the outside surfaces of all elevator doors and frames
3. Clean all cab floors thoroughly. Edge thoroughly

B. Weekly Services (Once per week)

1. Thoroughly clean the entire interior and exterior surfaces of all doors and frames
2. Stain and polish cab walls and rails to eliminate scratch marks on wood, as required

C. Quarterly Services (Once per quarter)

1. Wipe clean elevator cab lamps
2. Wipe clean entire cab ceiling
3. Thoroughly clean all elevator thresholds

III. BUILDING EXTERIOR and GROUNDS SERVICES – General Specifications

A. Daily Services (Monday – Friday), except City holidays

1. Spot clean accumulations of dirt, paper and leaves in all corner areas where winds cause debris to collect
2. Spot clean all exterior glass doors at the building entrances
3. Lift nap on all entry walk-off mats with a heavy bristle brush and vacuum, as necessary
4. Sweep sidewalk, stairs and remove all gum as required or as directed

B. Monthly Service (Once per month)

1. Power wash sidewalk around perimeter of the building

C. Semi-annual Services Wash all exterior windows including glass, ledges and window frames to be wiped clean and dry

D. Annual Service

1. Wash interior side of exterior windows in the Premises

IV. COMMON AREA RESTROOM SERVICE – General Specifications

A. Daily Services (Monday – Friday), except City holidays

1. Re-stock all restrooms including paper towels, toilet tissue, seat covers and hand soap, as required.
2. Re-stock all sanitary napkin and tampon dispensers from Contractor's supplies, as required. Monies collected from the coin dispensing machines are the sole responsibility

of the Contractor. Machines are to be repaired and maintained as needed by the Contractor.

3. Wash and polish all mirrors, dispensers, faucets, flushometers, and brightwork with a non-scratch disinfectant cleaner.
4. Wash and sanitize all toilets, toilet seats, urinals, and sinks with a non-scratch disinfectant cleaner. Wipe all sinks dry.
5. Remove stains and scrub toilets, urinals, and sinks as required.
6. Mop all restroom floors with disinfectant, germicidal cleaners. Scrub all baseboards, inside corners and hard to reach areas.
7. Empty and sanitize all sanitary napkin and tampon waste receptacles.
8. Remove all restroom trash.
9. Spot clean fingerprints, marks, and graffiti from walls, partitions, doors, glass, aluminum and light switches as required.

B. Monthly Services (Twice per month)

1. Dust all low and high reach areas, including but not limited to, structural ledges, mirror tops, partition tops and edges, air conditioning diffusers and return air grilles.
2. Wipe and clean all walls, metal partitions, and privacy screens. Partitions should be left clean and not streaked after this work is performed.

C. Monthly Services (Once per month)

1. Clean all ventilation grilles

D. Quarterly Services (Once per quarter)

1. Thoroughly clean and strip permanent sealer and reseal all ceramic/CT tile floors using approved sealers
2. Dust all doorjambs

E. Consumable Supplies

1. Landlord shall supply all consumable supplies required including paper towels, toilet tissue, hand soap, sanitary disposal bags, plastic trash bags, compostable trash bags, toilet seat covers, cleaning products and/or supplies, batteries, etc.

V. DAY PORTER SERVICES - Daily Services (Monday – Friday)

A qualified day porter. Work hours to be: from 7:00 am to 4:00 pm and Monday through Friday, except City holidays. Day Porter shall work under the supervision of the Building Manager for 1455 Market Street and may be asked to perform duties not specifically described herein, but which may be considered a part of the Day Porters' general responsibilities as customary for a first class San Francisco highrise. The daily duties of the Day Porter shall be, but not be limited to, the following:

A. Entrance Lobby and Exterior Perimeter Area

The lobby and exterior sidewalk and perimeter areas are to be kept clean and neat at all times. Day Porter is expected to perform the following minimum cleaning operations, as required.

1. Clean or spot clean floors and carpet runners as necessary
2. Clean or spot clean all metal, stone or other hard surfaces, including the security guard station daily as necessary
3. Wipe and clean glass doors twice daily and as necessary
4. Empty garbage receptacles as necessary
5. Remove graffiti from the exterior of the building and all street furniture, including planters as necessary or as requested.
6. Remove gum and foreign matter from the sidewalks and tree containers surrounding the building before 8:00 am each day and as required or directed by the Building Manager
7. Hose down sidewalk around the perimeter of the building, as necessary

B. Elevators

1. Clean or spot clean cab floors daily as needed
2. Clean or spot clean lobby elevator saddles, interior and exterior doors and frames daily as necessary
3. Clean sides of elevator cars daily as needed; polish brightwork in cab and on doors and frames
4. Keep freight elevator broom clean daily and as needed

C. Restrooms

1. Check and confirm night crew cleaned and re-stocked each bathroom before 9:00 am
2. Spot Clean all bathrooms each day. Restock restroom supplies as required.
3. Fill soap, paper towel, seat cover and toilet tissue dispensers as required.
4. Report all mechanical and plumbing problems and other deficiencies to the Building Manager (e.g., leaky faucets, malfunctioning urinals or toilets, etc.)
5. Spot Clean all mirrors, powder shelves and lavatory tops. Mirrors should be wiped clean to remove all spots and streaks
6. Empty paper towel waste receptacles daily and as needed or requested
7. Stock and maintain all sanitary napkin product vending machines located in the restrooms, if any.

D. Public Areas

1. Stairwells – Police and keep in clean condition. Sweep, dust, hand wipe and mop as necessary and as requested (includes escalator cleaning).
2. Dust stairwell railings as necessary and as requested
3. Public Corridors – Vacuum and keep in clean condition as necessary and as requested
4. Assist in changing interior lamps and light bulbs throughout the building as required

5. Spot clean lobby signage and building directories and all other appropriate glass enclosures.
6. In the 9th Floor public areas, empty trash cans daily, police area and planters for debris and maintain in clean condition. Vacuum as needed.

E. Building Service Areas

1. Loading Dock – Sweep area daily
2. Lay down and remove lobby runners during inclement weather, as necessary and as requested
3. Assist in replacing lamps and light bulbs throughout the building as required; clean diffusers and grilles when relamping
4. Assist in recycling lamps and light bulbs, ballasts, chemicals, electronics by putting them in designated areas for recycling these products in the building
5. Keep electrical rooms, fire control room, telephone and electrical closets clean and free of debris
6. Keep recycling area and bins clean and area swept

TENANT'S SCOPE OF WORK

The following Scope of Work is intended to describe and outline the initial requirements for Janitorial Services for the interior Premises to be provided by Landlord at City's cost.

I. SERVICES FOR THE SEVENTH FLOOR PREMISES (Monday – Friday after 7:00 pm and Sunday between 7:00 am and 10:00 pm)

A. Nightly Services

1. Secure all lights as soon as possible each night
2. Vacuum all carpets. Move electric cords to prevent damage to the corner bead
3. Dust mop all resilient and composition floors with dust mops. Damp mop the floors to remove spills and water stains as required
4. Spot clean stains on carpet
5. Dust all desktops and office furniture with dust cloths. Papers and folders on the desktop are not to be moved
6. Wipe and clean all tables, counters, and desktops
7. Empty all waste paper baskets and other trash containers and remove all trash from floors to the designated trash areas. Remove recyclable material and compost to Building's centralized recycle bins.
8. Remove fingerprints, dirt smudges, from all doors, frames, glass partitions, windows, light switches, walls, elevator doorjambs and elevator interiors
9. Return chairs and wastebaskets to proper positions
10. Police all interior public planters, if any
11. Wipe clean smudged brightwork
12. Glass:
    a. Clean both sides of entrance glass door

b. Spot clean interior glass windows, as necessary

B. Weekly Services (once per week)

1. Dust all low reach areas including, but not limited to, chair rungs, structural and furniture ledges, baseboards, window sills, door louvers, wood paneling molding, etc
2. Clean all door thresholds & jambs
3. Edge vacuum all carpeted areas
4. Move all plastic carpet protectors and thoroughly vacuum under and around all desks and office furniture
5. Wipe all exposed vinyl bases

C. Monthly Services (once per month)

1. Dust all high reach areas including, but not limited to, tops of doors, frames, furniture, ledges, air conditioning diffusers and return grilles, tops of partitions, picture frames, etc.
2. Dust and or vacuum all window coverings

D. Quarterly Services (once per quarter)

1. Thoroughly scrub all resilient or composition flooring.
2. If requested, shampoo carpeting in the "high-traffic" common areas. i.e. lobbies and other high-traffic" corridors.
3. Vacuum upholstered furniture and wipe down vinyl chair pads
4. Dust light diffusers

E. Annual Services (once per year)

1. Recondition all resilient or composition flooring to provide a level of appearance equivalent to a completely refinished floor.
2. Shampoo carpeting in all areas as requested

II. SERVICES FOR THE FIRST FLOOR (Shower Room) PREMISES (Monday – Friday after 7:00 pm)

A. Nightly Services

1. Spot clean entrance doors
2. Empty trash, recycling, compost and receptacles
3. Empty sanitary receptacles and re-line them
4. Clean mirrors
5. Wipe down stall partition and walls
6. Clean and sanitize sinks, toilet bowls & urinals
7. Refill paper towel, toilet paper, soap& fem. hygiene dispensers
8. Sweep and damp mop hard floors

B. Quarterly Services

1. Dust ceiling vents and high areas

C. Annual Services

1. Recondition all resilient or composition flooring to provide a level of appearance equivalent to a completely refinished floor.
2. Thoroughly scrub of all surfaces

III. ADDITIONAL SIXTH (6th) DAY COMMON AREA RESTROOM SERVICE FOR 7th FLOOR General Specifications

A. Same as Landlord's Daily Services Scope (See above)

III. GENERAL REQUIREMENTS

A. Quality Standards

1. Landlord's janitorial service contractor ("contractor') must have a minimum of five (5) years of relevant experience.

2. Any work completed by the Landlord's contractor that does not meet the 1st class office building quality standards as determined by the City department, shall be re-done by the contractor at no cost to the City. In the event contractor's work repeatedly does not meet quality (Class A) standards, the City reserves the right to request the Building Manager replace contractor personnel. Landlord's contractor must be available during regular business hours, to participate in an inspection walk-through.

3. The Building Manager will keep a janitorial log in which deficiencies in performance and special problems or instructions will be noted. The contractor must check the log daily and correct any deficiencies in service within twenty-four (24) hours of the log entry. When the deficiency has been corrected, the contractor must initial and date each entry.

4. Contractor accepts all responsibility for determining that all necessary safeguards for the protection of Contractor's employees will be furnished to employees e.g., gloves, masks, aprons, support belts. All work performed must conform to CAL-OSHA standards.

5. Contractor must comply with all laws and government regulations.

6. Contractor must be fully insured and bonded to standards typical of first class office buildings in San Francisco.

7. Contractor shall not unplug any of City's equipment and shall only use designated service electrical outlets. Contractor shall not move any papers or folders on City work surfaces.

8. Contractor shall take all actions to prevent and shall be responsible for any damage to the Premises (including but not limited to dragging extension cords around corners and spilling cleaning products on the carpeting, broken glass, etc.).

B. Employees

1. All contractor employees (including coordinators and supervisors) must wear uniforms. All personnel must have a visible company name, logo, badge, etc., on their uniforms.

2. All employees must be fully trained in the custodial service trade.

3. The City may request contractor remove any janitor from its premises for inappropriate behavior or alleged inappropriate behavior at any time it desires and for any reason whatsoever, and the contractor shall provide an immediate replacement.

C. Maintenance Reporting

1. The contractor's employees shall report maintenance requirements (such as broken glass, missing or burnt out light bulbs, inoperative fixtures, etc.) to the Building Manager.

D. Materials and Equipment

1. Landlord, at no cost to the City, shall provide adequate space in the building to the contractor for the storage of supplies and equipment.

2. The contractor shall furnish all labor, cleaning materials (paper and cloth towels, cleaning chemicals, floor wax, wax stripper, protective gloves, and other expendable supplies), equipment (including, but not limited to, ladders, vacuum cleaners, extractors, floor machines, mops, hoses, and buckets) and occupant supplies (including hand soap, paper hand towels, toilet tissue, paper seat covers and deodorants for tenant use only) required to perform the janitorial service as specified. Upon request Contractor shall submit to City for it's reasonable approval a complete list of products to be used, together with Material Safety Data Sheets (MSDS) for each cleaning chemical. Contractor shall use environmentally friendly products, including unscented products, Green Seal certified products, or EcoLogo certified products.

3. City shall supply trash, recycling, and composting containers within the Premises. Contractor shall supply liners

E. Recycling

1. The City's Recycling Program includes recycling materials and composting. Contractor will be responsible for the safe and sanitary removal of such recyclables and compost and appropriately depositing such materials in a Landlord provided central collection point in the building.

IV. SPECIAL SERVICES – GENERAL

City shall have the right to request additional or other cleaning services not included in this scope of work. The fee for these services shall be at contractor's direct cost but not to exceed that typically charged for such services at other first class office buildings. The fee for such services shall be agreed upon by City and Landlord before such services are performed. Landlord shall supply to City a written quote for such City requested work and Landlord shall promptly perform such work upon receipt of City's authorized acceptance of the cost.

EXHIBIT H

STANDARDS FOR SECURITY SERVICE

A. During the Initial Term. Landlord, at its cost, shall furnish security services 24 hours per day, 7 days per week, and 365 days per year to a quality for the podium level (floors 3 -8) comparable to other N-2 data facilities. Landlord shall provide:

I. Security Guards

A. At least (1) uniformed and trained security Guard shall at all times be located at the main lobby and at least One (1) 24/7 roving guard will monitor the other entry point(s) to the building. During normal working hours one (1) Security Supervisor will be on site and available, as needed, to assist the Lobby Security Guard.

II. Security Cameras

A. Landlord shall maintain central, monitored and recorded video surveillance system.

B. Landlord shall maintain security cameras at each of Building entrance points and the 3rd Floor lobby.

III. Card Access System

A. Landlord shall maintain a card access system, making sure the system registry is up to date not less than every 6 months, which provides only authorized access to the building and segregated access between the podium and tower as appropriate.

B. Landlord shall maintain card access readers and card entry to building and stand alone card access readers at each of the Premises floors (1, 3, and 7). Landlord will make reasonable efforts to make such premises card access system readers compatible with the building card access system.

C. Landlord shall supply City with up to 200 registered entry cards.

IV. Visitors

A. All visitors and messengers shall be signed in to the building and given visitors badges with proper identification.

B. All visitors to the 4th through 9th Floors shall be required to be escorted by the hosting tenant.

V. Vendors

Non pre-approved vendors to the 4th through 9th Floor must be badged and escorted by hosting tenant.

B. During any Extended Term. Landlord, at its cost, shall furnish security services 24 hours per day, 7 days per week, and 365 days per year to a quality for the podium level (floors 3 -8) comparable to other high security and 24 hour accessible 1st class office buildings in San Francisco. At a minimum, Landlord shall provide:

I. Card Access System

Landlord shall provide on-site access control equipment to the building, segregation between the tower and podium floors, and at the suites of the Premises.

II. Security Guards

Uniformed and trained security personnel in the building's Main Lobby.

III. Security Cameras

Cameras (and video recording equipment) with visual feeds to security personnel for common areas and entrances of building

IV. Additional Security

In the event City requires access control services for the Building that exceed the level of access control services provided at first-class multi-tenant office buildings in downtown San Francisco, City may provide such additional services at its own expense, or, upon request by City, Landlord shall provide such services, at City's expense.

Notwithstanding the foregoing, Landlord shall in no case be liable for personal injury or property damage for any error with regard to the admission to or exclusion from the property of any person, except to the extent arising from the gross negligence or willful misconduct of Landlord or Landlord's employees and agents.

EXHIBIT I

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

PREPARED BY AND UPON
RECORDATION RETURN TO:

SUBORDINATION, NON DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made as of the __ day of _____, 2011 by and between BARCLAYS BANK PLC, as Administrative Agent (as defined below), and CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("Tenant" or "City"), acting by and through the San Francisco Municipal Transportation Agency.

RECITALS:

A. Hudson Pacific Properties, Inc., a Maryland corporation (the "Borrower"), the several banks and other financial institutions or entities from time to time parties to the Credit Agreement herein described (the "Lenders"), Barclays Capital and Banc of America Securities LLC, as joint lead arrangers and joint book runners, Bank of America, N.A., as syndication agent and Barclays Bank PLC, as administrative agent (the "Administrative Agent"), are parties to that certain Credit Agreement, dated as of June 29, 2010 (as amended, supplemented or otherwise modified from time to time, the "Credit Agreement").

B. Pursuant to the Credit Agreement, the Lenders have severally agreed to make loans and other extensions of credit to Borrower upon the terms and subject to the conditions set forth therein, such extensions of credit including without limitation, the Revolving Credit Facility in the aggregate principal amount of TWO HUNDRED MILLION AND NO/100 DOLLARS ($200,000,000.00), and having a final maturity date of no later than June 29, 2013. The Revolving Credit Facility includes a future advance option that could raise the total principal amount to Two Hundred Fifty Million Dollars ($250,000,000.00).

C. The Credit Agreement is secured by a Deed of Trust from Hudson 1455 Market, LLC to Administrative Agent, executed on December 15, 2010 and effective as of December 16, 2010 (the "Deed of Trust").

D. Tenant, as tenant, and Hudson 1455 Market, LLC, as landlord, ("Landlord') anticipate entering into a lease (the "Lease") of a portion of the property commonly known as 1455 Market Street, San Francisco, California (the "Property") for a term of ten (10) years with the option to extend the term for two successive ten (10) year terms (the "Lease"), which Lease is dated on or about the date hereof. A Memorandum of the Lease may be recorded in the Official Records of the Assessor/Recorder of the City and County of San Francisco contemporaneously with the recordation of this Agreement. It is a condition precedent to Tenant's entering into the Lease that Administrative Agent and Lenders agree not to disturb Tenant's possessory rights if such parties exercise their rights under the Deed of Trust.

E. The Credit Agreement requires, as a condition of making the loans provided for in the Credit Agreement, that Borrower obtain a Subordination, Non-Disturbance and Attornment Agreement from Tenant.

AGREEMENT:

For good and valuable consideration, Tenant and Administrative Agent agree as follows:

1. Subordination. Subject to the terms of this Agreement, Tenant agrees that the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder (including, without limitation, any right of first offer set forth therein, if any) are and shall at all times continue to be subject and subordinate in all respects to the Deed of Trust and to the lien thereof and all terms, covenants and conditions set forth in the Deed of Trust and the related loan documents including without limitation all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby.

2. Non-Disturbance. Administrative Agent agrees that if any action or proceeding is commenced by Administrative Agent for the foreclosure of the Deed of Trust or the sale of the Property, Tenant shall not be named as a party therein unless such joinder shall be required by law, provided, however, such joinder shall not result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder, and the sale of the Property in any such action or proceeding shall be made subject to all rights of Tenant under the Lease except as set forth in Section 3 below, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale or exercise of any such other rights (a) the term of the Lease shall have commenced pursuant to the provisions thereof, (b) Tenant shall be in possession of the premises demised under the Lease, (c) the Lease shall be in full force and effect and (d) Tenant shall not be in default under any of the terms, covenants or conditions of the Lease or of this Agreement on Tenant's part to be observed or performed beyond the expiration of any applicable notice or grace periods.

3. Attornment. Administrative Agent and Tenant agree that upon the conveyance of the Property by reason of the foreclosure of the Deed of Trust or the acceptance of a deed or assignment in lieu of foreclosure or otherwise, the Lease shall not be terminated or affected thereby [provided that the conditions set forth in Section 2 above have been met at the time of such transfer or are at the time of such transfer waived by the transferee of the Property (the "Transferee")], but shall continue in full force and effect as a direct lease between the Transferee and Tenant upon all of the terms, covenants and conditions set forth in the Lease and in that event, Tenant agrees to attorn to the Transferee and the Transferee shall accept such attornment, and Tenant agrees that the Transferee shall not be:

(a) obligated to complete any construction work required to be done by Landlord pursuant to the provisions of the Lease or to reimburse Tenant for any construction work done by Tenant;

(b) liable (i) for Landlord's failure to perform any of its obligations under the Lease which have accrued prior to the date on which the Transferee shall become the owner of the Property, or (ii) for any act or omission of Landlord, whether prior to or after such foreclosure or sale;

(c) required to make any repairs to the Property or to the premises demised under the Lease required as a result of fire, or other casualty or by reason of condemnation unless the Transferee shall be obligated under the Lease to make such repairs and shall have received sufficient

casualty insurance proceeds or condemnation awards to finance the completion of such repairs, subject to the provisions of Section 7 below;

(d) required to make any capital improvements to the Property or to the premises demised under the Lease which Landlord may have agreed to make, but had not completed, or to perform or provide any services not related to possession or quiet enjoyment of the premises demised under the Lease (provided that any Successor Landlord will be bound to comply with the casualty and condemnation restorations provisions of the Lease if Successor Landlord receives the insurance or condemnation proceeds);

(e) subject to any offsets, defenses, abatements or counterclaims which shall have accrued to Tenant against Landlord prior to the date upon which the Transferee shall become the owner of the Property (except those expressly permitted under the Lease, including abatement rights);

(f) liable for the return of rental security deposits, if any, paid by Tenant to Landlord in accordance with the Lease unless such sums are actually received by the Transferee;

(g) bound by any payment of rents, additional rents or other sums which Tenant may have paid more than one (1) month in advance to any prior Landlord unless (i) such sums are actually received by the Transferee or (ii) such prepayment shall have been expressly approved of by the Transferee or Administrative Agent;

(h) bound to make any payment to Tenant which was required under the Lease, or otherwise, to be made prior to the time the Transferee succeeded to Landlord's interest;

(i) bound by any agreement amending, modifying or terminating the Lease in any material respect made without the Administrative Agent's prior written consent prior to the time the Transferee succeeded to Landlord's interest which decreases the amount of rent payable by Tenant, shortens the term of the Lease, substantially increases the obligations of Landlord, or substantially decreases the obligations of Tenant under the Lease; or

(j) bound by any assignment of the Lease or sublease of the Property, or any portion thereof, made prior to the time the Transferee succeeded to Landlord's interest other than if pursuant to the provisions of the Lease and not approved in writing by Transferee or Administrative Agent.

The foregoing shall not relieve Administrative Agent or such Transferee of the obligation to cure any conditions of the Property the existence of which constitute a landlord default under the Lease and which continue at the time of succession or acquisition by Administrative Agent, Lender or such Transferee, or deprive Tenant of the right to terminate the Lease for a breach of a landlord covenant which is not cured as provided for herein or in the Lease and as a result of which there is a material interference with Tenant's permitted use and occupation of the Property.

Administrative Agent's written consent to any proposed Lease modification may be withheld at the discretion of Administrative Agent if the change would decrease the amount of rent payable by Tenant, shorten the term of the Lease, materially increase the obligations of Landlord, or materially decrease the obligations of Tenant under the Lease. In all other instances, the consent of Administrative Agent shall not be unreasonably withheld, conditioned or delayed. Consent shall be deemed given if notice by Administrative Agent that its consent is denied is not given to Tenant within thirty (30) days of notice of the proposed action.

4. Notice to Tenant; Assignment of Rent. After notice is given to Tenant by Lender that the Landlord is in default under the Loan Documents and that the rentals under the Lease should be

paid to Lender pursuant to the terms of the assignment of leases and rents executed and delivered by Landlord to Administrative Agent in connection therewith, Tenant shall thereafter pay to Administrative Agent or as directed by the Administrative Agent, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Administrative Agent and agrees that any payments made by Tenant pursuant to the foregoing shall be credited against sums due under the Lease.

5. [Intentionally omitted].

6. Administrative Agent to Receive Notices. If any breach or default of Landlord under the Lease would give Tenant the right, immediately or after the lapse of a period of time, to cancel the Lease or to an abatement of the rents, additional rents or other sums payable thereunder, Tenant shall not exercise such right until it shall have notified Administrative Agent in writing, and Tenant agrees that, notwithstanding any provisions of the Lease to the contrary, no notice of cancellation thereof or of such an abatement shall be effective unless Administrative Agent shall have received notice of default giving rise to such cancellation or abatement and shall have failed within thirty (30) days after receipt of such notice to cure such default, or if such default cannot be cured within thirty (30) days such period shall be extended for such additional period as shall be reasonable necessary (provided that the default does not materially interfere with Tenant's use and occupation of the Premises), provided Administrative Agent provides Tenant with written notice of Administrative Agent's election to remedy within ten (10) days after receipt of Tenant's notice, commences the action to remedy the same within such thirty (30) day period, and pursues such cure with diligence.

7. Insurance and Condemnation Proceeds. Anything in this Agreement or the Deed of Trust to the contrary notwithstanding, Administrative Agent agrees that it shall permit any insurance or condemnation proceeds to be used for the purpose of reconstructing the improvements located on the Property, unless Administrative Agent, under a standard of good faith and fair dealing, believes its security is impaired by the casualty or condemnation giving rise to such proceeds and, in the case of an insurance award, the insurance proceeds (together with a commercially reasonable deductible) are insufficient to reconstruct the improvements and building to at least the same condition prior to the casualty resulting in the claim for which the insurance proceeds are paid.

8. Notices. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof and confirmed by telephone by sender, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: San Francisco Municipal Transportation Agency
South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Real Estate Section
Re: 1455 Market Street

with a copy to:

City and County of San Francisco
Real Estate Department
25 Van Ness Avenue, Suite 400
San Francisco, CA 94102
Attn: Director of Property

and a copy to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Pl.
San Francisco, CA 94102
Attn: Real Estate/Finance Team

If to Administrative Agent:

Barclays Bank PLC
745 Seventh Avenue
New York, New York 10019
Attention: Craig Malloy
Telecopy: (646) 758-4617
Telephone: (212) 526-7150

With a copy to:

Julian Chung, Esq.
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
Facsimile No. 212-504-6666

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

9. Joint and Several Liability. If Tenant consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Agreement shall be binding upon and inure to the benefit of Administrative Agent and Tenant and their respective successors and assigns.

10. Definitions. The term "Administrative Agent" as used herein shall include the successors and assigns of Administrative Agent and any person, party or entity which shall become the owner of the Property by reason of a foreclosure of the Deed of Trust or the acceptance of a deed or assignment in lieu of foreclosure or otherwise. The term "Landlord" as used herein shall mean and include the present landlord under the Lease and such landlord's predecessors and successors in interest under the Lease, but shall not mean or include Administrative Agent. The

term "Property" as used herein shall mean the Property, the improvements now or hereafter located thereon and the estates therein encumbered by the Deed of Trust.

11. No Oral Modifications. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto.

12. Governing Law. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State where the Property is located and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State where the Property is located.

13. Inapplicable Provisions. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision.

14. Duplicate Originals; Counterparts. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

15. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

16. Transfer of Loan. Administrative Agent may sell, transfer and deliver the note evidencing the Loan and assign the Deed of Trust, this Agreement and the other documents executed in connection therewith to one or more investors in the secondary mortgage market ("Investors"). In connection with such sale, Administrative Agent may retain or assign responsibility for servicing the loan, including the Deed of Trust, this Agreement and the other documents executed in connection therewith, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer, on behalf of the Investors. All references to Administrative Agent herein shall refer to and include any such servicer to the extent applicable.

17. Further Acts. Tenant will, at the cost of Tenant, and without expense to Administrative Agent, do, execute, acknowledge and deliver all and every such further acts and assurances as Administrative Agent shall, from time to time, require, for the better assuring and confirming unto Administrative Agent the property and rights hereby intended now or hereafter so to be, or for carrying out the intention or facilitating the performance of the terms of this Agreement or for filing, registering or recording this Agreement, or for complying with all applicable laws, provided that no such document or instrument shall modify the rights and obligations of the parties set forth herein, and provided further that any document to be signed by Tenant must be approved as to form by the San Francisco City Attorney and must not violate the City's Charter or Administrative Code.

18. Limitations on Administrative Agent's Liability. Tenant acknowledges that Administrative Agent is obligated only to Landlord to make the Loan upon the terms and subject to the conditions set forth in the Loan Documents. In no event shall Administrative Agent or any purchaser of the Property at foreclosure sale or any grantee of the Property named in a deed-in-

lieu of foreclosure, nor any heir, legal representative, successor, or assignee of Administrative Agent or any such purchaser or grantee (collectively the Administrative Agent, such purchaser, grantee, heir, legal representative, successor or assignee, the "Subsequent Landlord") have any personal liability for the obligations of Landlord under the Lease and should the Subsequent Landlord succeed to the interests of the Landlord under the Lease, Subsequent Landlord shall have the benefit of the limitation of liability provisions set forth in Section 15.5 of the Lease.

IN WITNESS WHEREOF, Administrative Agent and Tenant have duly executed this Agreement as of the date first above written.

ADMINISTRATIVE AGENT:

BARCLAYS BANK PLC

By:

Name:

Title:

TENANT:

CITY AND COUNTY OF SAN FRANCISCO,

a municipal corporation, acting by and through

its Municipal Transportation Agency

By: _____

NATHANIEL P. FORD SR.

Executive Director/CEO

San Francisco Municipal Transportation Agency

APPROVED AS TO FORM:

DENNIS J. HERRERA, City Attorney

By: _____

Anita L. Wood

Deputy City Attorney

The undersigned accepts and agrees to

the provisions of Section 4 hereof:

LANDLORD:

HUDSON 1455 MARKET, LLC

By: Hudson Pacific Properties, L.P.

a Maryland limited partnership

its Sole Member

By: Hudson Pacific Properties, Inc.

a Maryland corporation

its General Partner

By:

Name:

Title:

STATE OF _____)

) ss.:

COUNTY OF _____), to-wit:

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Notary Public

[SEAL]

My commission expires:

EXHIBIT A

LEGAL DESCRIPTION

(Attached)

EXHIBIT J

INTENTIONALLY OMITTED

EXHIBIT K

DISCLOSURE STATEMENT REGARDING ASBESTOS-CONTAINING MATERIALS

Disclosure Statement Regarding Asbestos Containing Material (ACM)

Hudson 1455 Market, LLC

California law requires that employees working in a building known to have asbestos containing construction materials (ACCM) be provided written notice of the presence of these materials. Asbestos containing construction materials contain asbestos, a naturally occurring fibrous mineral. Because of its properties, asbestos was once widely used (although often in very low percentages) in construction materials such as structural fireproofing, acoustical ceilings, floor tiles, and insulation around pipes, boilers, and duct system. By the late 1970s, the use of asbestos in many common building materials were banned by the United States Environmental Protection Agency because of research linking industrial asbestos exposures (e.g. mining, milling, shipbuilding) to various respiratory diseases and cancer. This building has been surveyed for the presence of asbestos. A summary of known asbestos containing construction materials in the above-referenced building are available for review. An asbestos survey summary, full survey reports, monitoring data, etc., are available for review along with an Operations & Maintenance Plan that provides guidance on the maintenance and management of the asbestos in the building. Copies of these documents can be obtained from Hudson Pacific Properties. As required by California law and the Operations and Maintenance Plan, in addition to notifying employees, the asbestos notice should also be provided to sub-tenants and contractors working in the building. The procedures for this notification are outlined in the Operations and Maintenance Plan. The mere presence of asbestos containing construction

materials does not present a health hazard. Hazards may exist when asbestos materials are damaged and fibers are released into the air. Inhalation of asbestos fibers may potentially result in health risks such as lung diseases, cancer and other serious illnesses. The condition of the asbestos containing construction materials in this building is monitored. However, to prevent damage to the asbestos containing construction materials, moving, drilling, boring, or otherwise disturbing those materials should not be attempted by an employee who is not qualified and approved to handle asbestos-containing construction material.

EXHIBIT L

FORM OF MEMORANDUM OF LEASE

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

Hudson 1455 Market, LLC
c/o Hudson Pacific Properties, Inc.
11601 Wilshire Blvd., Suite 1600
Los Angeles, California 90025

No Documentary Transfer Tax due;
term of lease less than 35 years.

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE ("**Memorandum**") is dated as _____, 2011, by and between CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("**Tenant**") acting by and through the San Francisco Municipal Transportation Agency, and HUDSON 1455 MARKET, LLC, a Delaware limited liability company ("**Landlord**").

RECITALS

A. Landlord owns the improved real property (the "**Property**") located in the City and County of San Francisco, State of California, commonly known as 1455 Market Street (the "**Building**") and more particularly described on Exhibit "A" attached hereto.

B. Concurrently with the execution of this Memorandum, Landlord and Tenant are entering into that certain unrecorded Lease dated as of _____, 2011 (the "**Lease**"), pursuant to which Landlord agrees to lease to Tenant, and Tenant agrees to lease from Landlord, a portion of the Building, as described in the Lease (the "**Premises**").

C. Landlord and Tenant desire to record this Memorandum to provide notice to all third parties of certain rights of Tenant under the Lease, and certain restrictions on Landlord under the Lease.

NOW, THEREFORE, in consideration of the Premises and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Lease Terms. The lease of the Premises to Tenant is on all of the terms and conditions set forth in the Lease, which is incorporated in this Memorandum by reference

2. Term. The term of the Lease is approximately ten (10) years commencing on the Commencement Date established in accordance with Section 3.1 of the Lease and expiring on the date immediately preceding the tenth (10^{th}) anniversary of the Commencement Date. Pursuant to Section 3.4 of the Lease, Tenant has two (2) options to renew the term of the Lease for ten (10) years each, subject to the terms and conditions set forth such Section 3.4.

3. Incorporation of Lease. This Memorandum is prepared and recorded for the purpose of providing the public with constructive notice of the Lease. This Memorandum in no way modifies or otherwise affects the terms and conditions of the Lease. In the event of any inconsistency between the terms and conditions of this Memorandum and the terms and conditions of the Lease, the terms and conditions of the Lease shall control.

4. Counterparts. This Memorandum may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute but one and the same document.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Memorandum as of the date first set forth above.

TENANT:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

By: _____

NATHANIEL P. FORD SR.
Executive Director/CEO
San Francisco Municipal Transportation Agency

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

LANDLORD:

HUDSON 1455 MARKET, LLC, a Delaware limited liability company

By: Hudson Pacific Properties, L.P.,
a Maryland limited partnership,
Its: Sole Member

By: Hudson Pacific Properties, Inc.,
a Maryland corporation
Its: General Partner

By:_____
Name:_____
Its:_____

TENANT'S ACKNOWLEDGEMENT

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____

Notary Public

LANDLORD'S ACKNOWLEDGEMENT

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____

Notary Public

EXHIBIT M

CITY INSURANCE REQUIREMENTS

1. City's self-insurance program shall not violate any laws, statutes, ordinances or governmental regulations or requirements currently in force or at any future date.

2. All references to insurance proceeds in this Lease shall be deemed to include any and all proceeds of self-insurance, including that which is considered a deductible or self insured retention, which shall be payable to the same extent, in the same amounts and to the party entitled to the same, as if actual policies of insurance set forth in this Lease had been obtained.

3. Such self-insurance shall be treated as if Tenant actually procured and maintained all of the following required policies and coverages:

    a. Commercial General Liability Insurance with respect to the Premises with limits of liability not less than Ten Million Dollars ($10,000,000) per occurrence and in the aggregate, including products liability coverage if applicable, owners and contractors protective coverage, blanket contractual coverage including both oral and written contracts, and personal injury coverage;

    b. Causes of loss – special form "All Risk" Property Insurance for City's Personal Property, the Leasehold Improvements and Alterations, including a vandalism and malicious mischief endorsement, sprinkler leakage coverage and earthquake sprinkler leakage, in an amount equal to the full replacement value new without deduction for depreciation;

    c. Worker's Compensation coverage as required by applicable law; and

    d. Business interruption, loss of income and extra expense insurance covering any failure or interruption of Tenant's business equipment (including, without limitation, data and telecommunications equipment) and covering all other perils, failures or interruptions sufficient to cover a period of interruption of not less than twelve (12) months.

4. The waiver of subrogation set forth in Section 17.5 shall apply to all self insurance and all commercially procured insurance.

EXHIBIT N

INTENTIONALLY OMITTED

EXHIBIT O

ELECTRICAL SYSTEM CONDITIONS AND REQUIREMENTS

General Office. The general office portions of the Premises shall be provided with: (i) an average of 1.0 watt per rentable square foot for general overhead lighting at 277V; (ii) emergency egress lighting at an average of 0.25 watts per rentable square foot; and (iii) an average of 5.0 watts per rentable square foot at 120/208V for computers, monitors, task lighting and general office support appliances.

Computer Rooms and Data Centers. Portions of the Premises used for computer rooms or Data Centers shall be provided with an average of 1.0 watt per rentable square foot for general overhead lighting at 277V from the UPS system and emergency egress lighting at an average of 0.25 watts per rentable square foot, and computer related equipment loads such that the total load from all areas does not exceed 1000 KW.

Generators. The parties acknowledge that (a) the Building Generators support the entire Building, including UPS (Uninterruptible Power Systems) and other critical systems, and (b) the Building Generators are part of a load shed program which reduces or adds building loads supported by the Building Generators based on the number of Building Generators running and the priority level assigned to the critical loads. Current priority levels are as follows: Priority 1 includes all life safety systems and functions; Priority 2 includes all Bank of America critical functions, including Bank of America's UPS systems; Priority 3 includes all remaining critical and non-critical Building functions, and Priority 4 is the redundant Building Generator and no load shedding occurs. Landlord acknowledges that City is operating a mission critical facility. Throughout the Term of the Lease, Landlord shall maintain N+1 redundancy of critical loads on the Building Generators for City's critical functions and UPS systems at a Priority 2 level, regardless of which emergency generator supports the load. The above notwithstanding for as long as Bank of America maintains a cash vault and critical data processing functions City's Priority 2 critical functions shall be subordinate to the Bank of America's critical functions. In other words all other Priority 3 and 4 loads shall be shed prior to any action shedding City's critical functions.

EXHIBIT P

EXISTING PERSONAL PROPERTY

QUANTITY	ITEM
ALL	**FIXED MARKERBOARDS**
ALL	**FIRE EXTINGUISHER CABINETS**
ALL	**METAL LOCKERS**
53	**OPEN-SHELF METAL STORAGE RACKS (ALL TYPES)**
33	**TALL STORAGE CABINETS WITH LOCKING ROLL-DOWN DOORS**
12	**TALL 2-DOOR STORAGE CABINETS WITH LOCKS**
1	**STORAGE CABINETS WITH LOCKS (3-TIER)**
2	**STORAGE CABINETS WITH LOCKS (4-TIER)**
6	**FOOTED STORAGE CABINETS WITH LOCKS (4-TIER)**
6	**STORAGE CABINETS WITH LOCKS (5-TIER)**
19	**FILE CABINETS (2-TIER)**
1	**FILE CABINETS (3-TIER)**
7	**FILE CABINETS (4-TIER)**
20	**FILE CABINETS (5-TIER)**
1	**ROLLING AUDIO-VISUAL RACK**
2	**DISASTER LOCKERS**
20	**SMALL WHEELED STORAGE PEDESTAL (GRAY)**
8	**TRAPEZOIDAL CONFERENCE TABLES**
2	**4'X12' CONFERENCE TABLES**
6	**3'X6' CONFERENCE TABLES**
8	**ROUND TABLES -**
various	**(6) 48" tables, (1) 54" table, (1) 36" table**
2	**SMALL RECTANGULAR TABLES (36" x 30")**
various	**(1) in conference room, (1) in NTS lab**
3	**WORKSHOP DESKS (36" x 72") (in NTS lab)**
54	**HAWORTH SYSTEMS FURNITURE (INCLUDING DESKS AND STORAGE)**
36	**2-TIER FILE CABINETS (AT ENDS OF CUBICLES)**
85	**CONFERENCE CHAIR (GRAY ONLY)**
17	**STACKING CHAIRS (BLACK)**
ALL	**VAV boxes**
ALL	**20-TON CRAC UNITS**
7 (TOTAL)	**480-208/120v, 125kVA TRANSFORMER, PDUs**
ALL	**TELEPHONE BACKBOARD**
ALL	**EXISTING CABLE TRAYS**
ALL	**EXISTING SERVER RACKS (INCLUDING RACKS IN STORAGE AREAS)**

QUANTITY	ITEM
various	**COAX FOR CABLE/SATELLITE FEEDS**

EXHIBIT Q

PRELIMINARY LEED-IDC SCORECARD

[SEE ATTACHED]

SFMTA 1455 Market Street – 7th Floor Preliminary LEED-IDC Score Card	Yes	Maybe	No
Sustainable Sites	14	0	7
Water Efficiency	6	2	3
Energy and Atmosphere	18	4	15
Materials and Resources	5	3	6
Indoor Environmental	9	3	5
Innovation and Design Process	3	3	0
Regional Priority	2	1	2
Project Total	57	16	38

Sustainable Sites:

Sustainable Sites	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
SS Credit 1 Option 1			4	Select a LEED Certified Building. **OR**	
SS Credit 1 Option 2				Locate the tenant space in a building that has in place one or more of the following characteristics at time of submittal (1-5 points). Each of the following options may also be met by satisfying the requirements of the corresponding LEED 2009 for New Construction credit.	Site Selection
Path 1				Deleted: ~~Path 1: Brownfield Redevelopment~~	
Path 2				Deleted: ~~Path 2: Stormwater Design - Quantity Control~~	
Path 3				Deleted: ~~Path 3: Stormwater Design - Quality Control~~	
Path 4				Deleted: ~~Path 4: Heat Island Effect, Non-Roof~~	
Path 5				Deleted: ~~Path 5: Heat Island Effect, Roof. A building whose roofing has a solar reflectance index (SRI) of the following minimum values for at least 75% of the roof surface; Low sloped roof (2:12) SRI 78.~~	Syska stated (E) conc. roofing can't meet this point.
Path 6			1	Path 6: Light Pollution Reduction	Syska to review whether Path 6 is achievable.
Path 7				Deleted: ~~Path 7: Water Efficient Landscaping - reduce consumption by 50%~~	
Path 8				Deleted: ~~Path 8: Water Efficient Landscaping - No Potable Use or No Irrigation (in addition to Path 7)~~	
Path 9				Deleted: ~~Path 9: Innovative Waste Water Technologies~~	
Path 10				Deleted: ~~Path 10: Water use Reduction~~	
Path 11				Deleted: ~~Path 11: On-site Renewable Energy : 2.5% for 1 point. 5% for 2 points~~	
Path 12				Deleted: ~~Path 12: Other Quantifiable Environmental Performance~~	

Sustainable Sites	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
SS Credit 2 Option 1				Deleted: ~~Select space in a building that is located in an established, walkable community with a minimum density of 60,000 sq.ft./acre net. The density calculation in based on a typical two-story downtown development and must include the area of the project being built. OR~~	Development Density & Community Connectivity
SS Credit 2Option 2	6			Select space in a building on a site that meets the following criteria: A) Is located within ½ mile of a residential area or neighborhood with an average density of 10 units per acre net, AND B) Is within ½ mile of at least 10 Basic Services, AND C) Has pedestrian access between the building and the services. Basic Services include: 1) Bank; 2) Place of Worship; 3) Convenience Grocery; 4) Day Care Center; 5) Cleaners; 6) Fire Station; 7) Beauty Salon; 8) Hardware; 9) Laundry; 10) Library; 11) Medical or Dental; 12) Senior Care Facility; 13) Park; 14) Pharmacy; 15) Post Office; 16) Restaurant; 17) School; 18) Supermarket; 19) Theater; 20) Community Center 21) Fitness Center; 22) Museum. Proximity is determined by drawing a 1/2 mile radius around a main building entrance on a site map and counting the services within that radius. Greenfield developments and projects that do not use existing infrastructure are not eligible. No more than 2 of 10 services required may be anticipated (i.e. at least 8 must be existing and operational).	City to complete LEED-Online documentation requirements
SS Credit 3.1 Option 1	6			Deleted: ~~Rail Station Proximity. Locate the project in a building within 1/2 mile walking distance (measured from a main building entrance) of an existing commuter rail, light rail or subway station.~~ ~~**OR**~~	Alternative Transportation-Public Transportation
SS Credit 3.1 Option 2				Bus Stop Proximity. Locate the project within 1/4-mile walking distance (measured from a main building entrance) of 1 or more stops for a 2 or more public campus or private bus lines usable by tenant occupants.	Access City to complete LEED-Online documentation requirements

Sustainable Sites	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
SS Credit 3.2	2			Provide secure bicycle racks and/or storage (within 200 yards of a main building entrance) for 5% or more of tenant occupants (measured at peak periods). Provide shower and changing facilities in the building, or within 200 yards of a building entrance, for 0.5% of full-time equivalent (FTE) occupants.	Alternative Transportation-Bicycle Storage & Changing Rooms IA/Syska to provide plans of bike & locker rooms
SS Credit 3.3			2	Parking spaces provided to tenant shall not exceed min. number required by local zoning regulations. AND Priority parking for carpools or van pools will be provided for 5% or more of tenant occupants. **OR**	Alternative Transportation-Parking Availability
SS Credit 3.3 Option 2				No parking is provided or subsidized for tenant occupants.	

Water Efficiency:

Water Efficiency	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
WE Prerequisite 1	required	required	required	Employ strategies that in aggregate use 20% less water than the water use baseline calculated for the building (not including irrigation). Calculate the baseline according to the commercial baselines outlined below. Calculations are based on estimated occupant usage and must include only the following fixtures and fixtures fittings (as applicable to the project scope): water closets, urinals, lavatory faucets, showers, kitchen sink faucets and prerinse spray valves.	IA/Syska to provide Building Code Requirements for lavatories and manufacturer's data, list plumbing fixtures by usage group.
Water Use Reduction - 20% Reduction				Commercial toilets: 1.6 gpf (*). Except blow-out fixtures: 3.5 gpf	
Water Use Reduction - 20% Reduction				Commercial urinals: 1.0 gpf	
Water Use Reduction - 20% Reduction				Commercial lavatory (restroom) faucets: 0.5 gpm at 60 psi (**), all others except private applications. 0.25 gallons per cycle for metering faucets.	
Water Use Reduction - 20% Reduction				Commercial prerinse spray valves (for food service applications): Flow rate less than 1.6 gpm (no pressure specified; no performance requirements)	
Water Use Reduction - 20% Reduction				* EPAct 1992 standard for toilets applies to commercial models. ** In addition to EPAct requirements, the American Society of Mechanical Engineers standard for public lavatory faucets is 0.5gpm at 60psi (ASME A112.18.1-2005). This maximum has been incorporated into the national Uniform Plumbing Code and the International Plumbing Code.	

Water Efficiency	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
WE Credit 1	6	2	3	Employ strategies that in aggregate use at least 30% less water than the water use baseline calculated for the building (not including irrigation). Calculate the baseline according to the commercial and/or residential baseline outlined in the reference guide.	Water Use ReductionNeed to install 1.2 gpf toilets, see plumbing cut sheets. 30%=6 points 35%=8 points 40%=11 points

Energy and Atmosphere:

Energy and Atmosphere	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
EA Prerequisite 1	18	4	15	The following commissioning process activities must be completed by the project team:	
Item 1	required	required	required	Designate an individual as the Commissioning Authority (CxA) to lead, review, and oversee the completion of the commissioning process activities. a) The CxA must have documented commissioning authority experience in at least 2 building projects. b) The individual serving as the CxA must be independent of the project's design and construction management, though CxA may be employees of any firms providing those services. The CxA may be a qualified employee or consultant of the Owner. c) The CxA must report results, findings and recommendations directly to the Owner. d) For projects smaller than 50,000 gross square feet, the CxA may be a qualified person on the design or construction teams who has the required experience.	Fundamental Commissioning of Building Energy Systems Hire a CxA acceptable to BAC and G.C.
Item 2	required	required	required	The Owner must document the Owner's Project Requirements. The design team must develop the Basis of Design. The CxA must review these documents for clarity and completeness. The Owner and design team must be responsible for updates to their respective documents.	
Item 3	required	required	required	Develop and incorporate commissioning requirements into the construction documents.	
Item 4	required	required	required	Develop and implement a commissioning plan.	
Item 5	required	required	required	Verify the installation and performance of the systems to be commissioned.	
Item 6	required	required	required	Complete a summary commissioning report.	

Energy and Atmosphere	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
Item 7	required	required	required	Commissioned Systems: Commissioning process activities must t be completed for the following energy-related systems at a minimum: 1) Heating, ventilating, air conditioning and refrigeration (HVAC & R) systems (mechanical and passive) and associated controls. 2) Lighting and daylighting controls. 3) Domestic hot water systems. 4) Renewable energy systems (e.g.. PV, wind, solar).	
EA Prerequisite 2	required	required	required	Design portions of the building as covered by the tenant's scope of work to comply with ANSI/ASHRAE/IESNA standard 90-1-2007, and complete the following:	Minimum Energy Performance IA/Syska to provide Building Code Requirements and ASHRAE compliance. G.C to buy only and provide cut sheets for ENERGY STAR equipments.
Item 1	required	required	required	Comply with the mandatory provisions (Sections 5.4, 6.4, 7.4, 8.4, 9.4 and 10.4) of ANSI/ASHRAE/IESNA Standard 90.1.2007.	
Item 2	required	required	required	Achieve the prescriptive requirements (Sections 5.5, 6.5, 7.5, and 9.5) or performance requirements (Section 11) of ANSI/ASHRAE,/IESNA Standard 90.1-2007.	
Item 3	required	required	required	Reduce connected lighting power density 10% below that allowed by AnSI/ASHRAE/IESNA Standard 90.1-2007 using either the Space-by-Space Method or by applying the whole building lighting power allowance to the entire tenant space.	
Item 4	required	required	required	Install ENERGY STAR qualified equipment for 50% (by rated-power) of ENERGY STAR eligible equipment installed as part of the tenant's scope of work. This requirement includes appliances, office equipment, electronics, and commercial food service equipment.	

Energy and Atmosphere	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
				Excluded are HVAC, lighting, and building envelope products.	
Item 5	required	required	required	Projects in California may use Title 24-2005, Part 6 in place of ANSI/ASHRAE/IESNA Standard 90.1-2007	
EA Prerequisite 3	required	required	required	Zero use of Chlorofluorocarbon (CFC)-	Syska will provide affirmative statement
EA Credit 1.1		1	4	Reduce connected lighting power density below that allowed by ANSI/ASHRAE/IESNA Standard 90.1-2007 using either the space-by-space method or by applying the whole building lighting power allowance to the entire tenant space. Lighting Power Density Reduction and Points as follows: 15%=1 point, 20%=2 points, 25%=3 points, 30%=4 points, 35%=5 points	Optimize Energy Performance - Lighting Power KH will work with IA/Syska to attempt 15% reduction.
Item 1				Potential Technologies & Strategies: Design the connected lighting power to maximize energy performance. If the project warrants, consider a computer simulation model to assess the performance and identify the most cost-effective energy efficiency measures.	
Item 2				Project teams in California may use Title 24-2005, Part 6 in place of ANSI/ASHRAE/IESNA Standard 90.1-2007	
EA Credit 1.2	1	1	1	Design the project to include 1 or more the following independent strategies:	Optimize Energy Performance - Lighting Controls
Item 1				Daylight controls for daylit areas: Install daylight responsive controls in all regularly occupied daylit spaces within 15 feet of windows and under skylights. Day light controls must switch or dim electric lights in response to the presence or absence of daylight illumination in the space. (1 point)	City to study whether Item 1 is achievable.

Energy and Atmosphere	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
Item 2				~~Daylight controls for 50% of the lighting load: Install daylight responsive controls for 50% or more of the connected lighting load and demonstrate that 50% of the connected lighting load is daylight responsive. Daylight controls must switch or dim electric lights in response to the presence or absence of daylight illumination in the space. (1 point)~~	
Item 3				Occupancy sensors: Install occupancy sensors for 75% of the connected lighting load. (1 point)	Item 3 credit is expected
EA Credit 1.3 Option 1	5		5	Implement 1 or both the following strategies:	Optimize Energy Performance - HVAC
Item A				Deleted: ~~A) Equipment Efficiency. Install HVAC systems that comply with the efficiency requirements outlined in the New Building Institute's Advanced Buildings "Core Performance" Guide Sections 1.4: Mechanical System Design, 2.9: Mechanical Equipment Efficiency and 3.20: Variable Speed Control. (5 points)~~	
Item B				B) Appropriate Zoning and Controls: Zone tenant fit out of spaces to meet the following requirements: 1) Every solar exposure must have a separate control zone. 2) Interior spaces must be separately zoned. 3) Private offices and special occupancies (conference rooms, kitchens, etc.) must have active controls capable of sensing space use and modulating the HVAC system in response to space demand. (5 points)	Syska confirmed Option 1B is achievable
EA Credit 1.3 Option 2				Deleted: ~~Reduce design energy cost compared with the energy cost budget for regulated energy components described in the requirements of ANSI/ASHRAE/IESNA Standard 90.1-2007. AND~~	

Energy and Atmosphere	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
Path 1				Deleted: ~~PATH 1 (5 points) - Demonstrate the HVAC system component performance criteria used for tenant space are 15% better than a system in minimum compliance with ANSI/ASHARE/IESNA Standard 90.1 2007. OR~~	
Path 2				Deleted: ~~PATH 2 (10 points) - Demonstrate that HVAC system component performance criteria used for tenant space are 30% better than system that is in minimum compliance with ANSI/ASHRAE/IESNA Stand 90.1-2007.~~	
EA Credit 1.4	2	2		For all ENERGY STAR qualified equipment and appliances installed as part of the tenant's scope of work, achieve one of the following percentages (by rated power): 70%=1 point 77%=2 points 84%= 3 points 90%= 4 points	MTA to prepare list This requirement applies to appliances, office equipment, electronics, and commercial food service equipment. Excluded are HVAC, lighting, and building envelope products.
EA Credit 2	5			Implement, or have a contract in place to implement, the following additional commissioning process activities in addition to the requirements of EA Prerequisite 1: Fundamental Commissioning of Building Energy Systems:	Enhanced Commissioning Part of the CxA contract work

Energy and Atmosphere	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
Item 1				Prior to the start of the construction documents phase, designate an independent Commissioning Authority (CxA) to lead, review, and oversee the completion of all commissioning process activities. a) The CxA must have documented commissioning authority experience in at least 2 building projects. b) The individual serving as the CxA: i) Must be independent of the work of design and construction; ii) Must not be an employee of the design firm, though he/she may be contracted through them; iii) Must not an employee of, or contracted through, a contractor or construction manager holding construction contracts; and iv) May be a qualified employee or consultant of the Owner.	CxA to complete LEED-Online documentation requirements.
Item 2				The CxA must conduct, at a minimum, 1 commissioning design review of the owner's project requirements, basis of design and design documents prior to the mid-construction documents phase and must back-check the review comments in the subsequent design submission.	
Item 3				The CxA must review contractor submittals applicable to systems being commissioned for compliance with the owner's project requirements and basis of design. This review must be concurrent with the reviews of the architect or engineer of record and submitted to the design team and the owner.	
Item 4				The CxA or other project team members must develop a systems manual that gives future operating staff the information needed to understand and optimally operate the project's commissioned systems.	
Item 5				The CxA or other project team members must verify that the requirements for training operating personnel and building occupants have been completed.	

Energy and Atmosphere	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
Item 6				The CxA must be involved in reviewing the operation of the tenant space with operations and maintenance (O&M) staff and occupants within 8 to 10 months after substantial completion. A plan for resolving outstanding commissioning-related issues must be included.	
EA Credit 3	5			Projects Less Than 75% of the Total Building Area. Complete 1 or more the following:	Measurement & Verification Part of Lease & TI project. Will need ____ for #1 verification
Case 1 Item 1				Install submetering equipment to measure and record energy use within the tenant space. (2 points)	City clarified that Chilled Water (energy sources) is part of submetering or prorated requirements.
Case 1 Item 2				Negotiate a lease whereby energy costs are paid by the tenant and not included in the base rent. (3 points)	
Case 1 Item 3				Develop and implement a measurement and verification (M&V) plan that incorporates the monitoring information from the above end uses and is consistent with Option B, C or D of the 2001 International Performance Measurement & Verification Protocol (IPMVP) Volume I: Concepts and Options for Determining Energy and Water Savings. Provide a process for corrective action if the results of the M&V plan indicate that energy savings are not being achieved.	
EA Credit 4			5	Deleted: ~~Engage in at least a 2-year renewable~~	Green Power
Option 1				Deleted: ~~energy contract to provide at least 50% of the building's electricity from renewable sources, as defined by the Center for Resource Solution's Green-e energy product certification requirements. All purchases of green power must be based on the quantity of energy consumed, not the cost, as determined by the annual electricity consumption~~	

Energy and Atmosphere	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
				~~results of EA Credit 1, Optimize Energy Performance.~~ **~~OR~~**	
Option 2				Engage in at least a 2-year renewable energy contract to purchase at least 8 kilowatt hours per square foot per year from renewable electricity sources as defined by the Center for Resource Solutions (CRS) Green-e Energy's product certification requirements. All purchases of green power must be based on the quantity of energy consumed, not the cost.	City to investigate cost of Option 2, if anticipated credits fall below 50 points.

Materials and Resources :

Materials and Resources	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
MR Prerequisite 1	required	required	required	Provide an easily accessible dedicated area or areas for the collection and storage of materials for recycling for the tenant space. Materials must include at a minimum paper, corrugated cardboard, glass, plastics, and metals.	Storage & Collection of Recyclables Already include in space plan. BAC to provides the building's recycling program.
MR Credit 1.2	1	1		Maintain at least 40% or 60% by area of the existing non-shell, nonstructural components (e.g.. Walls, flooring and ceiling systems). The minimum percentage interior component reuse for each point threshold is as follows: 40%= 1 point, 60% = 2 points	Building Reuse - Maintain Interior Nonstructural Components KH to provide initial drawings & City will provide calculations. IA to provide final area of new & existing elements, and area of reused interior nonstructural elements.
MR Credit 2	2			Recycle and/or salvage nonhazardous construction and demolition debris. Develop and implement a construction waste management plan that, at a minimum, identifies the materials to be diverted from disposal and whether the materials will be sorted on-site or comingled. Excavated soil and land-clearing debris do not contribute to this credit. Calculations can be done by weight or volume, but must be consistent throughout. The minimum percentage debris to be recycled or salvaged for each point threshold is as follows: 50% = 1 point, 75% = 2 points	Construction Waste Management Permit requirement. GC to track & keep summary log of all construction materials.
MR Credit 3.1			2	Use salvaged, refurbished or reused materials, the sum of which constitutes at least 5% or 10%, based on cost, of building (construction) materials, excluding furniture and furnishings The minimum percentage materials reused for each point threshold is as follows: 5% = 1 point, 10% = 2 points	Materials Reuse Not feasible
MR Credit 3.2			1	Use salvaged, refurbished or used furniture and furnishings for 30% of the total furniture and furnishings budget.	Materials Reuse Not feasible

Materials and Resources	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
MR Credit 5 Option 1			2	Use a minimum of 20% of the combined value of construction and Division 12 (Furniture) materials and products that are manufactured regionally within a radius of 500 miles. OR	Materials Reuse Not feasible
MR Credit 5 Option 2				Meet the requirements for Option 1. Use a minimum of 10% of the combined value of construction and Division 12 (Furniture) materials and products extracted, harvested or recovered, as well as manufactured, within 500 miles of the project.	Regional Materials

Indoor Environmental:

Indoor Environmental	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
IEQ Credit 1		1		Install permanent monitoring systems to ensure that ventilation systems maintain design minimum requirements. Configure all monitoring equipments to generate an alarm when the airflow values or carbon dioxide (CO2) levels vary by 10% or more from the design values, via either a building automation system alarm to the building operator or a visual or audible alert to the building occupants AND	Outdoor Air Delivery Monitoring Possible but expensive credit
Case 1				Mechanically Ventilated Spaces. Monitor CO2 concentrations within all densely occupied spaces (those with a design occupant density of 25 people or more per 1000 square feet). CO2 monitors must be between 3 and 6 feet above the floor. Provide a direct outdoor airflow measurement device capable of measuring the minimum outdoor air intake flow with an accuracy of plus or minus 15% of the design minimum outdoor air rate, as defined by ASHRAE 62.1-2007 for mechanical ventilation systems where 20% or more of the design supply airflow serves nondensely occupied spaces.	
IEQ Credit 2		1		Mechanically Ventilated Spaces. Increase breathing zone outdoor air ventilation rates to all occupied spaces by at least 30% above the minimum rates required by ASHRAE 62.1-2007 as determined by IEQ Prerequisite 1: Minimum Indoor Air Quality Performance.	Increased Ventilation: to be discussed w/ BAC
IEQ Credit 3.1	1			Develop and implement an indoor air quality (IAQ) management plan for the construction and pre-occupancy phases of the tenant space as follows:	GC to provide standard construction procedures & work w/ CxA for (create construction IAQ management plan, maintain visual documentation)
Item 1				During construction meet or exceed the recommended design approaches of the Sheet Metal and Air Conditioning Contractors National Association (SMACNA) IAQ Guidelines for Occupied Buildings under Construction, 2nd Edition 2007, AMSI/SMACNA 008-2008 (Chapter 3).	
Item 2				Protect stored on-site and installed absorptive materials from moisture damage.	

Indoor Environmental	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
Item 3				If permanently installed air handlers are used during construction, filtration media with a minimum efficiency reporting value (MERV) of 8 must be used at each return air grill, as determined by ASHRAE 52.2-1999. Replace all filtration media immediately prior to occupancy.	
IEQ Credit 3.2		1		Develop an Indoor Air Quality (IAQ) management plan and implement it after all finishes have been installed and the building has been completely cleaned before occupancy:	Construction Indoor Air Quality Management Plan - Before Occupancy Better Option to be discussed - lease provides 3 day burn off
Option 1 Path 1				Deleted: ~~PATH 1- After construction ends, prior to occupancy and with all interior finishes installed, install new filtration media and flush-out the building by supplying a total air volume of 14,000 cubic feet of outdoor air per square foot of floor area while maintaining an internal temperature of at least 60F and, where mechanical cooling is operated, relative humidity no higher than 60%.~~ ~~**OR**~~	
Option 2 Path 2				PATH 2 - If occupancy is desired prior to completion of the flush-out, the space may be occupied following delivery of a minimum of 3,500 cu.ft. of outdoor air per sq.ft. of floor area. Once the space is occupied, it must be ventilated at a minimum rate of 0.30 cfm/sq.ft. of outside air or the design minimum outside air rate determined in EQ Prerequisite 1: Minimum IAQ Performance, whichever is greater. During each day of the flush-out period, ventilation must begin a minimum of 3 hours prior to occupancy and continue during occupancy. These conditions shall be maintained until a total of 14,000 cu.ft./sq.ft. of outside air has been delivered to the space.	
Option 2				AIR QUALITY TESTING Conduct baseline IAQ testing after construction ends and prior to occupancy, using testing protocols consistent with the EPA Compendium of Methods for the Determination of Air Pollutants in Indoor Air and as additionally detailed in the LEED Reference Guide for Green Interior Design and Construction, 2009 Edition.	GC to provide pricing for IAQ Testing consultant

Indoor Environmental	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
IEQ Credit 4.1 Item 1				All adhesives and sealants used on the interior of the building (i.e. inside of the weatherproofing system and applied on-site) must comply with the requirements as applicable to the project scope: Adhesives, sealants and sealant primers must comply with South Coast Air Quality Management District (SCAQMD) Rule 1168. Volatile organic compound (VOC) limits listed in the table were effective July 1, 2005 with a rule amendment date of January 7, 2005. Refer to table listed in reference guide.	Low-Emitting Materials - Adhesives & Sealants KH and IA to spec. GC to provide documentation (maintain a list, track amount of each products).
Item 2				AND Aerosol Adhesives must comply with Green Seal Standard for Commercial Adhesives GS-36 requirements in effect on October 19, 2000. Refer to table listed in reference guide.	
IEQ Credit 4.2	1			Paints and coatings used on the interior of the building (i.e. inside the weatherproofing system and applied on-site) must comply with the following criteria as applicable to the project scope:	KH and IA to spec.
IEQ Credit 4.5	1			All systems furniture and seating that was manufactured, refurbished or refinished within 1 year prior to occupancy must meet 1 of the options below:	Low-Emitting Materials - Systems Furniture and Seating KH to spec, Furniture vendor & G.C. to documentation (maintain a list, track amount of each products).
Option 1				Furniture and seating are Greenguard Indoor Air Quality Certified. OR,	
Option 2				Calculated indoor air concentrations that are less than or equal to those listed in Table 1 for furniture systems and seating determined by a procedure based on the EPA Environmental Technology Verification (ETV) Large Chamber Test Protocol for Measuring Emissions of VOCs and Aldehydes (September 1999) testing protocol conducted in an independent air quality testing laboratory. OR,	

Indoor Environmental	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
Option 3				Calculated indoor air concentrations that are less than or equal to those listed in Table 1 for furniture systems and seating determined by a procedure based on ANSI/BIFMA M7.1-2007 and ANSI/BIFMAX 7.1-2007 testing protocol conducted in an independent third- party air quality testing laboratory. The requirements in Section 5 of ANSI/BIFMAX7.1-2007 is waived for LEED purposes. Section 5 requires that laboratories used to perform the emissions testing and/or provide analytical results must be independently accredited to ISO/IEC17025, "General requirements for the competence of testing and calibration laboratories." Refer to table listed in reference guide.	
IEQ Credit 5			1	Design to minimize and control the entry of pollutants into the tenant space and later cross-contamination of regularly occupied areas through the following strategies:	Indoor Chemical and Pollutant Source Control Project team decided this is not under consideration
Item 1				Employ permanent entryway systems at least 10 feet long in the primary direction of travel to capture dirt and particulates from entering the building at all high-volume exterior entryways. **AND,**	
Item 2				Sufficiently exhaust each space where hazardous gases or chemicals may be present or used (e.g. garages, housekeeping and laundry areas copying and printing rooms) to create negative pressure with respect to adjacent spaces when the doors to the room closed. For each of these spaces, provide self-closing doors and deck to deck partitions or a hard lid ceiling. The exhaust rate shall be at least 0.50 cfm/sq.ft., with no air re-circulation. The pressure differential with the surrounding spaces must be at least 5 Pascals (Pa) (0.02 inches of water gauge) on average and 1 Pa (0.0004 inches of water) at a minimum when the doors to the rooms are closed. **AND,**	
Item 3				In mechanically ventilated buildings, install new air filtration media in regularly occupied areas prior to occupancy; these filters must provide a minimum efficiency reporting value (MERV) of 13 or better. Filtration should be applied to process	

Indoor Environmental	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
				both return and outside air that is delivered as supply air. **AND,**	
Item 4				Provide containment drains plumbed for appropriate disposal of hazardous liquid wastes in spaces where water and chemical concentrate mixing occurs for maintenance or laboratory purposes.	
IEQ Credit 6.1	1			Provide individual lighting controls for 90% (minimum) of the tenant spaces occupants to enable adjustments to suit individual task needs and preferences. AND Provide lighting system controls for all shared multi-occupant spaces to enable adjustments that meet group needs and preferences.	Controllability of Systems - Lighting KH indicated that this point is achievable
IEQ Credit 6.2	1			Provide individual comfort controls for 50% (minimum) of the tenant occupants to enable adjustments to suit individual needs and preferences. Operable windows may be used in lieu of individual controls for occupants located 20 feet inside and 10 feet to either side of the operable part of the window. The areas of operable window must meet the requirements of ASHRAE Standard 62.1-2007 paragraph 5.1 Natural Ventilation. AND Provide comfort system controls for all shared multi-occupant spaces to enable adjustments that meet group needs and preferences. Conditions for thermal comfort are described in ASHRAE Standard 55-2004 and include air temperature, radiant temperature, air speed and humidity.	Controllability of Systems - Thermal Comfort YEI indicated that this point is achievable with raise floor mounted diffusers.
IEQ Credit 7.1	1			Design HVAC systems to meet the requirements of ASHRAE Standard 55-2004, Thermal Comfort Conditions for Human Occupancy. Demonstrate design compliance in accordance with the Section 6.1.1 Documentation.	Thermal Comfort - Design YEI indicated that this point is achievable

Indoor Environmental	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
IEQ Credit 7.2			1	Provide a permanent monitoring system and process for corrective action to ensure that building performance meets the desired comfort criteria as determined by IEQ Credit 7.1: Thermal Comfort - Design. Agree to conduct a thermal comfort survey of tenant space occupants within a period of 6 to 18 months after occupancy. This survey should collect anonymous responses about thermal comfort in the tenant space including an assessment of overall satisfaction with thermal performance and identification of thermal comfort problems. Agree to develop a plan for corrective action if the survey results indicate that more than 20% of occupants are dissatisfied with thermal comfort in the tenant space. This plan should include measurement of relevant environmental variables in problem areas in accordance with ASHRAE Standard 55-2004.	Thermal Comfort - Verification
IEQ Credit 8.1			2	Deleted: ~~The percentage of daylighting to be achieved for each point threshold is as follows: 75% - 1 point; 90% - 2 points.~~	Daylight & Views - Daylight
Deleted: ~~Option 1~~				Deleted: ~~Simulation. Demonstrate through computer simulations that 75% or 90% or more of all regularly occupied spaces areas achieve daylight illuminance levels of a minimum of 25 fc and maximum of 500 fc in a clear sky condition on Sept. 21 and 9 a.m. and 3 p.m. Areas with illuminance levels below or above the range do not comply. However, designs that incorporate view-preserving automated shades for glare control may demonstrate compliance for only the minimum 25 fc illuminance level. OR,~~	
Deleted: ~~Option 2~~				Deleted: ~~Prescriptive – Use a combination of side-lighting and/or top-lighting to achieve a total daylighting zone that is at least 75% or 90% of all the regularly occupied spaces. OR,~~	

Indoor Environmental	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
Deleted: ~~Option 3~~				Deleted: ~~Measurement – Demonstrate, through records of indoor light measurements that a minimum daylight illumination level of 25 fc has been achieved in at least 75% and 90% of all regularly occupied areas. Measurements must be taken on a 10-foot grid for all occupied spaces and recorded on building floor plans. OR,~~	
Deleted: ~~Option 4~~				Deleted: ~~Combination – Any of the above calculation methods may be combined to document the minimum daylight illumination in at least 75% or 90% of all regularly occupied spaces. The different methods used in each space must be clearly recorded on all building plans.~~	

Innovation and Design Process:

Innovation and Design Process	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
Path				Innovation in Design and Exemplary Performance paths as described below:	
Path 1				Innovation in Design (1-5 points), identify the following in writing:The intent of proposed innovation credit. 2) The proposed requirements for compliance. 3) The proposed submittals to demonstrate compliance. 4) The design approach (strategies) used to meet the requirements.	
Path 2				Exemplary Performance (1-3 points): Achieve exemplary performance in an existing LEED 2009 CI prerequisite or credit that allows exemplary performance as specified in the LEED Reference Guide for Green Building Interior Design, 2009 Edition. An exemplary performance point may be eared for achieving double the credit requirements and/or achieving the next incremental percentage threshold of an existing credit in LEED	
ID Credit 1.1	1			Use Reduce Mercury Lamps	New lighting to be compliant, see lamp cut sheet
ID Credit 1.2	1			Use Green Cleaning policy	BAC provided cleaning product spec.
ID Credit 1.3		1		Integrate Pest Management Plan	BAC to provide current pest management plan.
ID Credit 1.4		1		Solid waste management	
ID Credit 1.5		1		Improve acoustic design	
ID Credit 2	1			Credit requires that at least one principal participant of the project team that has successfully passed the LEED Accredited Professional Exam.	LEED™ Accredited Professional City to document

Regional Priority:

Regional Priority	Yes	Maybe	No	Design/Construction Requirements	Comments/Action Items
Item 1				To provide design teams and Projects the opportunity to be awarded points for achievement of existing LEED credits that deliver regionally important benefit which has been deemed, by the regional authority, to have benefit above the point value set by the LEED Green Building Rating System.	Regional Bonus Credits
Item 2				Requirements Achieve one of the (6) credits, to a maximum of (4) , that have been identified as regionally important by the regional authority where the LEED project is located.	
Item 3				*Available credits in the 94103 zip code are: WE c1 (40%), EA c1.1 (35%), EA c1.3, MR c2 (75%), MR c5.1, and MR c7.*	
RP Credit 1.1	1			MR c2 (75%) Construction Waste Management Recycle and / or salvage non hazardous construction and demolition debris	refer to MR credit 2 (comments)
RP Credit 1.2	1			MR c7 Certified Wood	refer to MR credit 7 (comments)
RP Credit 1.3			1	MR c5.1 Regional Materials	
RP Credit 1.4		1		WE c1 Water Use Reduction (40%)	
RP Credit 1.5			1	EA c1.1 Optimize Energy Performance - Lighting Power Reduction (35%) OR EA c1.3 Optimize Energy Performance - HVAC	

EXHIBIT R

SCHEDULE E-BASE INTERRUPTIBLE PROGRAM

Landlord participates in the E-BIP Program (Base Interruptible Program) offered by P.G. & E. which provides load reductions on P.G. & E's system on a day-of basis when the California Independent System Operator (CAISO) issues a curtailment notice. Customers enrolled in the Program will be required to reduce their load down to their firm service level (FSL) established in connection with P.G. & E.

Landlord manages the facility's power consumption load to or below levels that have been established with P.G. & E. to reduce the facility's load to or below a level that has been established, which is called the Firm Service Level (FSL) to optimize electrical conservations efforts at this location. This facility has met all of the equipment requirements for participation in this plan.

Landlord may establish reasonable measures to conserve energy and water, including automatic light shut off after hours and efficient lighting forms, so long as these measures do not unreasonably interfere with the use of the premises.

Qualification in the E-BIP Program requires that the building respond to notification requests provided from P.G. & E. to curtail power usage at the facility by at least 15 percent of the average monthly load or a minimum of 100 KW, whichever is greater.

Failure to reduce load down to or below our established (FSL) levels at the building during an event will result in substantially increased utility costs. There is a maximum of one (1) event per day and four (4) hours per event. The program will not exceed ten (10) events per month, or (120) hours per year.

This program may be closed by P.G. & E. without notice when the interruptible program limits set forth in the CPUC Decision 01-04-006 and Rulemaking 00-010-002 have been fully subscribed. In accordance with CPUC Decision 09-08-027, service under this schedule is currently capped at 392 MV, which is the enrolled megawatt level established on August 20, 2009.

Landlord's committed to energy conservation is demonstrated by their on-going participation in the various P.G. & E's Customer Energy Efficiency Programs available in the City of San Francisco.

EXHIBIT S

FORM ESTOPPEL CERTIFICATE

TO:

_____
_____
_____
_____

RE: Lease Dated: _____

Landlord: _____
_____ ("Landlord")

Tenant: City and County of San Francisco, a municipal corporation, acting by and through the San Francisco Municipal Transportation Agency ("Tenant")

Premises: Approximately ____ square feet located at _____ ("Premises")

Ladies and Gentlemen:

The undersigned hereby certifies to _____, a _____, and its successors and assigns ("Buyer") as of the date hereof as follows:

1. The undersigned is the "Tenant" under the above-referenced lease ("Lease") covering the above-referenced Premises ("Premises").

2. The Lease, attached hereto as Exhibit A, constitutes the entire agreement between Landlord and Tenant with respect to the Premises and the Lease has not been modified, changed, altered or amended in any respect except as follows (if none, so state):

3. The term of the Lease commenced on _____, 20__, and, including any presently exercised option or renewal term, will expire on _____, 20___. Tenant has accepted complete possession of the Premises and is the actual occupant in possession and has not sublet, assigned or hypothecated or otherwise transferred all or any portion of Tenant's leasehold interest. All improvements to be constructed on the Premises by Landlord have been completed to the satisfaction of Tenant and accepted by Tenant and any tenant construction allowances have been paid in full. All duties of an inducement nature required of the Landlord in the Lease have been fulfilled. To Tenant's knowledge, all of the Landlord's obligations which have accrued prior to the date hereof have been performed.

4. To Tenant's knowledge, there exists no breach or default, nor state of facts nor condition which, with notice, the passage of time, or both, would result in a breach or default on the part of either Tenant or Landlord. To the best of Tenant's knowledge, no claim, controversy, dispute, quarrel or disagreement exists between Tenant and Landlord.

5. Tenant is currently obligated to pay annual base rental in monthly installments of $_____ per month and monthly installments of annual rental have been paid through _____, 20__. In addition, Tenant is currently obligated to pay a proportionate share of ___% of increases in Operating Costs and Real Estate Taxes over Operating Costs and Real Estate Taxes for the Base Year, which is the calendar year 20__. Tenant presently pays estimated increases in Operating Costs and Real Estate Taxes equal to $_____ per month. Reconcilement for the Tenant's proportionate share of increases in Operating Costs and Real Estate Taxes have been made through _____, 20___, and Tenant or Landlord, as appropriate, has been fully and finally reimbursed for any deviations between the estimated payments and the actual expense therefor as indicated on Landlord's annual statement. The foregoing certification shall in no way waive or limit Tenant's audit rights under the Lease. No other rent has been paid in advance and to Tenant's knowledge Tenant has no claim or defense against Landlord under the Lease and is asserting no offsets or credits against either the rent or Landlord. Tenant has no claim against Landlord for any security, rental, cleaning or other deposits, except for a security deposit in the amount of $_____ which was paid pursuant to the Lease.

6. The Lease is in full force and effect in accordance with its terms and is a binding obligation of the undersigned.

7. [Intentionally omitted.]

8. Tenant has no option or preferential right to purchase all or any part of the Premises (or the real property of which the Premises are a part) nor any right or interest with respect to the Premises or the real property of which the Premises are a part other than as set forth in the Lease. Tenant has no right to renew or extend the terms of the Lease or expand the Premises except the first offer rights set forth in Section 22.1 of the Lease and the extension options set forth in Section 3.4 of the Lease.

9. Tenant has made no agreement with Landlord or any agent, representative or employee of Landlord concerning free rent, partial rent, rebate of rental payments or any other type of rental or other economic inducement or concession except as expressly set forth in the Lease.

10. There has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States, or any state thereof, or any other action brought under said bankruptcy laws with respect to Tenant.

11. [Intentionally omitted.]

12. The undersigned (i) is not presently engaged in nor does it presently permit, (ii) has not at any time in the past engaged in nor permitted, and (iii) has no knowledge that any third person or entity engaged in or permitted any operations or activities upon, or any use or occupancy of the Premises, or any portion thereof, for the purpose of or in any way involving the handling, manufacturing, treatment, storage, use, transportation, spillage, leakage, dumping, discharge or disposal (whether legal or illegal, accidental or intentional) of any radioactive, toxic or hazardous substances, materials or wastes, or any wastes regulated under any local, state or federal law, except as follows:

_____ (if none, so state).

13. The undersigned acknowledges that:

(a) Buyer or Buyer's assignee is purchasing Landlord's interest in the property which includes the Premises and, in connection with that purchase, will be receiving an assignment of Landlord's interest under the Lease;

(b) Landlord, Buyer and Buyer's successors, agents and assigns (including, but not limited to subsequent purchasers, lenders and title insurers) will be relying upon each of the statements contained herein in connection with Buyer's purchase of the property of which the Premises are a part; and

(c) The undersigned will attorn to and recognize Buyer as the Landlord under the Lease and will pay all rents and other amounts due thereunder to Buyer upon proper notice to the undersigned that Buyer has become the owner of Landlord's interest in the Premises under the Lease.

14. As used herein, Tenant's "knowledge" means the actual knowledge as of the date hereof of [insert name of individual] of the [insert department name].

EXECUTED this _____ day of _____, 20___.

TENANT:

,

By:
Name:
Title:

THIS PRINT COVERS CALENDAR ITEM NO. 11

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Sustainable Streets

BRIEF DESCRIPTION:

Directing SFMTA staff to reopen the solicitation process under Request for Proposals (RFP) #SFMTA 2009/10-14, titled "Request for Proposals for Operation and Management of Parking Facilities," by issuing an addendum setting new deadlines, authorizing prospective proposers to submit evidence of financial and experience qualifications with their proposals, and revising the model agreement to reflect recent revisions to City law governing parking tax bond amounts.

SUMMARY:

- On March 2, 2010, staff presented a report to the SFMTA Board of Directors summarizing the outcome of solicitation #SFMTA 2008/09-30 "Request for Proposals for Operation and Management of Parking Facilities." The report requested that the Board of Directors approve initiating negotiations to award new contracts to the highest ranking proposers under the RFP. The Board did not support moving forward with these awards.
- Subsequently, staff issued a revised RFP (#SFMTA 2009/10-14) in April 2010 designed to increase participation by potential bidders. While the deadline for proposals was June 21, 2010, on June 18, the solicitation was placed on hold while the City Attorney's Office investigated assertions that the SFMTA's decisions regarding solicitation #SFMTA 2009/09-30 were improper.
- On March 3, 2011, the City Attorney's Office issued a report concluding that the SFMTA's decisions regarding #SFMTA 2009/09-30 and issuance of #SFMTA 2009/10-14 did not reflect improper conduct on the part of any SFMTA officer or employee.
- Because most of the current garage management agreements have expired or are interim agreements, new and consistent contracts are necessary to effectively manage these garages. Staff recommends reopening the solicitation for #SFMTA 2009/10-14.
- In light of this finding, staff recommends issuing an addendum to reopen the solicitation process to all qualified operators. A tentative schedule is shown on Page 4.

ENCLOSURES:
1. SFMTA Board Resolution

APPROVALS: **DATE**

DIRECTOR OF DIVISION PREPARING ITEM _____ _____

FINANCE _____ _____

EXECUTIVE DIRECTOR/CEO _____ _____

SECRETARY _____ _____

ADOPTED RESOLUTION BE RETURNED TO: Amit Kothari

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

The purpose of this report is to update the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors regarding the revised Request for Proposals (RFP) #SFMTA 2009/10-14, titled "Request for Proposals for Operation and Management of Parking Facilities," and to seek the Board's direction on continuing the RFP process for awarding new contracts for the management of 13 garages administered by the SFMTA.

GOAL

This action is consistent with the SFMTA 2008-2012 Strategic Plan.

Goal 2: System Performance – To get customers where they want to go, when they want to be there
Objective 2.5: Manage parking supply to align with SFMTA and community goals

Goal 3: External Affairs/Community Relations – To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is the leader in the industry
Objective 3.1: Improve economic vitality by growing relationships with businesses, community, and stakeholder groups

Goal 4: Financial Capacity – To ensure financial stability and effective resource utilization
Objective 4.1: Increase revenue by 20% or more by 2012 by improving collections and identifying new sources
Objective 4.2: Ensure efficient and effective use of resources

DESCRIPTION

The SFMTA's Off-Street Parking Section manages 40 parking facilities, generating over $85 million in gross revenue annually. The mission of the Off-Street Parking Section is to provide clean, safe and convenient parking to the visitors, employees and businesses in the downtown core, as well as to the commercial and residential districts. Through effective management of over 15,000 spaces at these facilities, the Off-Street Parking Section supports economic vitality in the City's downtown and neighborhood commercial districts.

The current agreements with private operators for the management of most of the parking facilities have expired and are either continuing on a month-to-month basis or operating under interim agreements. These agreements should be replaced with a smaller number of consistent agreements that "bundle" garages into groups in order to achieve improved oversight and increased efficiencies. This approach is consistent with the recommendations contained in the 2007 report by Chance Management on the Parking Authority's oversight and management practices with respect to parking garages.

In April 2009, the SFMTA advertised solicitation #SFMTA 2008/09-30, titled "Request for Proposals for Operation and Management of Parking Facilities," soliciting proposals from qualified parking operators to manage 14 off-street parking facilities divided into three groups. Group A

consisted of six facilities encompassing 3,315 spaces, while Group B consisted of four facilities with 2,944 spaces and Group C included four facilities with a total of 387 spaces. The operators were to be paid a management fee of $6,000 per month for Group A, $5,000 per month for Group B and $2,000 per month for Group C, with the potential to earn substantially more by meeting revenue and customer satisfaction incentives. Operation of individual garages was to be phased in over time as existing agreements expired.

On November 30, 2009, staff announced that all bids received in response to the RFP were being rejected. Upon further consideration, in March 2010 the staff presented a report to the SFMTA Board of Directors summarizing results of this RFP process and recommending that staff be authorized to initiate contract negotiations with the highest ranking proposers. The Board did not approve this recommendation.

Subsequently, on April 23, 2010, the SFMTA advertised a revised RFP (#SFMTA 2009/10-14) soliciting proposals from private parking operators. This RFP was designed to encourage more prospective operators to submit proposals. Instead of being divided into three groups of varying sizes, the facilities were divided into three equal groups, based on the level of effort required, in order to achieve the highest operational efficiencies, oversight and opportunities for enhanced small/local business participation and joint venturing. The groupings are set forth below:

<u>Group A – Six Facilities (Gross Revenue – over $9M, Spaces - 2,210)</u>

1. Civic Center Garage, located at 355 McAllister Street (845 spaces)
2. Lombard Street Garage, located at 2055 Lombard Street (205 spaces)
3. Mission Bartlett Garage, located at 3255 21st Street (350 spaces)
4. Performing Arts Garage, located at 260 Grove Street (600 spaces)
5. 7th & Harrison Lot, located at 415 7th Street (110 spaces)
6. 16th & Hoff Garage, located at 42 Hoff Street (100 spaces)

<u>Group B – Two Facilities (Gross Revenue - Over $13M, Spaces - 1,510)</u>

1. Golden Gateway Garage, located 250 Clay Street (1,095 spaces)
2. St. Mary's Garage, located at 433 Kearny Street (415 spaces).
   (Current valet operations result in doubling the capacity of the St. Mary's Garage to over 800 spaces, resulting in a total of nearly 2,000 spaces for Group B).

<u>Group C – Five Facilities (Gross Revenue – Over $8M, Spaces - 2,875)</u>

1. SF General Hospital Garage, located 2500 24th Street (1,655 spaces)
2. Moscone Center Garage, located at 255 3rd Street (730 spaces)
3. North Beach Garage, located at 735Vallejo Street (200 spaces)
4. Vallejo Garage, located at 766 Vallejo Street (160 spaces)
5. Polk Bush Garage, located at 1399 Bush Street (130 spaces)

Under the second RFP, the operators of each group would receive a monthly management fee of $8,000 and there would be no incentive payments. In addition, there would be no "phase-in" of facilities. The selected operators would take over operation of all facilities in their group upon commencement of the contract. A 20 percent Local Business Enterprise (LBE) participation goal was established for each group.

Staff believes that certain aspects of the previous RFP may have discouraged some operators from submitting proposals. For example, the low monthly management fee combined with the potential for performance based incentives may have discouraged some operators from submitting proposals. Likewise, the phased assumption of individual garages (waiting as much as two years into the contract to assume responsibility for all garages and receive the full monthly payment) may have discouraged some operators from responding.

The deadline for proposals in response to the April 2010 RFP was June 21, 2010. On June 18, 2010, staff notified the prospective bidders that the deadline for submission of proposals was cancelled and that those bidders would be given at least two weeks' notice of any new deadline. The solicitation was placed on hold while the City Attorney's Office investigated assertions that the SFMTA's decisions regarding solicitation #SFMTA 2009/09-30 were improper. On March 3, 2011, the City Attorney's Office issued a report concluding that the SFMTA's decisions regarding #SFMTA 2009/09-30 and the issuance of #SFMTA 2009/10-14 did not reflect improper conduct on the part of any SFMTA officer or employee.

Staff now recommends that the solicitation process under the April 2010 RFP be reopened by issuing an addendum to that RFP establishing a new deadline for submissions. A tentative schedule for the remainder of the RFP process is shown below:

Milestone	**Date**
Advertisement & Addendum Issued Reopening the RFP Process	April 8, 2011
Deadline for Submittal of Written Questions	April 18, 2011
SFMTA Response to Questions from Prospective Proposers	April 21, 2011
Proposals, Required Documents and Bid Security Due	April 29, 2011
Evaluation by Contract Compliance Officer	May 6, 2011
Evaluation of Proposals and panel meetings/rankings	May 9 – 30, 2011
Interviews with highest ranking firms, Reference Check, Final Ranking	June 2011
Negotiations/draft agreement with highest ranking firm per Group	July 2011
Civil Service Commission Certification Process/Hearing	July 2011
SFMTA Board Approval	August 2011

If directed by the SFMTA Board of Directors, staff will issue an addendum that will provide the new timeline. In order to encourage participation in the RFP process, the addendum will also inform prospective proposers that anyone who may not have previously submitted a Qualification Questionnaire is eligible to submit the required information at the same time as they submit a proposal; it will not be necessary to be qualified prior to submitting a proposal as long as the required information is included with the proposal. This approach will ensure that all interested parties are given an opportunity to submit a proposal.

In addition, the addendum will make a minor changes to the model agreement attached to the RFP. Specifically, Section 10.4 will be revised to make clear that the parking tax collection bond shall be in the amount required by Section 6.6-1 of the San Francisco Business and Tax Regulations Code.

Under the terms of the second RFP, a proposer needs to submit only one proposal irrespective of which group of facilities the proposer is interested in. All proposals received by the due date will be reviewed for completeness, compliance with the eligibility requirements of the RFP, qualifications and experience, management approach, staffing and marketing plans, etc.

The three highest-ranked proposers (one for each group of garages) will be invited to negotiate agreements for an initial term of six years, with an option to extend for a maximum of three additional years.

Please note that from this point until contract award, any communication regarding this RFP must be through the designated staff identified in the RFP. In accordance with the SFMTA's policy on communications prior to contract award, prospective proposers are not allowed to discuss this RFP with any other staff members. The designated SFMTA staff contact is Winnie Xie, Manager of Contract Services.

ALTERNATIVES CONSIDERED

Since most of the current parking facility management contracts have already expired, it is important to complete this RFP process and award new contracts. The alternative to discontinue the RFP process and continue the month-to-month agreements was considered and is not recommended.

FUNDING IMPACT

Continuing with the RFP process and awarding new contracts will not result in a fiscal impact to the adopted budget for FY2010-11.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Approval by the Civil Services Commission on a Personal Services Contract (PSC) is anticipated in July 2011. The final agreements will require approval by the SFMTA Board of Directors.

The City Attorney's Office has reviewed this item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors adopt the attached resolution directing staff to reopen the solicitation process under RFP #SFMTA 2009/10-14, titled "Request for Proposals for Operation and Management of Parking Facilities," by issuing an addendum setting new deadlines and making specified revisions to the RFP.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The mission of the Off-Street Parking Section is to provide clean, safe and convenient parking to the visitors, employees and businesses in the downtown core, as well as to the commercial and residential districts; and

WHEREAS, Through effective management of over 15,000 spaces at 40 parking facilities, the Off-Street Parking Section supports economic vitality in the City's downtown and neighborhood commercial districts, supports the City's *Transit First* policy, develops various parking policies and programs that help reduce traffic congestion on City streets and promotes alternate modes of transportation; and

WHEREAS, In April 2010, the SFMTA advertised a solicitation #SFMTA 2009/10-14, titled "Request for Proposals for Operation and Management of Parking Facilities" (the RFP), soliciting proposals from qualified parking operators to manage 13 off-street parking facilities divided into three groups; and

WHEREAS, In June 2010, the SFMTA cancelled the deadline for submission of proposals in response to this RFP; and

WHEREAS, Most of the current management agreements for management of parking facilities administered by the SFMTA have either expired and are continuing on a month-to-month basis, or are operating under interim agreements, and new and consistent management agreements are needed for effective management and oversight of these parking facilities; now therefore, be it

RESOLVED, That the SFMTA Board of Directors directs SFMTA staff to reopen the solicitation process for Request for Proposals #SFMTA 2009/10-14, Operation and Management of Parking Facilities, by issuing an addendum setting a new schedule of deadlines, authorizing prospective proposers to submit evidence of financial and experience qualifications with their proposals, and revising the model agreement to reflect recent revisions to City law governing parking tax bond amounts.

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. : 13

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Transit Division

BRIEF DESCRIPTION:

Presentation and discussion of the TEP Draft Implementation Strategy. The Implementation Strategy includes a project schedule, capital cost estimates, key initiatives, staffing requirements, and performance management guidelines.

SUMMARY:

- The Transit Effectiveness Project (TEP) is a joint effort by the San Francisco Municipal Transportation Agency (SFMTA) and the City Controller's Office that aims to transform Muni so that people can get where they want to go more quickly, reliably and safely.
- In October 2008, the SFMTAB endorsed the Transit Effectiveness Project (TEP) for the purpose of environmental review. In December 2009, May 2010 and September 2010 service changes prevented an Implementation Strategy from moving forward, though service changes were TEP-informed and significant route update elements of the TEP have already been completed as a result.
- SFMTA and the Office of the Controller with assistance from PB Americas have completed the TEP Draft Implementation Strategy, a road map for TEP implementation through FY 20.
- Initiatives under the TEP Draft Implementation Strategy include: travel time reduction proposals (TTRP), service changes and associated systemwide infrastructure, terminal and transfer points improvement, overhead wire expansion, and long-term studies.
- Capital cost estimates are approximately $170 million through FY 20. Additionally, approximately 5 to 10 percent more annual service hours would be needed to deliver service improvements which have an impact on the operating budget.
- The Draft Strategy will inform the environmental review process to be led by the City Planning Department and in coordination with the Office of the Controller.
- Key next steps include gathering public input on the travel time reduction proposals, selecting an environmental consultant and providing quarterly updates.

ENCLOSURES:

1. Draft Implementation Strategy

APPROVALS: **DATE**

DIRECTOR OF DIVISION
PREPARING ITEM _____ _____

FINANCE _____ _____

EXECUTIVE DIRECTOR/CEO _____ _____

SECRETARY _____ _____

ADOPTED RESOLUTION
BE RETURNED TO_____

ASSIGNED SFMTAB CALENDAR DATE: _____

THIS PRINT COVERS CALENDAR ITEM NO. : 14

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Presentation of the FY11 Q2 Service Standards Scorecard

SUMMARY:

- Schedule adherence (A1) decreased slightly on a quarter over quarter basis, dipping from 72.0 percent in FY11 Q1 to 71.1 percent in FY11 Q2.
- Scheduled service hours delivered (A2) dipped from 97.4 percent in FY11 Q1 to 96.9 percent in FY11 Q2.
- Mean distance between failure (A5) improved on a quarter over quarter basis for both the rubber tire and rail fleets.
- Color curb applications addressed within 30 days (A8) rose from 88 percent in FY11 Q1 to 90 percent in FY11 Q2.
- Hazardous traffic signals addressed within two hours (A11) increased from 95 percent in FY11 Q1 to 96 percent in FY11 Q2.
- Muni complaints (C2) decreased from 5,974 in FY11 Q1 to 4,873 in FY11 Q2.

ENCLOSURES:
1. FY11 Q2 Service Standards Scorecard

APPROVALS: **DATE**

DIRECTOR OF DIVISION
PREPARING ITEM _____ _____

FINANCE _____ _____

EXECUTIVE DIRECTOR/CEO _____ _____

SECRETARY _____ _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

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

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

GOAL

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

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

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

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

Objective 4.1 Ensure efficient and effective use of resources.

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

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

Objective 5.3 Improve internal communication and employee satisfaction.

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

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

DESCRIPTION

Key results for FY11 Q2 (October-December 2010) are as follows:

Schedule adherence (A1) decreased during the quarter, dropping from 72.0 in FY11 Q1 to 71.1 percent in FY11 Q2. Five of the 40 lines and routes evaluated achieved on-time performance of 80 percent or greater. The goal is 85 percent.

Scheduled service hours delivered (A2) decreased from 97.4 percent in FY11 Q1 to 96.9 percent in FY11 Q2. Presidio Division led all reporting units at 99.0 percent service delivery.

Mean distance between failure (A5) improved for both the rubber tire and rail fleets. Miles between road calls for the bus fleet increased from 2,663 in FY11 Q1 to 2,668 in FY11 Q2. The

goal is 2,669. Rail performance rose from 1,845 miles in FY11 Q1 to 1,897 in FY11 Q2. The goal is 3,456.

Color curb applications processed within 30 days (A8) increased from 88 percent in FY11 Q1 to 90 percent in FY11 Q2. The goal is 90 percent.

Hazardous traffic signals addressed within two hours (A11) increased from 95 percent in FY11 Q1 to 96 percent in FY11 Q2. The goal is 92 percent.

Muni complaints (C2) dropped from 5,974 in FY11 Q1 to 4,873 in FY11 Q2. On a quarter over quarter basis, service planning related concerns submitted by customers dropped 36 percent.

ALTERNATIVES CONSIDERED

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

FUNDING IMPACT

Not applicable.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Citizens' Advisory Council will receive the report at a forthcoming meeting.

RECOMMENDATION

Receive the report.

THIS PRINT COVERS CALENDAR ITEM NO. : 16

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:
Summarizing the findings of a 2010 Proof-of-Payment follow-up study to identify any changes in fare compliance patterns from those identified in the initial 2009 study.

SUMMARY:
- The San Francisco Municipal Transportation Agency (SFMTA) conducted its first comprehensive Proof-of-Payment (POP) study in 2009 to identify fare compliance patterns throughout the Muni system, quantify the financial impacts of customers without valid proof-of-payment, and improve the SFMTA's POP fare inspection program.
- Since then, the SFMTA has expanded POP enforcement from the Muni Metro light-rail lines to buses and historic streetcars. In 2010, the SFMTA conducted a follow-up study to identify any changes in fare compliance patterns from the 2009 study.
- Based on a survey of approximately 12,000 customers (about 30 percent of the original study's sample size), the percentage of customers without valid proof-of-payment has decreased from 9.5 to 8.6 percent. This suggests that enforcement on buses, especially in areas identified as having significant POP issues, has helped the SFMTA manage fare compliance levels.
- The rate continues to vary greatly by route/line. While fare compliance has improved on many routes/lines, it continues to be a major issue on others.
- Estimated revenue losses due to customers without valid Proof-of-Payment remain at approximately $19 million annually based on the current fare structure.
- The percentage of customers entering through the back door without valid proof-of-payment appears to have decreased significantly, from 55 to 41 percent.
- The number of transit fare inspectors has decreased from 46 to 42. The relocation of the Proof-of-Payment program from 875 Stevenson to the Muni Metro Extension (MME) facility has impacted travel times to and from assigned lines and routes.
- The Clipper^{SM} Card is necessitating changes to transit fare inspection procedures.

ENCLOSURES:
1. Proof-of-Payment Study – 2010 Update

APPROVALS: **DATE**
DIRECTOR OF DIVISION
PREPARING ITEM _____ _____

FINANCE _____ _____

EXECUTIVE DIRECTOR/CEO _____ _____

SECRETARY _____ _____

ADOPTED RESOLUTION BE RETURNED TO: Sonali Bose

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

The purpose of the follow-up Proof of Payment (POP) Study is to determine what has happened to fare compliance patterns since the original study was completed in 2009. Several key enforcement changes have occurred since then and the purpose of this study was to document and identify the impact of these changes.

GOAL

Improving fare compliance helps increase SFMTA fare revenues, which provides resources to operate transportation services in San Francisco. It also results in a better customer experience, as many fare-paying customers believe that their fellow customers should also pay their fares. It will also help increase the SFMTA's farebox recovery ratio (the percentage of operating costs covered by fare revenues), which is now approximately 25 percent. Fare compliance staff also serve to enhance safety on the system and provide customer service.

These goals are in accordance with the SFMTA Strategic Plan, specifically:

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

Objective 4.1: Increase revenue by 20 percent or more by 2012 by improving collections and identifying new sources

Objective 4.2: Ensure efficient and effective use of resources.

DESCRIPTION

In 2009, the SFMTA conducted its first-ever comprehensive Proof-of-Payment Study to assess fare payment patterns on the Muni system. The resulting survey of over 40,000 customers on more than 1,100 vehicle runs provided enough samples by time period, route and vehicle occupancy to identify fare payment patterns at a disaggregated level. The study found that a minimum of 9.5 percent of customers did not have valid proof-of-payment, a rate that varied significantly by route, location, door of entry, time of day and level of enforcement, amounting to an estimated $19 million annually in uncaptured revenue based on the July 1, 2009 fare structure. The findings of the 2009 study have been used by fare inspectors in their deployment plan.

The SFMTA recently conducted a smaller follow-up study to determine what has happened to transit fare patterns over the past year and to evaluate any changes that occurred over the year. Several key changes have occurred since last year, most notably, the expansion of enforcement from the Muni Metro light-rail lines to buses and historic streetcars. Between August 16 and September 2, 2010, teams of SFMTA Transit Fare Inspectors and surveyors rode Muni vehicles and observed nearly 12,000 customers on over 300 vehicle runs, representing a sample size of a little less than 2 percent of ridership. Although the SFMTA was not able to conduct as extensive a survey as last year due to resource limitations, the sample size was large enough to conclude that there has been a slight decrease in the percentage of customers without valid proof-of-payment from 9.5 percent to 8.6 percent. These estimates should be considered minimums as it was not always possible to tell whether a customer with valid proof-of-payment had paid the appropriate fare.

The following table compares key findings of the follow-up and original POP study.

Comparative Summary of 2009 and 2010 Proof-of-Payment Surveys

Category	2010 Survey	2009 Survey
Invalid Proof-of-Payment Rate	8.6%	9.5%
Customer Observations	11,939	41,239*
Transit Fare Inspectors	42	46
Estimated Daily Inspection Time per Employee**	3 hr 15 min	4 hr 35 min
Estimated Travel Times per Employee***	1 hr 20 min	50 min
Clipper^{SM} Ridership Share	6%	<1%
Annual Uncaptured Revenue Estimate	$19 million	$19 million

***** Includes 38,672 customer observations prior to the July 1, 2009 fare increase and 2,567 observations afterwards.

** Excludes travel time between the office and the assigned transit line or station.

*** Transit Fare Inspectors also conduct inspections while riding transit to and from the office, but inspectors usually do not get on and off to check additional customers as it would delay them from reaching or returning from their assignments. Moreover, fare inspection teams on any given shift begin and end at the same time, so multiple teams typically ride the same one or two trains inspecting a relatively small number of customers between their assignments and the office.

The attachment contains the full report with a detailed analysis of the study findings. The following table (continued onto the next page) summarizes major observations.

Fare Payment Major Findings

Overall Invalid POP Rate	The percentage of customers without valid proof-of-payment has decreased from 9.5 percent to 8.6 percent.
Route-by-Route Changes	While fare compliance has improved on many routes, it continues to be a major issue on others.
"Walk Aways"	As non-paying customers have become accustomed to fare enforcement on buses, they are increasingly attempting to evade Transit Fare Inspectors (growing from 9 to 17 percent of people with invalid proof of payment).
Clipper®	The growing use of Clipper℠ has also prompted new ways of avoiding fare payment as some customers fail to tag the card reader to deduct the appropriate fare or have no value on their card.
Enforcement Logistics	The relocation of the Proof-of-Payment office from 875 Stevenson to the Muni Metro East (MME) facility provides better access to the T-Third line, but requires additional travel time to reach locations closer to the center of the system.
Staffing Levels	There are now 42 Transit Fare Inspectors (out of 44 funded positions) compared to last year's 46 filled positions. Combining this staffing reduction with increased travel time to and from the office, fare inspection work hours have declined by an estimated 35 percent since 2009. The SFMTA has expanded the geographical coverage of fare inspections and deployed resources strategically, but current staffing levels remain lower than 2009 levels.
Back-Door Boarding	The percentage of customers entering through the back door without valid proof-of-payment appears to have decreased significantly, from 55 to 41 percent.
Uncaptured Revenue	Revenue losses due to customers without valid Proof-of-Payment are similar to last year – approximately $19 million annually based on the current rate structure.
Overall Effectiveness	Fare compliance has slightly improved systemwide. This suggests that enforcement on buses, particularly in areas that 2009 study identified as having significant proof-of-payment issues, has helped the SFMTA manage fare compliance levels.

ALTERNATIVES CONSIDERED

Since 2009, the SFMTA has made significant changes to its Proof-of-Payment program. For example, it has expanded fare enforcement from the Muni Metro light rail system to buses and historic streetcars. It has also rescheduled inspector shifts to devote more resources towards the afternoon hours, which the original Proof-of-Payment study identified as having more fare compliance issues. Finally, the program office has been relocated from 875 Stevenson (near Van Ness and Market) to the Muni Metro Extension (MME) facility on the Central Waterfront.

The primary alternative would be to make no changes to current Proof-of-Payment practices and procedures. As the follow-up study notes, there may be potential opportunities for refinements to the Proof-of-Payment program that would continue to improve its efficiency and effectiveness, and support the SFMTA's desire to increase fare compliance and associated fare revenue.

FUNDING IMPACT
Improvement in fare compliance levels can help SFMTA increase operating revenues.

OTHER APPROVALS RECEIVED OR STILL REQUIRED
No other approvals have been received or are still required for this item.

The City Attorney has reviewed this report.

RECOMMENDATION
This item is presented for the SFMTA Board of Directors' information. Based on the findings identified in the follow-up POP study, SFMTA's Security and Enforcement, Transit and Finance and Information Technology Divisions will continue to evaluate potential modifications and improvements to the POP program.

February 2011

Proof-of-Payment Study – 2010 Update
Buses, Light Rail Vehicles and Streetcars

San Francisco Municipal Transportation Agency

Finance and Information Technology Division

Image of passengers boarding the rear of a Muni bus

SFMTA

Executive Summary

In 2009, the SFMTA conducted its first-ever comprehensive Proof-of-Payment Study to assess fare payment patterns on the Muni system. Based on a survey of over 40,000 customers, the study found a minimum of 9.5 percent of customers did not have valid proof-of-payment, amounting to an estimated $19 million annually in uncaptured revenue based on the July 1, 2009 fare structure.

Between August 16 and September 2, 2010, the SFMTA recently conducted a smaller follow-up study of nearly 12,000 customers to determine what has happened to transit fare patterns over the past year. Several key enforcement changes have occurred since last year, perhaps most notably the expansion of fare inspections from the Muni Metro light-rail lines to buses and historic streetcars.

The follow-up study finds:

- Route-by-Route Changes - While fare compliance has improved on many routes, it continues to be a major issue on others.
- "Walk Aways" – As non-paying customers have become accustomed to fare enforcement on buses, they are increasingly attempting to evade Transit Fare Inspectors (growing from 9 to 17 percent of people with invalid proof of payment).
- Clipper® – The growing use of Clipper® has also prompted new ways of avoiding fare payment as some customers fail to tag the card reader to deduct the appropriate fare or have no value on their card.
- Enforcement Logistics – The relocation of the Proof-of-Payment office from 875 Stevenson to the Muni Metro East (MME) facility provides better access to the T-Third line, but requires 45 minutes to 1 hour of travel time to reach locations closer to the center of the system.
- Staffing Levels - There are now 42 Transit Fare Inspectors (out of 44 funded positions) compared to last year's 46 filled positions. Combining this staffing reduction with increased travel time to and from the office, fare inspection work hours have declined by an estimated 35 percent since 2009. The SFMTA has expanded the geographical coverage of fare inspections and deployed resources strategically, but current staffing levels remain lower than 2009 levels.
- Back-Door Boarding – The percentage of customers entering through the back door without valid proof-of-payment appears to have decreased significantly, from 55 to 41 percent.
- Uncaptured Revenue – Revenue losses due to customers without valid Proof-of-Payment are similar to last year – approximately $19 million annually.

- Overall Invalid Proof-of-Payment Rate – The percentage of customers without valid proof-of-payment has decreased from 9.5 percent to 8.6 percent.
- Overall Effectiveness – Notwithstanding the major decline in fare inspection work hours over the past year, fare compliance has slightly improved systemwide. This suggests that enforcement on buses, particularly in areas that 2009 study identified as having significant proof-of-payment issues, has helped the SFMTA manage fare compliance levels.

Introduction

In 2009, the SFMTA conducted its first-ever comprehensive Proof-of-Payment Study to assess fare payment patterns on the Muni system. The resulting survey of over 40,000 customers on more than 1,100 vehicle runs provided enough samples by time period, route and vehicle occupancy to identify fare payment patterns at a disaggregated level. The study found a minimum of 9.5 percent of customers did not have valid proof-of-payment, a rate that varied significantly by route, location, door of entry, time of day and level of enforcement, amounting to an estimated $19 million annually in uncaptured revenue based on the July 1, 2009 fare structure.

The SFMTA recently conducted a smaller follow-up study to determine what has happened to transit fare patterns over the past year. Several key changes have occurred since last year, perhaps most notably the expansion of enforcement from the Muni Metro light-rail lines to buses and historic streetcars. Between August 16 and September 2, 2010, teams of SFMTA Transit Fare Inspectors and surveyors rode Muni vehicles observed nearly 12,000 customers on over 300 vehicle runs, representing a sample size of a little less than 2 percent of ridership. Although the SFMTA was not able to conduct as extensive a survey as last year due to resource limitations, the sample size was large enough to conclude that there has been a slight decrease in the percentage of customers without valid proof-of-payment from 9.5 percent to 8.6 percent.

Comparative Summary of 2009 and 2010 Proof-of-Payment Surveys

Category	2010 Survey	2009 Survey
Invalid Proof-of-Payment Rate	8.6%	9.5%
Customer Observations	11,939	41,239*
Transit Fare Inspectors	42	46
Estimated Daily Inspection Time per Employee**	3:15	4:35
Estimated Travel Times per Employee***	1:20	0:50
Clipper^{SM} Ridership Share	6%	<1%
Annual Uncaptured Revenue Estimate	$19 million	$19 million

***** Includes 38,672 customer observations prior to the July 1, 2009 fare increase and 2,567 observations afterwards.

** Excludes travel time between the office and the assigned transit line or station.

*** Transit Fare Inspectors also conduct inspections while riding transit to and from the office, but inspectors usually do not get on and off to check additional customers as it would delay them from reaching or returning from their assignments. Moreover, fare inspection teams on any given shift begin and end at the same time, so multiple teams typically ride the same one or two trains inspecting a relatively small number of customers between their assignments and the office.

Major Changes since 2009

Since last year, SFMTA's Proof-of-Payment program has undergone some significant changes:

- Staffing levels - For Fiscal Year 2009-2010, the SFMTA had planned a 30 percent increase (from 46 to 60 full-time Transit Fare Inspectors). The SFMTA was not able increase staffing as a result of operating funding shortfalls. The staffing level had decreased to 42 Transit Fare Inspectors.
- Enforcement Coverage - In response to last year's study, the SFMTA moved shifts one to three hours later to reallocate more resources towards the afternoon and evening. Shifts were rescheduled to the following times: 7:00 am to 3:30 pm, 8:30 am to 5:00 pm, 11:00 am to 7:30 pm, 12:00 pm to 8:30 pm, or 2:30 pm to 11:00 pm. After this year's study, Proof-of-Payment management has again revised shift times. Shifts are now scheduled either during the morning/afternoon (7:00 am to 3:30 pm) or afternoon/evening (2:30 pm to 11:00 pm). In addition, Transit Fare Inspectors have increased enforcement on bus lines and the F-Market & Wharves historic streetcars. Prior to this time, enforcement was primarily concentrated on the Muni Metro system.
- "Enhanced Fare Enforcement" - In order to prevent non-paying customers from "walking away" from Transit Fare Inspectors to avoid a citation, the SFMTA has launched "Enhanced Fare Enforcement". During these operations, fare inspectors on teams of up to six either board while a vehicle is at a stop and quickly check fares or remain outside to inspect those exiting the vehicle. Those without valid proof-of-payment are asked to leave the vehicle and cited.
- Clipper^{SM} Card – The SFMTA has begun its transition from paper fare media to the regional Clipper^{SM} Card. Clipper^{SM} allows customers to load a monthly Muni pass or e-cash, as well as fare products from other Bay Area transit agencies. During the survey, approximately 6 percent of customers used a Clipper^{SM} Card but this number has probably quadrupled since then given the installation of new fare equipment at Muni Metro stations and the migration of the Adult Fast Pass from paper to the Clipper^{SM} Card.
- Proof-of-Payment Relocation – Proof-of-Payment headquarters has relocated from 875 Stevenson to the Muni Metro East Light Rail Maintenance and Operations Facility (MME) adjacent to 23rd St Station on the T-Third line. The former location was approximately a 10-minute walk from Market and Van Ness, the location of SFMTA headquarters with direct access to many parts of San Francisco via the six Metro lines, F-Market streetcar, and multiple bus routes along the Van Ness and Market corridors. The current location, adjacent to the T-Third line and two bus routes, is about 45 minutes to an hour away from Market and Van Ness using the T-Third line.

Survey Methodology

Due to logistical, scheduling and financial constraints, the 2010 survey update contained a little over one-quarter of the samples of last year's survey. Therefore, the data is less precise and is subject statistically to a higher margin or error.

Nonetheless, SFMTA's survey plan achieved a reasonably representative sample of its ridership by route and time of day, subject to the study's logistical, scheduling and financial constraints. It included observations on all rail lines (except for the M Ocean View, which was closed for St. Francis Circle reconstruction project) and most bus routes. Due to resource limitations, the plan could not precisely mirror ridership to the stop level by time of day, but the survey design employed several strategies to gather samples to reflect ridership patterns broadly:

- Major crosstown and radial routes were surveyed at least five times, usually with at least 200 customers observed.
- On most routes, surveys took place at multiple locations along the route to capture customer turnover.
- To reflect varying ridership patterns, surveys took place on 16 days throughout the study period.

This year, the survey plan logistics differed from last year in the following ways:

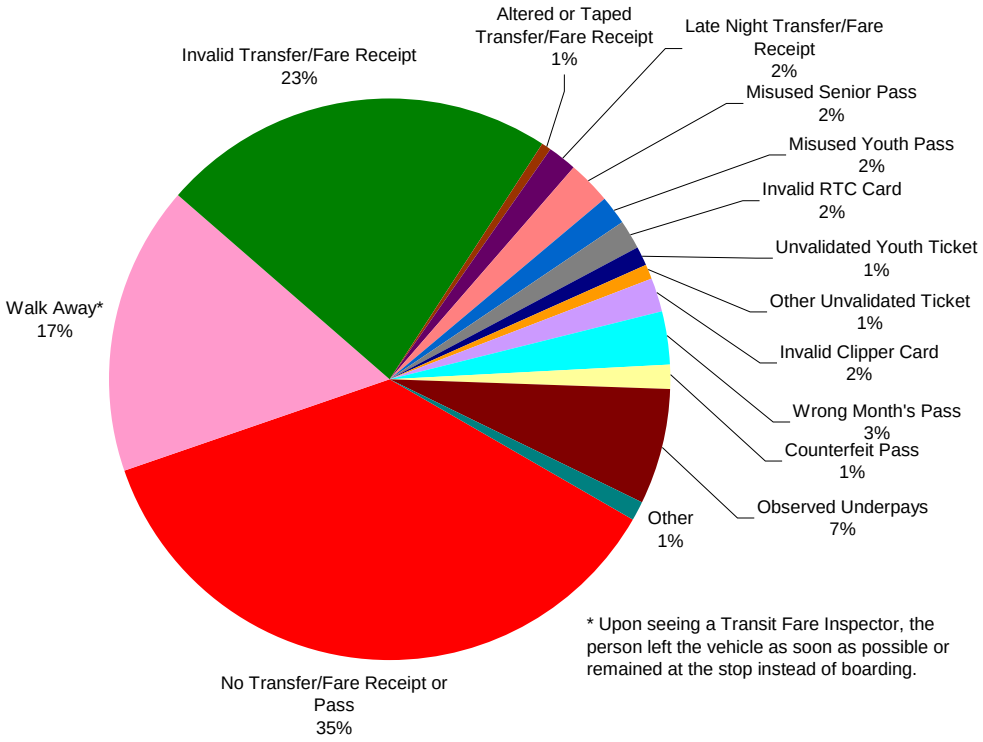
- The relocation of the Proof-of-Payment office from 875 Stevenson to the Muni Metro East (MME) facility required extra 45-minutes to 1-hour of travel time for the Transit Fare Inspectors to Van Ness and Market (near the center of the Muni system). This reduced survey time by approximately 1½ to 2 hours per day out of a Transit Fare Inspector's 8-hour shift.
- Last year, the Transit Fare Inspector Day shift began at 5:30 am and ended at 2 pm, allowing teams to survey the entire morning rush hour. The shift now begins 1½ hours later at 7 am. After accounting for Transit Fare Inspector travel time from MME, teams were not usually able to begin surveying before 8:15 am. Therefore, data for the morning rush hour is more limited in terms of route coverage than last year.

Key Findings

Overall, there has been no significant change in the overall number of customers without valid proof-of-payment. On average, a minimum of 9.5 percent of customers could not produce a valid transfer/fare receipt, pass, Clipper[SM] Card or other fare media when surveyed. Although the overall rate was virtually identical to last year, there were some differences when examining the data at a disaggregated level (please note that the reported figures for this year are subject to less precision and certainty than last year because of a smaller size):

- "Walk Aways" – Similar to last year's findings, approximately half of the customers without valid proof-of-payment (52 percent) either had no fare media or were presumed to have no fare media because they "walked away" from Transit Fare Inspectors. Within this group of people without fare media, there has been nearly a doubling of "walk aways" (from 9 to 17 percent). This suggests that as non-paying customers have become accustomed to seeing fare enforcement on buses, they are increasingly attempting to evade Transit Fare Inspectors to avoid citations.
- Underpayment of Fares – Not paying the full $2.00 adult fare or $0.75 discount fare continues to be a significant issue. Because survey teams boarded vehicles and asked for proof-of-payment but typically did not typically witness fare transactions themselves, they usually could not determine whether customers had paid the full fare. Nonetheless, they did observe that 7 percent of people without valid proof-of-payment had not deposited the full fare into the farebox (up from 2 percent last year.)
- Counterfeit Fare Media – The percentage of customers with counterfeit fare media remained small (approximately 2 percent of people without valid proof-of-payment, or 0.2 percent of all customers observed). Popular forms of counterfeit fare media included monthly passes as well as altered or "taped" transfers/fare receipts, where a customer had extended the expiration time by taping a portion of a transfer from the previous day onto a transfer from the current day.
- Clipper[SM] – The growing use of Clipper[SM] has also prompted new ways of avoiding fare payment. Approximately 3 percent of Clipper[SM] Cards were not valid. Some customers had no value on their card while others had value but did not tag the card reader to avoid deducting a fare from the card. During the survey, customers with invalid Clipper[SM] Cards comprised only 2 percent of all those without valid proof-of-payment; this percentage is expected to grow as the SFMTA transitions to Clipper[SM] as its primary fare media.

Types of Invalid Proof-of-Payment - 2010 Survey



Types of Invalid Proof-of-Payment – 2010 Survey (Accessible Table)

Category	Percentage of Observations
No Transfer/Fare Receipt or Pass	36.3%
Walk Away*	16.9%
Invalid Transfer/Fare Receipt	22.7%
Altered or Taped Transfer/Fare Receipt	0.6%
Late Night Transfer/Fare Receipt	1.7%
Misused Senior Pass	2.5%
Misused Youth Pass	1.6%
Invalid RTC Card	1.6%
Unvalidated Youth Ticket	1.0%
Other Unvalidated Ticket	0.8%
Invalid Clipper Card	2.0%
Wrong Month's Pass	3.2%
Counterfeit Pass	1.3%
Observed Underpays	6.7%
Other	1.0%

*Upon seeing a Transit Fare Inspector, the person left the vehicle as soon as possible or remained at the stop instead of boarding.

- Route – As in last year's survey, there were significant differences in the percentage of customers without valid proof-of-payment by route. (The attachment to this report contains route-by-route detail.) Most notably, the following routes had rates of over 10%:

Routes with Significant POP issues

Route	Invalid Proof-of-Payment Rate
8X,8AX,8BX Bayshore Express	13%
14,14L Mission/Mission Ltd	14%
19 Polk	22%
23 Monterey	22%
44 O'Shaughnessy	18%
49 Van Ness-Mission	13%
52 Excelsior	14%
54 Felton	31%
108 Treasure Island	16%
T Third	24%

Note: Routes without enough samples to draw statistical conclusions are not shown.

Several routes showed significant improvements in fare compliance, while others showed decreased fare compliance:

Routes with Significant Changes in Levels of Fare Compliance

Route	2010 Survey	2009 Survey
Increased Fare Compliance		
5 Fulton	4%	11%
9/9L San Bruno/San Bruno Ltd	8%	18%
14/14L Mission/Mission Ltd	14%	20%
27 Bryant	3%	10%
28 19th Av	4%	8%
31 Balboa	8%	15%
38/38L Geary/Geary Ltd	6%	10%
47 Van Ness	5%	9%
F Market & Wharves	5%	11%
Decreased Fare Compliance		
19 Polk	22%	15%
23 Monterey	22%	6%
44 O'Shaughnessy	18%	9%
54 Felton	31%	13%
T Third	24%	15%

Note: Routes without enough samples to draw statistical conclusions are not shown.

- Time of Day – As in last year's survey, the percentage of customers without valid proof-of-payment remains lower during the morning peak period compared to the rest of the day. While there appear to have been some improvements in fare compliance during the midday and evening periods, the school period had a substantially higher percentage of customers without valid proof-of-payment 14 versus 10 percent) compared to last year.

Proof of Payment by Time of Day

Time of Day	2010 Survey Invalid Proof-of-Payment Rate	2010 Margin of Error*	2010 Customers Surveyed	2009 Invalid Proof-of-Payment Rate	2009 Margin of Error*	2009 Customers Surveyed	Significant Improvement?
Weekday AM Peak 7-9 am)	**5%****	±1.3%	1,188	**6%**	±0.5%	9,056	
Weekday Midday 9 am-2 pm)	**7%**	±0.8%	3,728	**10%**	±0.7%	7,655	Yes
Weekday School 2-4 pm)	**14%**	±2.0%	1,230	**10%**	±0.7%	7,170	No
Weekday PM Peak 5-7 pm)	**9%**	±1.0%	3,237	**11%**	±0.6%	9,249	
Weekday Evening 7-10 pm)	**6%**	±1.4%	1,126	**15%**	±1.3%	2,923	Yes
Weekend	**11%**	±1.6%	1,430	**12%**	±1.3%	2,619	

* At a 95% confidence level

** In 2009, survey teams started at 7 am. Due to the Proof-of-Payment program's move from 875 Stevenson to the Muni Metro Extension MME) facility and 1½-hour delay in start times for the Day shift, teams were not usually able to begin surveying before 8:15 am in 2010. Therefore, data for the morning rush hour is more limited in terms of route coverage than last year.

- Back-Door Boarding – The percentage of customers entering through the back door without valid proof-of-payment appears to have decreased significantly, from 55% to 41%. This estimate is based on a sample of 381 customers that survey teams observed entering or attempting to enter through the back door. Because the 2010 sample size is less than half that of the 2009 survey (381 vs. 857 customers), this 41% estimate is subject to a greater margin of error compared to last year.

Back-Door Boarding

2010 Invalid Proof-of-Payment Rate	2010 Margin of Error*	2010 Customers Surveyed	2009 Invalid Proof-of-Payment Rate	2009 Margin of Error*	2009 Customers Surveyed	Significant Improvement?
41%	±4.9%	381	**55%**	±3.3%	857	Yes

* At a 95% confidence level

- Uncaptured Revenue – Due to a smaller sample size compared to last year, the SFMTA was not able to conduct a detailed estimate on revenue losses due to customers without valid Proof-of-Payment. Nevertheless, uncaptured revenue is likely to be similar to last year's estimate ($19 million). The reduction in revenue losses resulting from fare compliance improvements has been offset by an increase in the estimated revenue loss per customer due to a fare increase. Although the percentage of customers without valid proof-of-payment declined from 9.5 percent to

8.6 percent in the 2010 survey (a 9.5 percent decrease), SFMTA fares also increased on January 1, 2010. For example, the price for unlimited monthly Muni rides increased from $55 to $60 – a 9 percent increase.

Transit Fare Inspector Staffing and Effectiveness

During a typical 8½ hour shift, SFMTA's Transit Fare Inspectors (TFIs) perform one of following major activities in addition to checking fares:

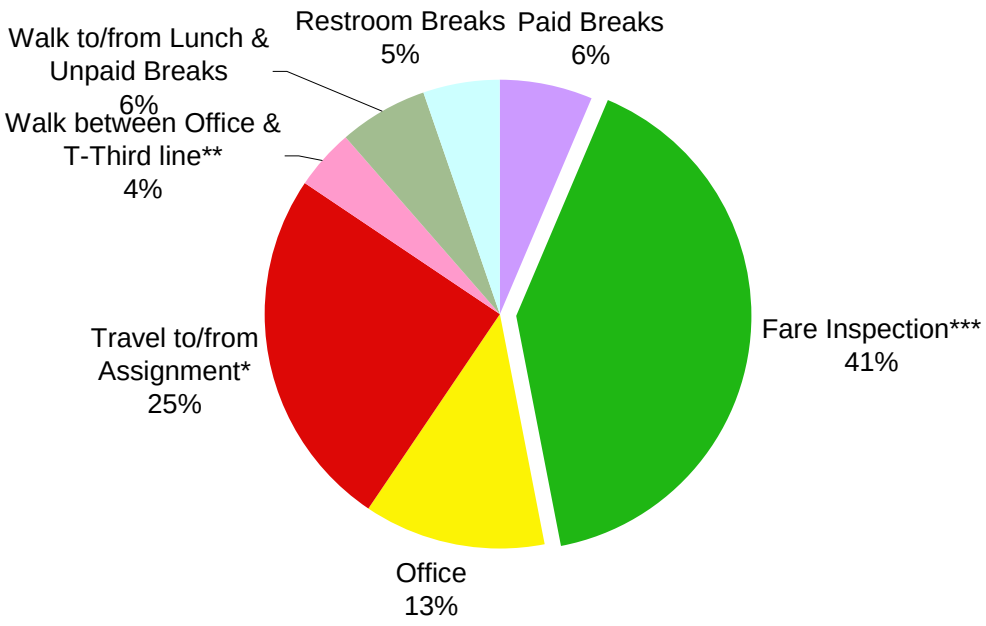
- Office Work – Office work includes team briefing and paperwork (for example, tabulating customer contact statistics, filing incident reports, and processing citations)
- Walking to/from Office – TFIs travel between the Muni Metro Extension (MME) office and the T-Third light rail line or 22-Fillmore or 48 Quintara/24th St. bus routes twice per day. The T Third station and bus stops for the 22 and 48 lines are approximately a ten-minute walk from the office.
- Paid Breaks – Inspectors receive two paid 15-minute breaks taken at their discretion.
- Travel to/from Assignment – At the beginning of each shift, supervisors assign inspectors a station or route segment to enforce. TFIs usually ride the T-Third line or sometimes the 22 and 48 buses and are checking for customer proof-of-payment during this time. The combined waiting and in-vehicle travel times to reach an assignment is approximately 45 minutes to 1 hour each way, or longer if the assignment is in the northern or western part of San Francisco.
- Restroom Breaks – TFIs may take a restroom break whenever necessary. While inspectors know restroom locations near the Muni Metro rail lines, they are less familiar with facilities adjacent to bus routes.
- Unpaid 30-minute Lunch Break – TFIs are entitled to a 30-minute unpaid lunch break that starts once they sit down to begin eating.

Last year's study found that on a typical day, Transit Fare Inspectors might spent approximately 4 hours and 35 minutes (57%) of their paid hours inspecting fares, exclusive of any fare checking traveling to/from their assignments. In 2010, this time has decreased to approximately 3 hours and 15 minutes (41%) of their paid hours. This 29% reduction in fare inspection time is primarily attributable to the relocation of the Proof-of-Payment office, but the effects have been partially offset given that no Transit Fare Inspectors are returning to the office for their unpaid lunch break any longer.

Traveling to and from assignments, assuming they are located in the northeast quadrant of San Francisco, has increased from approximately 10% of work hours to 25% since 2009. During this time, Transit Fare Inspectors are verifying customer proof-of-payment and issuing citations as appropriate. While the current location of the Proof-of-Payment program does allow for greater coverage of the T-Third line, the rail line with the lowest rate of fare

compliance, less time is available to enforce other routes such as the 8X,8AX,8BX Bayshore Express, 14,14L Mission/Mission Ltd and 49 Van Ness-Mission. Moreover, the effectiveness of inspections is limited relative to the personnel resources expended. Fare inspection teams on any given shift begin and end at the same time, so multiple teams typically ride the same one or two trains inspecting a relatively small number of customers between their assignments and MME. They usually do not get on and off T-Third trains to check additional customers as it would delay them from reaching or returning from their assignments.

Composition of a Sample TFI Workday (Paid Hours)



Composition of a Sample TFI Workday (Paid Hours) (Accessible Table)

Category	Percentage of Paid Hours
Paid Breaks	6%
Fare Inspection***	41%
Office	13%
Travel to/from Assignment*	25%
Walk between Office & T-Third line**	4%
Walk to/from Lunch & Unpaid Breaks	6%
Restroom Breaks	5%

Estimated time represents a sample day, but the time spent for each activity can vary from day to day. Time excludes 30-minute unpaid lunch break.

* - Includes T-Third waiting and travel time and any additional time needed to reach final assignment. Transit Fare Inspectors may check fares while traveling to/from assignment, but generally take the most direct route and do not get on and off to check customers on multiple vehicles.

** - Assumes that a Transit Fare Inspector returns to the office for lunch.

*** - May include time when Transit Fare Inspectors are not issuing citations (e.g., after baseball games)

Change in Fare Inspection Hours

Category	2010	2009	Change
Estimated Transit Fare Inspectors	42	46	-9%
Estimated Fare Inspection Hours Per Day Per Inspector*	3:15	4:35	-29%
Estimated Annualized Work Hours Per Inspector**	780	1,100	-29%
Estimated Annual Fare Inspection Work Hours	32,760	50,600	-35%

* May include time when Transit Fare Inspectors are not issuing citations (e.g., after baseball games)

** Based on 240 workdays per year (excludes overtime)

Due to attrition, budget constraints, and multiple personnel on leave, there are now approximately 42 Transit Fare Inspectors, a 9% decrease from last year's 46 positions. Combining this staffing reduction with 29% fewer inspection hours per employee compared to 2009, fare inspection work hours have declined by approximately 35% since last year.[1]

[1] This excludes travel time to and from an assignment. During this time, Transit Fare Inspectors are verifying proof-of-payment and issuing citations as appropriate. However, because fare inspection teams on any given shift begin and end at the same time, multiple teams may be riding the same one or two trains inspecting a relatively small number of customers between their assignments and MME. They usually do not get on and off T-Third trains to check additional customers as it would delay them from reaching or returning from their assignments.

Conclusions

Despite the major decline in fare inspection work hours over the past year, the follow-up 2010 Proof-of-Payment Study shows that there has been a slight improvement in fare compliance levels. This suggests that enforcement on buses, particularly in areas that 2009 study identified as having significant proof-of-payment issues, has helped the SFMTA contain fare evasion. Nonetheless, the results and analysis of the follow-up study highlight the following issues for further consideration:

- Fare Inspector Staffing Levels – While the follow-up survey suggests that fare compliance has improved on many routes over the past year, the percentage of customers without valid proof-of-payment remains around 9 percent. Although the SFMTA has expanded the geographical coverage of fare inspections and deployed resources strategically, the number of fare inspectors has decreased from 46 to 42.
- Proof-of-Payment Program Location – The relocation of Proof-of-Payment headquarters from 875 Stevenson to the Muni Metro East Light Rail Maintenance and Operations Facility MME) has resulted in a net change of approximately 1 hour 10 minutes to 1 hour 40 minutes daily for Transit Fare Inspectors to reach the center of the system.
- Scheduling – In 2009, the first weekday shift began at 5:30 am when the Proof-of-Payment Program was located at 875 Stevenson. After the initial team meeting and walking to Van Ness and Market, Transit Fare Inspectors could begin enforcement in the downtown area around 6 am or outlying areas around 6:30 am. The 2009 Proof-of-Payment Study findings revealed that fare compliance issues were higher in the afternoon hours but that they also existed during the morning rush hour. In response, the start of the Day shift was moved to 7 am to encompass most of the morning rush hour but also extend later into the afternoon. With the move of the Proof-of-Payment Program to MME, this later start time now effectively limits the ability for fare inspection to occur during the morning rush hour. Fare inspectors cannot reliably reach Van Ness and Market or other centralized locations before 8:15 am. They probably could not reach San Francisco's outlying northern and western neighborhoods until 8:45 am, too late to inspect the bulk of morning rush hour customers.
- Clipper^{SM} Cards – The transition of Muni passes to the Clipper® Card will help reduce the invalid proof-of-payment rate in several ways. It will eliminate the underground market for counterfeit paper passes, reduce misuse of Senior and Youth passes by ineligible adults because seniors and youths must apply for a special Clipper^{SM} Card, and misuse of Regional Transit Connection RTC) cards for people with disabilities who used to flash their cards to the operator without having a valid monthly sticker.

In addition, Clipper[SM] Cards will facilitate all-door boarding, which will help reduce dwell times and increase operating speeds. On buses, Clipper[SM] readers are located adjacent to the front and rear doors, allowing customers to tag their cards entering through any door.

Nonetheless, the Clipper[SM] Card will also make it more challenging for fare enforcement:

- Inspection Techniques – Transit Fare Inspectors can inspect paper passes visually, sometimes from a distance without needing to directly contact with a customer. With Clipper[SM], an inspector must tap the card to a handheld device, a process that takes a couple of seconds each time and requires approaching individual customers to obtain the card. This extra time may allow non-paying customers to exit the bus before an inspector has time to reach them.
- Transfer Expiration – SFMTA's fare policy requires customers to be able to display proof-of-payment valid for the duration of their trip. Unlike current fare media, neither the Clipper[SM] card nor the limited-use tickets available at Muni Metro station ticket vending machines have printed expiration times. This could lead to disputes between customers and TFIs, as customers will not be able to tell when their cards expire.
- Untagged or Insufficiently-Funded Clipper[SM] Cards – Approximately 3 percent of customers had an invalid Clipper[SM] Card. Either they had no cash value loaded on the card, or they had cash value on the card but did not want the card reader to deduct the appropriate fare for the ride. Survey teams observed multiple customers tagging card readers upon sight of the Transit Fare Inspectors to avoid a citation.

Notwithstanding these issues, this follow-up study has shown some significant increases in fare compliance over many routes. The SFMTA will continue to work towards improving its Proof-of-Payment program over the next year.

Fare Compliance Levels by Route

Route	2010 Invalid Proof-of-Payment Rate	2010 Margin of Error	2010 Customers Surveyed	2009 Invalid Proof-of-Payment Rate	2009 Margin of Error	2009 Customers Surveyed	Significant Improve-ment?*
1 California	4%	±2.0%	367	4%	±1.3%	975	
2,3 Clement/Sutter	0%	±0.0%	146	5%	±1.5%	756	
5 Fulton	4%	±2.2%	388	11%	±2.1%	849	Yes
6,71,71L Parnassus/Haight-Noriega	8%	±1.8%	510	9%	±1.3%	1,945	
8X,8AX,8BX Bayshore Exp	13%	±2.4%	684	15%	±1.5%	2,122	
9,9L San Bruno	8%	±1.9%	331	18%	±2.1%	1,241	Yes
10 Townsend	2%	±3.1%	88	4%	±2.5%	233	
14,14L Mission/Mission Ltd	14%	±3.1%	509	20%	±1.8%	2,048	Yes
14X Mission Exp	5%	±6.3%	43	10%	±3.0%	333	
17 Parkmerced	7%	±9.1%	29	6%	±5.3%	70	
18 46th Av	8%	±4.8%	122	6%	±3.6%	162	
19 Polk	22%	±5.5%	204	15%	±2.6%	714	No
21 Hayes	3%	±2.3%	243	7%	±1.9%	689	
22 Fillmore	7%	±2.2%	459	9%	±1.7%	1,294	
23 Monterey	22%	±9.3%	111	6%	±2.9%	236	No
24 Divisadero	8%	±4.1%	220	8%	±2.0%	712	
27 Bryant	3%	±2.1%	225	10%	±2.3%	597	Yes
28,28L 19th Av/19th Av Ltd	4%	±2.7%	201	8%	±2.0%	886	Yes
29 Sunset	8%	±3.0%	365	9%	±2.0%	750	
30 Stockton	6%	±2.1%	514	8%	±1.5%	1,580	
30X Marina Exp	1%	±1.6%	118	6%	±2.8%	231	
31 Balboa	8%	±3.5%	230	15%	±2.5%	746	Yes
33 Stanyan	9%	±8.9%	170	7%	±2.1%	550	
36 Teresita	0%	±0.0%	7	3%	±4.0%	66	
38,38L Geary/Geary Ltd	6%	±0.9%	1,094	10%	±1.1%	3,008	Yes
43 Masonic	9%	±3.4%	380	7%	±1.9%	722	
44 O'Shaughnessy	18%	±5.7%	360	9%	±1.9%	820	No
45 Union-Stockton	4%	±4.7%	70	6%	±1.8%	772	
47 Van Ness	5%	±2.8%	245	9%	±2.1%	728	Yes
48 Quintara-24th St	8%	±3.3%	258	9%	±2.1%	614	
49 Van Ness-Mission	13%	±2.8%	673	13%	±1.8%	1,360	
52 Excelsior	14%	±7.8%	72	13%	±3.8%	225	
54 Felton	31%	±8.7%	194	13%	±3.7%	307	No
67 Bernal Heights	7%	±7.5%	43	4%	±5.4%	132	
108 Treasure Island	16%	±7.3%	200	21%	±3.8%	399	
F Market & Wharves	5%	±2.3%	487	11%	±1.6%	1,707	Yes

Route	2010 Invalid Proof-of-Payment Rate	2010 Margin of Error	2010 Customers Surveyed	2009 Invalid Proof-of-Payment Rate	2009 Margin of Error	2009 Customers Surveyed	Significant Improve-ment?*
J Church	6%	±3.5%	189	6%	±1.6%	780	
K Ingleside	3%	±2.8%	138	4%	±1.2%	870	
L Taraval	3%	±1.9%	301	2%	±0.9%	1,023	
M Ocean View (shuttle bus)	2%	±2.0%	189	4%	±1.0%	1,216	
N Judah	3%	±2.0%	421	3%	±0.8%	1,469	
T Third	24%	±4.5%	341	15%	±2.7%	666	No
Estimated Total	8.6%*	±0.5%	11,939	9.5%*	±0.3%	38,672**	

***** *Only for routes without enough samples to draw statistical conclusions.*

*** *Excludes 2,567 samples taken after the July 1, 2009 fare increase to measure the impact of the fare increase on fare compliance (the SFMTA determined there was no significant impact).*