

THIS PRINT COVERS CALENDAR ITEM NO.: 10.10

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

DIVISION: Administration, Taxis & Accessible Services

BRIEF DESCRIPTION:

Approving the negotiated successor agreement between the San Francisco Municipal Transportation Agency (SFMTA) and employees in Service Critical Classifications represented by Transport Workers' Union (TWU) Local 250A – 7410 (Automotive Service Workers), which reduces the SFMTA obligations for the term of the Agreement from July 1, 2010 through June 30, 2012.

SUMMARY:

- Charter Section 8A.104 authorizes the SFMTA to bargain labor agreements with employee organizations representing employees in service critical classifications.
- The Collective Bargaining Agreement (CBA) between SFMTA and TWU Local 250A - 7410 expires on June 30, 2010.
- The SFMTA negotiated a successor CBA with TWU Local 250A – 7410 for a term of two years through June 30, 2012.
- A ratification vote by the membership of TWU Local 250A - 7410 on June 11, 2010.
- The tentative agreement includes the following concessions:
 - 12 unpaid furlough days in FY11;
 - 12 unpaid furlough days in FY12;
 - Health Plan Savings in FY11 &12;
 - No layoffs between July 1, 2010 and December 31, 2010;
 - The Pilot Wellness Incentive Program shall sunset close of business June 30, 2010.
 - Cost savings for FY11 is \$196,515; for FY12 is \$196,515.

ENCLOSURES:

1. SFMTAB Resolution
2. Labor Cost Analysis

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM

FINANCE

DIRECTOR

SECRETARY

ADOPTED RESOLUTION
TO BE RETURNED TO

Rumi Ueno

ASSIGNED MTAB CALENDAR DATE:

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PURPOSE

To approve the CBA between SFMTA and the TWU Local 250A – 7410 Automotive Service Workers for a term from June 30, 2010 to June 30, 2012.

GOAL

The proposed agreement meets the following strategic goals:

- Goal 4 – Financial Capacity – To ensure financial stability and effective resource utilization.
- 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 with an evolving technology-driven future.

DESCRIPTION

Charter Section 8A.104 gives the SFMTA the authority to negotiate labor agreements covering wages, hours, working conditions, and benefits with labor organizations representing employees at SFMTA in service critical classifications.

The agreement was ratified by the membership of TWU Local 250A - 7410 on June 11, 2010.

The negotiated agreement amends the existing CBA as follows: the term of the agreement is two years from July 1, 2010 to June 30, 2012. Additionally, the following concessions were agreed to: 12 unpaid furlough in FY 11 and 12 unpaid furlough days in FY 12; Health Plan Savings in FY 12; no layoffs between July 1, 2010 and December 31, 2010; and The Pilot Wellness Incentive Program shall sunset close of business June 30, 2010. There are no other changes with the exception of updating dates and language where appropriate. The CBA will be in effect from July 1, 2010 through June 30, 2012.

The CBA for TWU Local 250A - 7410 was provided to the SFMTA Board on June 1, 2010 when the agreement was formally sunshined.

ALTERNATIVES CONSIDERED

If the CBA is not approved, the cost savings that this agreement provides will not be realized and SFMTA would not have a labor contract for employees represented by TWU Local 250A – 7410.

The City Attorney has reviewed this calendar item.

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FUNDING IMPACT

The Labor Cost Analysis is attached.

The cost savings for TWU Local 250A - 7410 for FY11 is \$196,515; for FY12 is \$196,515.

RECOMMENDATION

Staff's recommendation is for the SFMTA Board to adopt the Resolution approving the CBA between SFMTA and TWU Local 250A - 7410.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Under Section 8A.104 of the Charter, the San Francisco Municipal Transportation Agency Board of Directors succeeded to the powers of the Board of Supervisors with respect to collective bargaining for employees in service critical classifications; and

WHEREAS, The current Collective Bargaining Agreement (CBA) between the San Francisco Municipal Transportation Agency (SFMTA) and Transport Workers' Union (TWU) Local 250A - 7410 expires on June 30, 2010; and

WHEREAS, In June 2010 the SFMTA and TWU Local 250A -7410 negotiated the CBA for the term from July 1, 2010 to June 30, 2012; and

WHEREAS, This agreement is pending ratification by the members of TWU, Local 250A - 7410; and

WHEREAS, The proposed CBA, which shall be effective July 1, 2010 through June 30, 2012, and all other required information were publicly disclosed in accordance with Charter Section 8A.104(p) on June 1, 2010 and are on file with the Secretary of the SFMTA Board of Directors; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors hereby approves the CBA between the SFMTA and TWU, Local 250A – 7410, Automotive Service Workers to implement negotiated concessions and extend its term to June 30, 2012.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Estimated Cost savings from Proposals & Ratified Agreements

Date: May 27, 2010

Emp Org Title	Agreement	FY 2011 Count	FY 2011 Salary Costs	Ratification Savings Amount – FY 2011	FY 2012 Count	FY 2012 Salary Costs	Ratification Savings Amount – FY 2012
TWU LOCAL 250-A, TWU – 7410 AUTO SERV WORKER Total	12 Furlough – 4.62%	69.00	4,253,574	196,515	69.00	4,253,574	196,515

Based on Active employees provided on HR Report Dated April 26, 2010

*** Represents Craft Classification**

Revised May 27, 2010

Reflects change of 6 furlough days for PCO's

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Sustainable Streets – Transportation Engineering

BRIEF DESCRIPTION:

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

SUMMARY:

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

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO _____ Tom Folks _____

ASSIGNED SFMTAB CALENDAR DATE: June 15, 2010

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PURPOSE

To approve various routine traffic and parking modifications.

Benefit to the SFMTA 2008 – 2012 Strategic Plan:

GOAL

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

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

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

Objective 2.4 - Reduce congestion through major corridors

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

ITEMS:

- A. REVOKE – ANGLE PARKING AT 45 DEGREES – Irving Street, south side, from 9th to 10th Avenue. **PH 5/14/2010 Requested by SFMTA.**
- B. ESTABLISH – ANGLE PARKING AT 60 DEGREES - Irving Street, south side, from 9th to 10th Avenue. **PH 5/14/2010 Requested by SFMTA.**
- C. ESTABLISH – STOP SIGNS – Stopping Brussels Street at Harkness Avenue, making this intersection an All-Way STOP. **PH 5/14/2010 Requested by Resident.**
- D. ESTABLISH – STOP SIGNS – Stopping 26th Street at Florida Street, making this intersection an All-Way STOP. **PH 5/14/2010 Requested by Resident.**
- E. ESTABLISH – ONE WAY STREET – Edna Street, northbound, between Marston Avenue and Judson Avenue. **PH 5/14/2010 Requested by Resident.**
- F. ESTABLISH - 2-HOUR PARKING 7AM TO 10PM EVERYDAY – 4th Street both sides between Channel and Mariposa Streets. China Basin Street both sides between 3rd and 4th Streets, and Mission Rock Street both sides between 3rd and 4th Streets. Makes Existing Regulations Permanent. **PH 5/14/2010 Requested by Business.**
- G. ESTABLISH - 2-HOUR PARKING 7AM -10PM EVERYDAY – Channel Street, both sides from 4th Street to 1000 feet westerly. Makes existing regulation permanent. **PH 5/14/2010 Requested by Business.**
- H. REVOKE – BLUE ZONE – “31” 6th Street, east side, from 3 feet to 21 feet north of Stevenson Street (18-foot zone) (replace with general metered parking). **PH 5/21/2010 Requested by SFMTA.**
- I. ESTABLISH – BLUE ZONE – “499” Stevenson Street, south side, from 9 feet to 27 feet east of 6th Street (18-foot zone). **PH 5/21/2010 Requested by SFMTA.**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

- A. REVOKE – ANGLE PARKING AT 45 DEGREES – Irving Street, south side, from 9th to 10th Avenue.
- B. ESTABLISH – ANGLE PARKING AT 60 DEGREES - Irving Street, south side, from 9th to 10th Avenue.
- C. ESTABLISH – STOP SIGNS – Stopping Brussels Street at Harkness Avenue, making this intersection an All-Way STOP.
- D. ESTABLISH – STOP SIGNS – Stopping 26th Street at Florida Street, making this intersection an All-Way STOP.
- E. ESTABLISH – ONE WAY STREET – Edna Street, northbound, between Marston Avenue and Judson Avenue.
- F. ESTABLISH - 2-HOUR PARKING 7AM TO 10PM EVERYDAY – 4th Street both sides between Channel and Mariposa Streets. China Basin Street both sides between 3rd and 4th Streets, and Mission Rock Street both sides between 3rd and 4th Streets. Makes Existing Regulations Permanent.
- G. ESTABLISH - 2-HOUR PARKING 7AM -10PM EVERYDAY – Channel Street, both sides from 4th Street to 1000 feet westerly. Makes existing regulation permanent.
- H. REVOKE – BLUE ZONE – “31” 6th Street, east side, from 3 feet to 21 feet north of Stevenson Street (18-foot zone) (replace with general metered parking).
- I. ESTABLISH – BLUE ZONE – “499” Stevenson Street, south side, from 9 feet to 27 feet east of 6th Street (18-foot zone).

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

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

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs & Construction

BRIEF DESCRIPTION:

Awarding the San Francisco Municipal Transportation Agency Contract No. 1238, California Street Cable Car Infrastructure Improvement, and authorizing the Executive Director/CEO to execute the contract with NTK Construction, Inc. located at 501 Cesar Chavez Street, San Francisco, CA 94124, as the lowest responsive and responsible bidder, in the amount of \$8,324,586.

SUMMARY:

- On March 1, 2010, the Executive Director/CEO of the San Francisco Municipal Transportation Agency (SFMTA) notified the SFMTA Board of Directors that he had authorized a bid call for Contract No. 1238, California Street Cable Car Infrastructure Improvement.
- The scope of work under this project includes installation of conduits and communication and data cables, replacement of the existing pulley brackets, installation of pipes, non-clog strainers, and manholes, replacement of electrical and mechanical devices that support the cable car system, resurfacing 17 blocks of California Street and to install ADA curb ramps, and replacement of selected sections of damaged sewer. Cable Car Maintenance staff will also perform certain specialized deferred maintenance work.
- Four bids were received and publicly opened on May 12, 2010.
- Staff recommends awarding Contract No. 1238 to NTK Construction, Inc. as the lowest responsive and responsible bidder, in the amount of \$8,324,586.
- Federal and local sources are providing funds for the work under this contract.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget & Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

_____ Jessie Katz _____

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The purpose of this calendar item is to award San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1238, California Street Cable Car Infrastructure Improvement, and to authorize the Executive Director/CEO to execute the contract with NTK Construction, Inc., as the lowest responsive and responsible bidder, in an amount not to exceed \$8,324,586.

GOAL

Contract No. 1238 would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

Objective 1.1 Improve safety and security across all modes of transportation

Objective 1.4 Improve accessibility across transit services

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

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

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

Objective 2.2 Ensure efficient transit connectivity and span of service

Objective 2.3 Fulfill bicycle and pedestrian network connectivity

Objective 2.4 Reduce congestion through major corridors

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

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

Objective 5.2 Improve facilities in which people are working

Objective 5.3 Improve internal communication and employee satisfaction

DESCRIPTION

Background

Contract No. 1238 is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under the Infrastructure Program, which consists of capital projects to rehabilitate and maintain fixed guideway and make infrastructure repairs and improvements to the cable car system. Rehabilitation of these systems would reduce operational problems, reduce maintenance, and increase system reliability.

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Scope of Work

The cable car system underwent a major overhaul in the early 1980's with reconstruction of the entire system in preparation for the National Democratic Convention. Since then, the system has been in continuous service for more than 20 years and many of the components, such as the vital circuit wiring, are in need of rehabilitation. This project will replace the worn and obsolete components with functionally similar replacements in order to improve maintainability, reliability, safety, and quality service for the California Cable Car Line.

The scope of work for this project includes installation of new conduits and cables to replace worn data and communication cables; replacement of the existing with newly designed pulley brackets with setscrew-held inserts; installation of pipes, non-clog strainers, and manholes to improve drainage in the trackway; installation of take-rope gypsies pits to allow lifting of the cable for the grip to engage; relocation of the electrical panel and other equipment from underground sheave pits to cabinets at above-ground locations on the sidewalk; and resurfacing 17 blocks of California Street, including installation of ADA curb ramps and replacement of selected sections of damaged sewer. Cable Car Maintenance staff will also perform certain specialized deferred maintenance work such as replacement of depression beams, worn switches, and rebuilding track switches while the California Cable Car Line is shut down.

Shutdown of the California Cable Car Line

Initial construction for the project is scheduled to begin at the end of summer 2010. Work to be performed includes installation of curb ramps and sewer rehabilitation. During this time, the California Cable Car Line will remain in service. A complete shutdown of the California Cable Car Line will be necessary beginning January 3, 2011 through June 19, 2011. Contractor will make improvements to the cable car system, which includes electrical and mechanical work beneath the cable car trackway and roadway renovation. Shuttle bus service will be provided along the California Cable Car Line, and trolley bus operations on the 1-California route will remain in service.

The contractor shall substantially complete all work by June 19, 2011. Liquidated damages are \$10,000 per calendar day for failure to complete the work specified in the contract.

Bids Received

On March 1, 2010, the Executive Director/CEO of the SFMTA notified the SFMTA Board of Directors that he had authorized a bid call for Contract No. 1238, California Street Cable Car Infrastructure Improvement, in accordance with Board Resolution No. 09-191, which delegates, among other things, the authority to issue bid calls to the Executive Director/CEO.

On May 12, 2010, SFMTA's Capital Programs and Construction Division received and publicly opened four bid proposals. Immediately before opening of the Bids, SFMTA announced the construction budget in the amount at \$11,970,936. Staff rejected one of the bids as non-responsive.

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The three responsive bids are as follows:

Bidders		Bid Amount
1	NTK Construction, Inc. 501 Cesar Chavez Street, Suite 123 San Jose, CA 94124	\$8,324,586
2	Con – Quest Contractors, Inc. 290 Toland Street San Francisco, CA 94124	\$8,757,734
3	Shimmick Construction Company, Inc. 8201 Edgewater Drive, Suite 202 Oakland, CA 94621	\$10,632,110

Following receipt of bids, SFMTA received a bid protest from Con-Quest Contractors, Inc. against NTK Construction, Inc.’s bid. Staff evaluated the protest and determined that it was without merit. After reviewing all proposals, staff has determined that NTK Construction, Inc. is the lowest responsive and responsible bidder. The engineer's estimate ranged between \$11,500,000 and \$12,500,000.

The Contract Compliance Office reviewed the bid proposals and confirmed that NTK Construction, Inc. will meet the Small Business Enterprise (SBE) participation goal of 20 percent established for this contract and will commit to meeting the Non-discrimination Equal Employment Requirements of the contract. NTK Construction, Inc. is in compliance with Chapter 12B Equal Benefits Provision of the San Francisco Administrative Code.

ALTERNATIVES CONSIDERED

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

FUNDING IMPACT

The conceptual and design phases of the project were funded with programmed Federal Transit Administration (FTA) funds, with AB664 Bridge Toll funds serving as local match. Funding for construction comes from a combination of programmed FTA funds, with local matching funds from the San Francisco County Transportation Authority for SFMTA's portion of the work. DPW will use Certificate of Participation (COP) funds from the DPW Street Resurfacing Funding Plan for the roadway construction work. The funding source for SFPUC portion of work is from the Wastewater Enterprise’s Operations budget under the SFPUC Wastewater Enterprise Repair and Replacement (R&R) Program. All funding for this project has been secured.

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

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney has reviewed this report.

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

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors award and authorize the Executive Director/CEO to execute SFMTA Contract No. 1238, California Street Cable Car Infrastructure Improvement, to NTK Construction, Inc., as the lowest responsive and responsible bidder, for a contract amount of \$8,324,586.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1238, California Street Cable Car Infrastructure Improvement, is identified in the latest San Francisco Municipal Railway Short Range Transit Plan under the Infrastructure Program, which consists of capital projects to rehabilitate and maintain fixed guideway and make infrastructure repairs and improvements to the cable car system; and,

WHEREAS, The work to be performed under this project includes installation of conduits and communication and data cables; replacement of the existing pulley brackets; installation of pipes, non-clog strainers, and manholes; replacement of electrical and mechanical devices that support the cable car system; and resurfacing 17 blocks of California Street, including installation of ADA curb ramps and replacement of selected sections of damaged sewer; and,

WHEREAS, On March 1, 2010, the Executive Director/CEO notified the SFMTA Board of Directors that he had authorized a bid call for Contract No. 1238 in accordance with Board Resolution No. 09-191, which delegates, among other things, the authority to issue bid calls to the Executive Director/CEO; and,

WHEREAS, On May 12, 2010, SFMTA received and publicly opened four bid proposals in response to its invitation for bids, one of which was rejected as being non-responsive to the bidding requirements; and,

WHEREAS, The second low bidder filed a protest against the low bidder claiming that it was non-responsive to the bidding requirements; the staff determined that the protest was without merit; and,

WHEREAS, SFMTA determined that NTK Construction, Inc., located at 501 Cesar Chavez Street, San Francisco, CA 94124, is the lowest responsive and responsible bidder, in the amount of \$8,324,586; and,

WHEREAS, The SFMTA Contract Compliance Office reviewed the bid proposals and confirmed that NTK Construction, Inc. will meet the revised Small Business Enterprise participation goal of 20 percent established for this contract and will commit to meeting the Non-discrimination Equal Employment Requirements of the contract; and

WHEREAS, The project is funded by Federal grants and by local funding sources; now, therefore, be it

RESOLVED, That SFMTA Board of Directors authorizes the Executive Director/CEO to execute SFMTA Contract No. 1238, California Street Cable Car Infrastructure Improvement, with NTK Construction, Inc., as the lowest responsive and responsible bidder, in an amount not to exceed \$8,324,586.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2

Contract No. 1238

**California Street Cable Car Infrastructure Improvement
Project Budget and Financial Plan**

PROJECT BUDGET

Category	Budget
Conceptual Engineering Phase Staff Support (SFMTA and Other Dept. Services)	\$1,293,000
Detail Design Phase Staff Support (SFMTA and Other Dept. Services)	\$1,644,000
Construction Phase Construction Contract, Contingency, and Staff Support	\$16,797,000
SFDPW Cost Share	\$3,500,000
SFPUC Cost Share	\$1,000,000
Total Cost	\$24,234,000

FINANCIAL PLAN

Project Funding Source	Amount
Federal Grant	\$15,787,200
Local Grants	
Proposition K	\$3,159,506
AB664 Bridge Toll	\$787,294
Certificate of Participation Fund	\$3,500,000
SFPUC Wastewater Enterprise's Operations budget	\$1,000,000
Total	\$24,234,000

THIS PRINT COVERS CALENDAR ITEM NO.: 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Capital Programs and Construction

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute a sole-source professional services agreement, Contract No. CS-162, Professional Support Services for the Job Order Contracting Program, with The Gordian Group, Inc., for an amount not to exceed \$975,000 and a term not to exceed five years.

SUMMARY:

- The Job Order Contracting System (“JOC”) consists of an “as-needed” indefinite quantity contract with a predefined set of bid items that are assigned on a task order basis for the performance of public work maintenance, repair and construction projects.
- This method of contracting, as authorized by San Francisco Administrative Code Section 6.62, will enable SFMTA to obtain construction services for small projects on an as-needed basis in an efficient and expeditious manner.
- The purpose of this agreement is to provide SFMTA with specialized consulting services required to continue to support SFMTA’s JOC program.
- Total expenditures under this contract will be dependent on the total construction work performed under the Agency’s JOC contracts. The Consultant will be paid a fixed negotiated percentage of the value of the construction work performed under the JOC contract only after the JOC contracts have been established and task orders issued.
- The Gordian Group, Inc. pioneered the development of the JOC program and remains the only available source for preparation of bid documents and implementation of the JOC program.
- Funding for task orders issued under this contract will be provided through both operating and capital funds to the extent there are funds identified in both the operating and capital budgets.

ENCLOSURES:

1. SFMTAB Resolution
2. Agreement without Appendices

APPROVALS:

DATE

DIRECTOR OF DIVISION PREPARING ITEM: _____	_____
FINANCE: _____	_____
EXECUTIVE DIRECTOR/CEO: _____	_____
SECRETARY: _____	_____

ADOPTED RESOLUTION
TO BE RETURNED TO: Jessie Katz, Capital Programs & Construction

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE:

Requesting authorization to execute Contract No. CS-162, Professional Support Services for the Job Order Contracting Program, with The Gordian Group, Inc., for an amount not to exceed \$975,000 and a term not to exceed five years.

GOALS:

Contract No. CS-162 will assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

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

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

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

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

DESCRIPTION:

Background

As authorized under Section 6.62 of the San Francisco Administrative Code, the SFMTA has developed a Job Order Contracting ("JOC") program for the purpose of performing minor construction and maintenance work in an efficient and expeditious manner.

Under this program, each JOC contract is advertised competitively. Contractors bid on detailed specifications and unit prices derived for each construction task contemplated to be performed under the JOC contract. Each task item includes direct costs for material, equipment and labor, and is grouped by trade. The unit prices are derived from a Unit Price Book developed by the Consultant containing approximately 100,000 unit prices covering material, equipment and labor costs for various types of construction. Contractors submitting bids on the JOC contract state in their bids an adjustment factor on a percentage basis, either increasing or decreasing the unit prices for all construction tasks set forth in the bid documents. All of the contractor's profit, overhead and indirect costs are included in the adjusted unit prices. Contracts are awarded to the responsible bidders who submit the lowest responsive bids based on the lowest adjustment factor. Task orders are issued to the selected contractors on an as-needed basis once a need for work has been identified.

The SFMTA requires the services of a consultant to prepare the bid documents and the Unit Price Book and to support the JOC program for the SFMTA. Under Contract No. CS-162, the Consultant will provide these services without any initial compensation. Compensation to the Consultant will be limited to 1.95% of the value of the construction work performed under the Agency's JOC contracts. The fee payable to the Consultant will be reduced to 1.75% of the construction work during any Contract Year where the total value of construction exceeds \$10,000,000. No payments are made to the Consultant under Contract No. CS-162 until JOC contracts are established and task orders for construction work are issued. These JOC contracts will be brought before the SFMTA Board of Directors for approval. Total compensation under this Contract will be dependent on the amount of construction task orders issued but will not exceed \$975,000. Funding for payments under this contract will be provided through existing approved budgets for the projects requiring JOC services.

The SFMTA established its first JOC program in 2006. The SFMTA Board of Directors adopted Resolution No. 06-139 on November 7, 2006 authorizing the Executive Director/CEO to negotiate and execute a Contract No. CS-144, Implementation of a Job Order Contracting Program, with The Gordian Group in an amount not to exceed \$300,000 and a term not to exceed five years. Under Contract No. CS-144, The Gordian Group assisted SFMTA in establishing its JOC program. On August 4, 2009, the SFMTA Board of Directors adopted Resolution No. 09-127, authorizing Contract Amendment No. 1 to Contract No. CS-144, increasing the contract amount by \$150,000 to \$450,000.

The contract to implement a Job Order Contracting Program is different from a standard construction contract or as-needed professional services contract in that the amount that is paid to the contractor is dependant on future contracts which will be approved by this Board.

SFMTA has so far entered into two three-year JOC construction contracts with the assistance received from The Gordian Group - SFMTA Contracts Nos. 1222 and 1223, awarded on August 5, 2008, each in the amount of \$3,000,000. Each contract contained an option to increase the contract amount by 50%. The SFMTA Board later approved modifications to both contracts increasing each contract amount to \$4,500,000.

SFMTA has utilized its two JOC contracts to accomplish a number of critically important projects effectively and expeditiously. Following is a representative listing of completed projects:

- Repaired cracked 12" sewer on Third Street east side between Palou & Quesada
- Installed bicycle counter on Fell Street bike lane between Scott & Divisadero
- Potholed utilities at Moscone Station and Central Subway portal
- Installed new steel guardrails at 2nd & King
- Installed new overhead disconnect switches in the Potrero Trolley Coach facility
- Replaced asphalt concrete with rail grout 4th & King platform signal rail and replaced 157 speed bumps
- WAFER site preparation at Forest Hill metro station
- Installed new safety fence at Holloway to Winston
- Replaced flooring and carpet at Lenox and Green facilities
- Replaced boiler at Woods facility
- Installed fencing at east Sunset Tunnel portal, Berry & 6th
- Replaced main HVAC, ceilings and lighting at Central Control facility

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- Replaced (4) roof HVAC, curbs and ductwork at Presidio bus facility
- Repaired roofing at Green facility
- Modified existing exterior gates at Illinois & Phelps substation
- Replaced HVAC at Central Control computer room
- Replaced UPS at Central Control
- Upgraded electrical and light fixtures at Muni's Motor Power facility
- Installed fencing and gates at Eureka portals exterior security
- Upgraded electrical and lighting fixtures at Lenox facility

The existing JOC contracts and Contract No. CS-144 with the Gordian Group are reaching their authorization limits. Due to the successes of these contracts, SFMTA wishes to expand its program and issue new JOC contracts in the near future. Recent amendments to Section 6.62 of the Administrative Code allow departments to issue JOC contracts for up to five years and up to \$5 million per contract. It is anticipated that that the SFMTA will issue up to \$50,000,000 in JOC contracts within the next five years. SFMTA will need consultant support for its new JOC Contracts and is requesting authorization to execute Contract No. CS-162 with The Gordian Group.

The Gordian Group pioneered the development of the JOC system and remains the only available source for preparation of bid documents and implementation/support of the JOC program. The Gordian Group is the only firm in the nation that provides the full range of products and services necessary to develop, implement and support JOC programs for public agencies like SFMTA. The Gordian Group's proprietary JOC System consists of their PROGEN[®] software, Construction Task Catalog[®] and the supporting material and services necessary to train SFMTA and construction contractor staff to utilize the system.

The Gordian Group has also been awarded numerous contracts on a sole source basis or as the sole responsive proposer to numerous RFPs issued by other agencies. A list of a few of the recently awarded Gordian contracts is presented below.

<u>Agency Name</u>	<u>RFP Date</u>	<u>Contract Date</u>
San Francisco Public Utilities Commission	06/16/08	07/22/08
San Francisco Recreation & Park Department	08/19/08	09/30/08
United States Postal Service (Nationwide)	Sole Source	02/24/05
Chicago Transit Authority	Sole Source	08/18/08
Chicago Public Schools	Sole Source	10/16/09
University of California (Statewide System)	06/28/07	10/01/07
California State University (Statewide System)	11/19/08	02/23/09
San Mateo County	06/16/08	08/12/08
Sonoma County	06/22/07	02/05/08
Sacramento County	Sole Source	01/15/08
Los Angeles Unified School District	04/20/09	10/01/09

The Gordian Group has also provided JOC services for the San Francisco Department of Public Works for several years.

Details of Work Under this Agreement

- Prepare a Unit Price Book containing approximately 100,000 unit prices covering material, equipment and labor costs for various units of construction, and adjusting these costs to current market conditions;
- Prepare and publish technical specifications describing the materials, performance and installation requirements for each of the construction tasks listed in the Unit Price Book;
- Develop and implement prequalification processes for certain types of SFMTA job contracting work to ensure that all selected contractors have the required experience and expertise to successfully provide the construction services needed;
- Provide procurement support, execution procedures and Windows compatible software to manage the contracts for construction;
- Train City staff on implementation of the contracting system;
- Conduct outreach to maximize contractor participation in bidding;
- Train potential contractors on application of the system;
- Train the awarded general contractors in implementation of the contracts; and
- Conduct/attend orientation meetings, program review conferences, and program briefings as needed.

As mentioned above, the majority of the above services will be provided before issuance of any JOC contract. The Consultant receives its compensation as a fixed negotiated percentage of the value of actual task orders issued under JOC contracts, payable only after a JOC contract has been established and a task order has been issued. Under the current Contract No. CS-144, the Consultant receives 5% of the value of the construction work performed under the JOC contracts. Recognizing that much of the work on the Unit Price Book was performed under Contract No. CS-144 and that the Consultant will only be required to update the Unit Price Book under the proposed contract, the SFMTA has negotiated a reduction of the percentage in the proposed contract to 1.95% of the value of the construction work (reduced to 1.75% if the work contracts exceed \$10,000,000 in any given contract year). This rate is consistent with rates paid by other agencies including City and County of San Francisco's Department of Public Works and the Public Utilities Commission.

The Contract Compliance Office has not established a SBE participation goal for this contract as there are no subcontracting opportunities.

ALTERNATIVES CONSIDERED:

The alternative of bidding out individual small contracts increases the length of time to complete a task and adds additional administrative costs to each task. Utilizing a JOC system remains the most efficient and expeditious manner for performing minor construction and maintenance work.

FUNDING IMPACT

Funding for task orders issued under this contract will be provided through both operating and capital funds to the extent there are funds identified in both the operating and capital budgets.

PAGE 6.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Civil Service Commission has approved these services.

The City Attorney's Office has reviewed this report.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to execute a sole-source professional services agreement, Contract No. CS-162, Professional Support Services for the Job Order Contracting Program, with The Gordian Group, Inc. for an amount not to exceed \$975,000 and a term not to exceed five years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Job Order Contracting system (“JOC”) consists of an indefinite quantity contract with a predefined set of bid items that are assigned on a task order basis for the performance of public work maintenance, repair and construction projects; and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) implemented a JOC system in 2006 for the purpose of performing construction and maintenance work in an efficient and expeditious manner; and,

WHEREAS, It is necessary to obtain the services of the best qualified consulting firm to provide contract documents and implementation support for a JOC for the SFMTA; and,

WHEREAS, The Gordian Group pioneered the development of the JOC system and remains the only available source for preparation of bid documents and implementation of the JOC system; and,

WHEREAS, The SFMTA has had a successful contract with the Gordian Group since 2006 for JOC services, which contract is reaching the limits of its authorized funding; and,

WHEREAS, The Contract Compliance Office has set no SBE participation goal for this contract because there are no subcontracting opportunities; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute a sole-source professional services agreement, Contract No. CS-162, Professional Support Services for the Job Order Contracting Program, with The Gordian Group, Inc., for an amount not to exceed \$975,000 and a term not to exceed five years.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

AGREEMENT BETWEEN
CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO MUNICIPAL TRANSPORTATION
AGENCY
AND
THE GORDIAN GROUP, INC.
FOR
PROFESIONAL SERVICES TO SUPPORT THE
JOB ORDER CONTRACTING PROGRAM
(CONTRACT CS-162)

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**San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103**

**Agreement between the City and County of San Francisco
Municipal Transportation Agency and**

The Gordian Group, Inc.

**For Professional Services to Support the
Job Order Contracting Program
Contract No. CS-162**

This Agreement is made this ____ day of _____, 2010, in the City and County of San Francisco, State of California, by and between The Gordian Group, Inc., 140 Bridges Road, Suite E, Mauldin, South Carolina, 29662 (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its San Francisco Municipal Transportation Agency (“SFMTA”).

Recitals

- A. The SFMTA wishes to retain the services of a firm to support its Job Order Contracting (“JOC”) program.
- B. The Gordian Group pioneered development of the JOC program and remains the only available source for preparation of bid documents and implementation and support of the JOC program.
- C. The Gordian Group represents and warrants that it is qualified to perform the services required by SFMTA as set forth under this Agreement.
- D. On _____, 2010, the SFMTA Board of Directors adopted Resolution No. _____, which authorized the Executive Director/CEO to execute this Agreement with the Contractor to provide JOC services.
- E. Approval for this Agreement was obtained from a Civil Service Commission Notice of Action Number 4071-09/10 on January 4, 2010.

Now, THEREFORE, the parties agree as follows:

DEFINITIONS. Wherever any of the words or phrases defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning set forth below. Terms defined in the Construction Task Catalog® shall have the meaning defined in that document.

City: The City and County of San Francisco, a municipal corporation. The rights of City in this Agreement inure to the benefit of the City and County of San Francisco and all of its constituent departments. However, except as otherwise expressly provided herein, the powers and duties to be exercised by City under this Agreement shall be exercised by SFMTA by and through the Executive Director/CEO or his or her designee(s).

Construction Task Catalog® (CTC): A comprehensive listing of specific repair or refurbishment tasks, together with a specific unit of measurement and a unit price for each task.

Engineer: The Director of Capital Programs and Construction of the SFMTA or a Project Manager designated by the Director.

Job Order Contract (JOC): A competitively bid, indefinite quantity contract authorized under San Francisco Administrative Code section 6.62 for accomplishing maintenance, repair, and minor construction projects.

San Francisco Municipal Transportation Agency (SFMTA or Agency or Owner): The Municipal Transportation Agency, an agency of the City and County of San Francisco established by San Francisco Charter Article VIII A, or any successor agency.

Task Order: A document issued by SFMTA to a JOC construction contractor that describes specific work to be accomplished under a JOC Contract.

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

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

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

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be the earlier of (a) five years from the Effective Date as set forth in Section 3 of this Agreement; or (b) expenditure of the not-to-exceed amount specified in Section 5 below.

3. Effective Date of Agreement

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

4. Services Contractor Agrees to Perform

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

5. Compensation

The Contractor agrees to perform the services specified in Appendix A for the JOC System License Fees set forth in Appendix B, Calculation of Charges. Compensation shall be paid within thirty (30) days after receipt of an invoice from the Contractor representing its percentage of each Task Order issued to a JOC contractor, as described in Appendix B. In no event shall the compensation amount of this Agreement exceed Nine Hundred Seventy-Five Thousand Dollars (\$975,000).

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

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

6. Guaranteed Maximum Costs

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

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

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

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

7. Payment; Invoice Format

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

The Contractor shall submit one original invoice package with the appropriate SFMTA reporting forms and supporting documentation to substantiate all costs for the contractor and any subcontractors. Contractor shall develop a standard invoice format to be approved by the City. Each invoice must include an SFMTA Form 6 to identify the participation and amount payable to subcontractors. Complete invoice packages shall be sent directly to the SFMTA Project Manager.

Contractor shall send SFMTA Form No. 7 to the Project Manager within five (5) days of receipt of payment for each invoice to document the Contractor's payments to any subcontractors.

Contractor shall send SFMTA Form No. 8 to the Project Manager when processing all modifications, supplements or change orders that cumulatively increase the original amount of the contract.

Contractor shall send SFMTA Form No. 9 to the Project Manager with the final invoice for each task order to authenticate the total subcontractor participation and close out the Purchase Order Release.

The City will make payments to Contractor at the following address: The Gordian Group, P.O. Box 751959, Charlotte, NC 28275-1959.

8. Submitting False Claims; Monetary Penalties

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

9. Disallowance

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

10. Taxes

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

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

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

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

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

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

11. Payment Does Not Imply Acceptance of Work

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

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement. The SFMTA Project Manager must approve the assignment of staff prior to beginning the work. The

SFMTA Project Manager must also approve in writing any personnel changes proposed by Contractor after a Notice to Proceed has been issued.

13. Responsibility for Equipment

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

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

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

b. Payment of Taxes and Other Expenses.

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

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

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

15. Insurance

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

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

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

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

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

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must 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 (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

Shahnam Farhangi
Deputy, Contract Administration and Quality Management
Capital Programs and Construction
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 3rd Floor
San Francisco, CA 94103

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 Agreement 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.

16. Indemnification

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

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

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

17. Incidental and Consequential Damages

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

18. Liability of City

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

19. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

This contract is covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By executing this Agreement, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the SFMTA. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension

and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C throughout the period of this Agreement. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

20. Default; Remedies

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

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

Section	Title
8.	Submitting False Claims; Monetary Penalties.
10.	Taxes
15.	Insurance
24.	Proprietary or confidential information of City
30.	Assignment
37.	Drug-free workplace policy
52.	Compliance with laws
54.	Supervision of minors
56.	Protection of private information
57.	Graffiti removal

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

iii. 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.

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

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or

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

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

21. Termination for Convenience

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

(1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable

allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

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

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

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

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

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

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

22. Rights and Duties upon Termination or Expiration

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

Section	Title
8.	Submitting false claims
9.	Disallowance
10.	Taxes
11.	Payment does not imply acceptance of work
13.	Responsibility for equipment

Section	Title
14.	Independent Contractor; Payment of Taxes and Other Expenses
15.	Insurance
16.	Indemnification
17.	Incidental and Consequential Damages
18.	Liability of City
24.	Proprietary or confidential information of City
26.	Ownership of Results
27.	Works for Hire
28.	Audit and Inspection of Records
47.	Modification of Agreement.
48.	Administrative Remedy for Agreement Interpretation.
49.	Agreement Made in California; Venue
50.	Construction
51.	Entire Agreement
55.	Severability
56.	Protection of private information

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

23. Conflict of Interest

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

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

To City: Shahnam Farhangi
Deputy, Contract Administration and Quality Management
Capital Programs and Construction
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 3rd Floor
San Francisco, California 94103
Tel.: 415-701-4284
Fax: 415-701-4300
email: shahnam.farhangi@sfmta.com

To Contractor: David L. Mahler
The Gordian Group
140 Bridges Road, Ste. E
Mauldin, South Carolina, 29662
Tel.: (800) 874-2291
Fax: (864) 233-9100
email: d.mahler@gordian-group.com

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

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

28. Audit and Inspection of Records

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

29. Subcontracting

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

30. Assignment

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

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

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

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If,

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

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

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

33. 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) 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. Public Access to Meetings and Records

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

41. 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. Contractor further agrees to provide to City the names of each person, entity or committee described above.

42. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to

comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

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

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

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with 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.

43. Requiring Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

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

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

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

temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

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

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

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

(6) Set the term of the requirements.

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

Contractor agrees:

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

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

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

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

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

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

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce

Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

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

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

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

f. Subcontracts

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

45. 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.

46. 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.

47. Modification of Agreement

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

48. 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.

49. 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.

50. Construction

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

51. Entire Agreement

This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 47.

52. 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.

53. 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.

54. JOC System License

The Gordian Group grants to the SFMTA, and the SFMTA accepts from The Gordian Group for the term of this Agreement, a non-exclusive right, privilege, subscription and license to use The Gordian Group's Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") for the sole purpose of operating the SFMTA's Job Order Contracting program. The parties agree that Proprietary Information includes, but is not limited to, The Gordian Group's Construction Task Catalog[®] (also commonly referred to as CTC, Unit Price Book and UPB), PROGEN[®] software and support documentation, training materials and other proprietary materials developed by The Gordian Group. The parties agree that Sections 26 and 27 of this Agreement do not apply to Proprietary Information. Upon the expiration or termination of this Agreement as provided herein, the SFMTA shall return to The Gordian Group all Proprietary Information in the SFMTA's possession and The Gordian Group shall provide all data generated by the SFMTA in a form accessible by a standard database program, such as Microsoft[®] Access[®]. In the event of a conflict in terms and conditions between this JOC System License and any other terms and conditions of this Agreement or any purchase order or similar document issued by SFMTA, this JOC System License shall take precedence.

55. 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.

56. Protection of Private Information

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

57. Graffiti Removal

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

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

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

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

58. 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.

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

60. Dispute Resolution Procedure

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

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

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

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

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

b. For disputes involving a claim for additional compensation, parties involved shall attempt to resolve such disputes expeditiously and in good faith so as not to impact the performance or schedule of the Project. Under no circumstances shall the Contractor or its subconsultants stop work due to an unresolved dispute.

61. Small Business Enterprise Program

The services covered by this Agreement are funded in part by federal grant monies. Contractor must comply with all federal regulations regarding Disadvantaged Business Enterprise (DBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations (49 CFR Part 26). More information on federal DBE requirements can be found on the internet at:

http://www.fta.dot.gov/civilrights/dbe/civil_rights_5263.html

Contractor shall also comply with the SFMTA's Small Business Enterprise (SBE) provisions contained in Appendix D, which are incorporated by reference as if fully set forth herein. Failure of Contractor to comply with any of these requirements shall be deemed a material breach of this Agreement.

A zero (0%) SBE participation goal has been established for the services to be performed under this Agreement. SFMTA encourages contractor to use good faith efforts to solicit DBEs for this contract if available.

62. Federal Transportation Administration (FTA) Requirements

The provisions contained in "FTA Requirements for Personal Services Contracts," attached as Appendix C, are incorporated into this Agreement. If there is any conflict between

the FTA terms and conditions and any other terms and conditions of this Agreement, the FTA terms and conditions shall take precedence.

63. Cooperative Drafting

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

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

<p>CITY</p> <p>Approved:</p> <p>_____</p> <p>Nathaniel P. Ford Sr. Executive Director/CEO San Francisco Municipal Transportation Agency</p> <p>SFMTA Board of Directors Resolution No. _____ Adopted: _____ Attest:</p> <p>_____</p> <p>Roberta Boomer, Secretary SFMTA Board of Directors</p> <p>Approved as to Form: Dennis J. Herrera, City Attorney</p> <p>By _____ Robin M. Reitzes Deputy City Attorney</p>	<p>THE GORDIAN GROUP</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 34, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>_____</p> <p>Authorized Signature</p> <p><u>David L. Mahler</u> Printed Name</p> <p><u>Vice President of Finance</u> Title</p> <p><u>The Gordian Group, Inc.</u> Company Name</p> <p><u>53805</u> City Vendor Number</p> <p><u>140 Bridges Rd., Ste. E, Mauldin, SC 29662</u> Address</p> <p><u>58-1900371</u> Federal Employer ID Number</p>
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APPENDICES

- A. Services to be Provided by Contractor
- B. Calculation of Charges
- C: FTA Requirements for Personal Services Contracts
- D. Disadvantaged Business Enterprise (DBE) Program for Professional and Technical Services

THIS PRINT COVERS CALENDAR ITEM NO. : 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute the First Amendment to the Memorandum of Understanding (MOU) between the SFMTA and the Port of San Francisco for parking meter coin counting and collections services, extending the term of the MOU by two years, from July 1, 2010 to June 30, 2012.

SUMMARY:

- On June 17, 2008, the SFMTA Board approved the Memorandum of Understanding (MOU) between the SFMTA and the Port of San Francisco (Port) for two years to assist the Port of San Francisco (“Port”) to purchase and install 111 multi-space parking meters on Port property, maintain the multi-space meters, and collect and count the coins from the meters.
- The MOU is due to expire on June 30, 2010.
- Procurement of the meters, meter coin counting and collections is done through the SFMTA’s Agreement with Serco Inc, which was extended by the SFMTA Board on May 4, 2010 for two years, to June 30, 2012.
- The Port wishes to continue meter maintenance and coin collections and counting services.
- In order to maintain the current mechanism in place that allows the Port to pay the SFMTA for services obtained through Serco, an extension of the current MOU is needed, and must be approved by both the SFMTA and the Port.
- Costs to the Port for the services under the MOU will total approximately \$1.12 million for the term of the extension.

ENCLOSURES:

1. SFMTAB Resolution
2. 1st Amendment to the MOU for Parking Meter Coin Counting, Collections and Maintenance

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO: Sonali Bose

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Authorizing the Executive Director/CEO to execute the First Amendment to the Memorandum of Understanding (MOU) between the SFMTA and the Port of San Francisco for parking meter coin counting and collections services to extend the term for two years, from July 1, 2010 to June 30, 2012.

GOAL

The extension of the MOU with the Port for parking meter coin counting, collections and maintenance would assist the SFMTA in meeting the following Strategic Goals:

- 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

On June 17, 2008, the SFMTA Board approved the Memorandum of Understanding (MOU) between the SFMTA and the Port of San Francisco (Port) for a two years to assist the Port of San Francisco (“Port”) to purchase and install 111 multi-space parking meters on Port property, maintain the multi-space meters, and collect and count the coins from the meters (Resolution 08-097). The MOU is due to expire on June 30, 2010.

Procurement of the parking meters was done through the SFMTA’s existing contract with Serco Inc., who manages coin counting and collections services for the City’s 23,000+ meters on behalf of the SFMTA. On May 4, 2010, the SFMTA Board approved a two-year extension of the Serco Contract (Resolution No. 10-067). Because the Port wishes to continue to have the SFMTA maintain its parking meters, and continue coin counting and collections on behalf of the Port, an extension to the current MOU is needed so that the mechanism currently in place to enable the Port to reimburse the SFMTA for costs associated with the project can continue. Both the SFMTA and the Port must approve the extension to the MOU. The Port Commission is expected to approve the MOU at or before its June 22, 2010 meeting, prior to the current MOU’s expiration.

ALTERNATIVES CONSIDERED

The only alternative to extending the MOU would be to cease providing services to the Port for maintenance and coin counting and collections support. Since both agencies were interested in continuing the relationship, this alternative was rejected.

FUNDING IMPACT

Projected costs to the Port under the MOU are as follows:

1. The Port shall pay Serco’s costs to collect and count the coins from the Port’s meters for FYs 2010-2011 and 2011-2012 up to the following amounts:

- **FY 2010-11:** \$147,096
 - **FY 2011-12:** \$149,908
2. The Port shall pay the SFMTA's costs to maintain the Port's multi-space paystations for FYs 2010-11 and 2011-12 up to the following amounts
- **FY 2010-11:** \$258,877
 - **FY 2011-12:** \$269,233
3. The Port shall pay the monthly wireless meter management fee up to the following amounts:
- **FY 2010-11:** \$88,434
 - **FY 2011-12:** \$91,972
4. The Port shall pay for extended warranty on the multi-space paystations up to the following amounts:
- **FY 2010-11:** \$44,123
 - **FY 2011-12:** \$64,713

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed the item and the amendment to the MOU. The Port Commission is expected to approved the MOU prior to its expiration date.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to execute the First Amendment to the MOU with the Port.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On June 17, 2008, the SFMTA Board adopted Resolution No. 08-097, which approved the Memorandum of Understanding (MOU) between the SFMTA and the Port of San Francisco (Port) for two years to assist the Port of San Francisco (“Port”) to purchase and install 111 multi-space parking meters on Port property, maintain the multi-space meters, and collect and count the coins from the meters; and,

WHEREAS, The MOU is due to expire on June 30, 2010; and,

WHEREAS, Procurement of the parking meters was achieved through the SFMTA’s existing contract with Serco Inc, who manages coin counting and collections services for the City’s 23,000+ meters on behalf of the SFMTA; and,

WHEREAS, On May 4, 2010, the SFMTA Board approved a two-year extension of the Serco Contract (10-067); and,

WHEREAS, The Port wishes to continue to have the SFMTA maintain its parking meters, and continue coin counting and collections on behalf of the Port; and,

WHEREAS, An extension to the current MOU is needed so that the mechanism currently in place to enable the Port to reimburse the SFMTA for costs associated with the project can continue; and,

WHEREAS, Port costs under the MOU will total approximately \$1.12 million; and,

WHEREAS, The Port Commission is expected to approve the MOU at or before its June 22, 2010 meeting, prior to the current MOU’s expiration; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute the First Amendment to the MOU between the SFMTA and the Port of San Francisco for installation, coin collection and counting and maintenance of up to 111 Port multi-space meters, to extend the term of the MOU for two years, from July 1, 2010 to 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

CITY AND COUNTY OF SAN FRANCISCO

GAVIN NEWSOM, MAYOR

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

THE SAN FRANCISCO PORT COMMISSION

AND

**THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
("SFMTA")**

MONIQUE MOYER
EXECUTIVE DIRECTOR

PORT OF SAN FRANCISCO

KIMBERLY BRANDON, PRESIDENT
RODNEY FONG, VICE PRESIDENT
MICHAEL HARDEMAN,
COMMISSIONER
ANN LAZARUS, COMMISSIONER
STEPHANIE SHAKOFSKY,
COMMISSIONER

SAN FRANCISCO PORT COMMISSION

NATHANIEL P. FORD SR.
EXECUTIVE DIRECTOR/CEO

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

TOM NOLAN, CHAIRMAN
JERRY LEE, VICE-CHAIRMAN
CAMERON BEACH, DIRECTOR
MALCOLM HEINECKE, DIRECTOR
BRUCE OKA, DIRECTOR

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY
BOARD OF DIRECTORS

**FIRST AMENDMENT TO
MEMORANDUM OF UNDERSTANDING**

THIS FIRST AMENDMENT TO MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into as of the 1st day of July, 2010, by and between the San Francisco Municipal Transportation Agency ("SFMTA"), an agency of the City and County of San Francisco ("City"), and the San Francisco Port Commission ("Port"), an agency of the City and County of San Francisco.

RECITALS

A. On July 1, 2008, the Port and the SFMTA entered into a two-year MOU for the Port to obtain, through the SFMTA's contract with Serco, Inc. (Serco), (1) approximately 111 electronic multi-space paystations that accept coins and credit card payments, and may in the future accept SFMTA "smart" parking cards; (2) coin collection and counting services for the Port's multi-space paystations; and (3) meter repair services by Serco, its subcontractor, Parkeon, and the SFMTA to maintain the Port's multi-space paystations.

B. The parties wish to enter into this First Amendment to MOU to extend the MOU through June 30, 2012, and adjust payment amounts based on changes to the Serco contract.

C. Serco's obligations for liquidated damages under the Agreement and for the performance of warranty work under the Warranty Services Agreement have not been changed.¹

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Section 3 (Term) of the Agreement is amended to read as follows:

3. TERM. THE Term of this MOU shall commence on the Effective Date and shall terminate on June 30, 2012.

2. A new Section 4.2 is added to read as follows:

4.2. At its option, the SFMTA may replace the Port's existing Parkeon pay stations with pay stations procured from another vendor. The SFMTA will advise the Port of this decision if pursued and the reasons for the replacement. The SFMTA will be responsible for the replacement, if any, and the full functioning of any new pay stations.

3. Section 5 (Payments and Budgeting) is deleted and replaced by a new Section 5 to read as follows:

5. PAYMENTS AND BUDGETING

(a) Payment Amounts

¹ Liquidated Damages are included in Exhibit 2 of Appendix E of the Seventh Amendment to the Agreement between the SFMTA and Serco, Inc. The Warranty and Services Agreement is included in Attachment One to the Ninth Amendment to the Agreement between SFMTA and Serco Inc.

(i) The Port shall pay Serco's costs to collect and count the coins from the Port's meters for FYs 2010-2011 and 2011-2012 up to the following amounts:

- **FY 2010-11:** \$147,096
- **FY 2011-12:** \$149,908

(ii) :The Port shall pay the SFMTA's costs to maintain the Port's multi-space paystations for FYs 2010-11 and 2011-12 up to the following amounts

- **FY 2010-11:** \$258,877
- **FY 2011-12:** \$269,233

(iii) The Port shall pay the monthly wireless meter management fee up to the following amounts:

- **FY 2010-11:** \$88,434
- **FY 2011-12:** \$91,972

(iv) The Port shall pay for extended warranty on the multi-space paystations up to the following amounts:

- **FY 2010-11:** \$44,123
- **FY 2011-12:** \$64,713

(v) Should any other unforeseen costs arise as a result of the provisions of this MOU, the Port and SFMTA will jointly share in such costs.

(b) **Payments – Serco Coin Collection and Counting Services**

(i) The SFMTA will provide the Port with an invoice from Serco of its costs to collect and count coins from the Port's multi-space paystations.

(ii) Within 30 days of receipt of the invoice, the Port shall pay to the SFMTA the amount owed thereunder, not to exceed the amount in 5.a.i above.

(c) **Payments – SFMTA Multi-space Paystation Maintenance Services**

(i) On a quarterly basis, the SFMTA shall provide the Port with an invoice of its costs to maintain the Port's multi-space paystations

(ii) Within 30 days of receipt of the invoice, the Port shall pay to the SFMTA the amount owed thereunder, not to exceed the amount in 5.a.ii above.

(d) **Payments – Monthly Wireless Meter Management Fee**

(i) The SFMTA will provide the Port with a monthly invoice from Serco for the monthly wireless fee for the prior month.

(ii) Within 30 days of receipt of the invoice, the Port shall pay to the SFMTA the amount owed thereunder, not to exceed the amount in 5.a.iii above.

(e) **Payments – Extended Warranty and Service Fee**

(i). The SFMTA will provide the Port with an invoice from Serco in December 2010 (for the last six months of FY 2011) and June 2011 (for FY2011-2012).

(ii). Within 30 days of receipt of the invoice, the Port shall pay to the SFMTA the amount owed thereunder, not to exceed the amount in 5.a.iv above.

(f) **Monies Collected from the Port’s Multi-space Paystations**

(i) The Port will receive all monies collected from the multi-space paystations installed on Port property including coins, credit card payments, and City Smart Card payments. The SFMTA and its contractors will work with the Port’s Fiscal Officer to develop procedures to deposit the monies collected from the multi-space paystations into the Port’s accounts.

4. Section 6(d) (Early Termination) of Agreement is amended to read as follows:

(d) **Early Termination**. Should the Port wish to terminate the coin collection and or counting service prior to June 30, 2012, then the Port agrees to pay Serco the following early termination fees:

- i) Coin collection: If Port Collection services are terminated prior to 24 months, the cost would be \$1,765.00 times the number of operational months remaining in the term.
- ii) Counting services: If Port coin counting services are terminated prior to 24 months from the date hereof, the cost would be \$1,088.00 times the number of operational months remaining in the term.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By _____
NATHANIEL P. FORD SR.
Executive Director/CEO
San Francisco Municipal
Transportation Agency

SFMTA Board of Directors

Resolution No. _____

Dated: _____

Secretary, SFMTA Board

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through THE SAN FRANCISCO PORT COMMISSION

By: _____
MONIQUE MOYER
Executive Director
Port of San Francisco

Port Commission Resolution No. _____

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute the First Amendment to the Memorandum of Understanding (MOU) between the San Francisco Municipal Transportation Agency and the Port of San Francisco for use of Pier 70 as the Long-Term Storage Facility for Illegally Towed and Abandoned Vehicles, extending the MOU for five years, to July 31, 2015.

SUMMARY:

- In June 2005, SFMTA Board approved a five-year Agreement for Towing and Storage of Illegally Parked and Abandoned Vehicles with San Francisco AutoReturn. The agreement will expire on July 31, 2010.
- On June 1, the SFMTA Board approved the five-year extension of the Towing Agreement to July 31, 2015.
- As part of the towing agreement, the SFMTA acquired use of 13 acres of Pier 70 from the Port of San Francisco (“Port”).
- The SFMTA currently pays \$137,997.29/month in rent for use of this property; this rent is passed through to AutoReturn by way of reimbursement to the SFMTA for use of the Pier 70 property for 1) long-term storage of towed vehicles, and 2) to conduct weekly auctions of vehicles that have not been claimed by their owners.
- In addition to standard negotiations regarding rent amount and term, the Port has commissioned an RFP to be released for eventual redevelopment of the Pier 70 property. Therefore, modifications to the MOU were necessary to manage any needed transition of the property between the Port and the SFMTA.

ENCLOSURES:

1. SFMTAB Resolution
2. MOU for Use of Pier 70 as the Long-term Storage Facility for Towed Vehicles

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
BE RETURNED TO: Sonali Bose

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Authorizing the Executive Director/CEO to execute the First Amendment to the Memorandum of Understanding (MOU) between the San Francisco Municipal Transportation Agency and the Port of San Francisco for use of Pier 70 as the Long-Term Storage Facility for Illegally Towed and Abandoned Vehicles, extending the MOU for five years, to July 31, 2015.

GOAL

The extension of the MOU with the Port for use of Pier 70 as the Long-term Storage Facility for towed vehicles would assist the SFMTA in meeting the following Strategic Goal:

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

DESCRIPTION

In June 2005, SFMTA Board approved a five-year Agreement for Towing and Storage of Illegally Parked and Abandoned Vehicles with San Francisco AutoReturn. The agreement will expire on July 31, 2010. On June 1, the Board approved a five-year extension of the agreement, to July 31, 2015.

As part of the towing agreement, the SFMTA acquired use of 13 acres of Pier 70 from the Port of San Francisco (“Port”). The SFMTA currently pays \$137,997.29/month in rent for use of this property; the rent is passed through to AutoReturn by way of reimbursement to the SFMTA for use of the Pier 70 property for 1) long-term storage of towed vehicles, and 2) to conduct weekly auctions of vehicles that have not been claimed by their owners. When a vehicle is not claimed by the owner, the California Vehicle Code and Civil Code authorizes the Contractor to sell the vehicle through a lien sale process to recoup towing and storage costs.

In addition to standard negotiations regarding rent amount and term, the Port has commissioned an RFP to be released for eventual redevelopment of the Pier 70 property. Therefore, modifications to the MOU were necessary to manage any needed transition of the property, should the Port acquire a developer prior to the MOU extension’s expiration. Major modifications to the MOU are summarized below:

- **Rent Amount:** Rent will increase by CPI for each year of the MOU’s five-year extension.
- **Holdover Period:** Should the SFMTA and Port not re-negotiate an additional extension for use of Pier 70 by the end of the five-year term of the agreement, a holdover period will be available as follows:
 - The first 18 months of the holdover period, rent would increase by 110%, after annual CPI adjustment.
 - If the MOU remains in holdover status after 18 months, the rent would increase again by 110% after CPI adjustment.
- **Contribution to Port Beautification Fund:**
 - The SFMTA, through AutoReturn, will contribute up to \$50,000 for signage approved by the Port to illustrate the historical significance of Pier 70 to the public.

- The SFMTA, through AutoReturn, will enlist a contractor to make repairs to Building 12 on Pier 70 to preserve its status as an historical building. AutoReturn will be allowed to offset 100% of rent for an amount not to exceed \$450,000 for this project.
- **Modifications to current area rented:**
 - Should the SFMTA or the Port opt to return any portion or all of Pier 70, the agency initiating such action must provide one year's notice prior to vacancy.
 - Should the Port wish to reconfigure the current area provided for use, the Port must give 180 days notice. The SFMTA will have the option to accept the relocation parcel or to give up the portion reclaimed by the Port. A portion of relocation costs would be offset by rent credit.
 - The Port may, with 90 days notice, request access of up to 15% of the area currently used for environmental testing. No rent would be offset to cover relocation of vehicles, however, should re-fencing, paving or other modifications be necessary, the Port and the SFMTA, through AutoReturn will share in those costs.

ALTERNATIVES CONSIDERED

The SFMTA considered locating alternative property for use as a long-term tow storage facility. However, in the interest of continuing this MOU to benefit the citizens of San Francisco by providing a convenient location within San Francisco, while assisting each agency with their respective needs, including a steady income stream at fair market value rent, space that is convenient and ensures continuity of operations, the agencies have opted to continue the MOU as amended.

FUNDING IMPACT

Current rent for Pier 70 is approximately \$137,997.29/month, or approximately \$1.7 million for FY 2010. This rent will be subject to an annual CPI adjustment at the beginning of each new contract year. SFMTA pays the Port rent, and AutoReturn reimburses the SFMTA the same amount for use of the facility.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has reviewed the item and MOU. The Port Commission is expected to approve the MOU retroactively at its July 13, 2010 meeting, since the June 22nd meeting was canceled.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to execute the First Amendment to the Memorandum of Understanding (MOU) between the San Francisco Municipal Transportation Agency and the Port of San Francisco for use of Pier 70 as the Long-Term Storage Facility for Illegally Towed and Abandoned Vehicles, extending the MOU for five years, to July 31, 2015.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, In June 2005, SFMTA Board approved a five-year Agreement for Towing and Storage of Illegally Parked and Abandoned Vehicles with San Francisco AutoReturn; and,

WHEREAS, The Board will consider extending the Agreement for an additional five-year term on June 1, 2010; and,

WHEREAS, As part of the Agreement, the SFMTA acquired use of 13 acres of Pier 70 from the Port of San Francisco ("Port"); and,

WHEREAS, The SFMTA currently pays \$137,997.29/month in rent for use of this property, and this rent is passed through to AutoReturn by way of reimbursement to the SFMTA for use of the Pier 70 property for 1) long-term storage of towed vehicles, and 2) to conduct weekly auctions of vehicles that have not been claimed by their owners, and;

WHEREAS, In addition to standard negotiations regarding rent amount and term, the Port has commissioned an RFP to be released for eventual redevelopment of the Pier 70 property; and,

WHEREAS, Modifications to the MOU were necessary to manage any needed transition of the property; and,

WHEREAS, The current rent for Pier of \$137,997.29/month will be subject to an annual CPI adjustment at the beginning of each new contract year for the term of the extension; and,

WHEREAS, SFMTA pays the Port rent, and AutoReturn reimburses the SFMTA the same amount for use of the facility; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute the First Amendment to the Memorandum of Understanding (MOU) between the San Francisco Municipal Transportation Agency and the Port of San Francisco for use of Pier 70 as the Long-Term Storage Facility for Illegally Towed and Abandoned Vehicles, extending the MOU for five years, to July 31, 2015.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

FIRST AMENDMENT TO MOU

Port Reference MOU M-13828

This First Amendment to Memorandum of Understanding Port Reference M-13828 ("**First Amendment**") is entered into by and between the Municipal Transportation Agency, an agency of the City and County of San Francisco ("**MTA**") and the San Francisco Port Commission, an agency of the City and County of San Francisco ("**Port**").

RECITALS

A. Effective on July 31, 2005, Port and MTA entered into a lease of certain real property located at Pier 70 in the City and County of San Francisco, State of California as more particularly described in the "**Original MOU**". With Port's consent, as required by the Original MOU, MTA simultaneously entered into an agreement with Tegsco, LLC, dba San Francisco AutoReturn ("**AutoReturn**") to conduct automobile towing and storage operations for the City, which included a license to use the Port property for storage and other required services. MTA's agreement with AutoReturn expires on July 31, 2010. The Original MOU had a five year term expiring on July 31, 2010 and an extension option through March 1, 2012. Through correspondence (including a letter dated February 17, 2009 from Port to MTA), Port and MTA agreed to extend the Original MOU until March 1, 2012.

B. The Original MOU contemplated that it would be concurrent with the initial agreement with AutoReturn. MTA has determined that it will renew or extend its contract with AutoReturn ("**Licensee**") until July 31, 2015 without a competitive bid, subject to approval by the Board of Supervisors. Accordingly, the parties have agreed to extend the Original MOU to cover such term and possibly additional term with AutoReturn or another MTA contractor, subject to Port's consent to any license or agreement to allow the use of the premises at Pier 70.

C. On May 11, 2010, the Port Commission adopted Resolution 10-27 by which it (1) endorsed the vision, goals, objectives, and design criteria for the Preferred Master Plan for Pier 70; and (2) authorized Port staff to prepare and issue a competitive solicitation for a private development partner for the waterfront site ("**Waterfront Site**") described in the accompanying Port Commission staff report which encompasses the premises contemplated by this First Amendment. Port staff expects the following timeline for the competitive solicitation authorized by the Port Commission and for subsequent development activities: issue Waterfront Site competitive solicitation in June 2010; Port Commission selection of Waterfront Site developer in late 2010; initiate environmental review in 2011; commence infrastructure/remediation work requiring site access in late 2012; commence construction on Waterfront Site in 2013 or later; and occupy Waterfront Site in 2015 or later.

D. Port and MTA are negotiating the First Amendment for their mutual benefit and to benefit the citizens of San Francisco and the State of California, and this First Amendment speaks to this goal while assisting each agency with their respective needs, including a steady income stream at fair market value rent, space that is convenient and appropriate in a San Francisco location for tow customers and contractors and continuity of operations.

E. Port and MTA now desire to amend the Original MOU to: (i) permit the Port to reconfigure the Premises with one hundred-eighty (180) days notice from Port to MTA, with MTA's approval, and partial rent credits for some relocation costs; (ii) add an additional five (5) year term from the original expiration date and to allow a year to year holdover tenancy at an increased monthly base rate of 110% in the first year, and increased by 110% in the eighteenth month, with an annual CPI increase in each year of the term and annually during any holdover period of longer than 12 months; (iii) confirm that all of the requirements of the Original MOU

apply to the renewed or extended agreement and license with AutoReturn and any other MTA contractor providing the services described; (iv) provide for partial or complete termination by either party with twelve (12) months notice; (v) allow Port to access up to 15% of the Premises to facilitate development of Pier 70, with ninety (90) days notice from Port to MTA, with rent credits or third party reimbursement for specified relocation costs ; (vi) require MTA to conduct a relocation study; (vii) add a requirement that MTA comply with Port's Southern Waterfront Beautification Policy, which was adopted subsequent to the effectiveness of the Original MOU, through specified actions and to authorize rent credits for a portion of same; and (viii) make other changes consistent with the above.

F. The Original MOU and this First Amendment shall collectively be referred to as the "MOU." All capitalized terms used herein but not otherwise defined shall have the meaning given to them in the Original MOU.

NOW THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the Port and MTA hereby amend the Original MOU as follows:

AGREEMENT

1. RECITALS. THE FOREGOING RECITALS ARE TRUE AND CORRECT AND ARE INCORPORATED HEREIN BY THIS REFERENCE AS IF FULLY SET FORTH HEREIN.

2. PURSUANT TO SECTION 16 OF THE ORIGINAL MOU, THE PARTIES AGREE THAT MTA IS A SUCCESSOR OF DPT AND THAT MTA WILL FULFILL ALL OF THE OBLIGATIONS AND RESPONSIBILITIES AND HAVE ALL OF THE RIGHTS OF DPT AS SET FORTH IN THE ORIGINAL MOU. ALL REFERENCES IN THE MOU TO "DPT" SHALL NOW BE TO "MTA".

3. THE PARTIES AGREE THAT ALL OF THE PROVISIONS OF THE ORIGINAL MOU REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO THE NEW, RENEWED OR EXTENDED MTA LICENSE WITH AUTORETURN AND/OR OTHER FUTURE LICENSES OR SIMILAR AGREEMENTS TO USE THE PREMISES OR PORTIONS THEREOF WITH OTHER FUTURE PROVIDERS OF TOW SERVICES UNDER CONTRACT WITH MTA. THIS INCLUDES WITHOUT LIMITATION, SECURING AND MAINTAINING A CURRENT BCDC PERMIT (SECTIONS 3(B) AND 14(I)); COMPLIANCE WITH THE PERMITTED USES AND PROPERTY USE CONDITIONS, INCLUDING PORT APPROVAL OF AN OPERATIONS PLAN (SECTIONS 7 AND 14); COMPLIANCE WITH THE TERMS OF THE MOU (SECTION 12); AND PORT'S CONSENT TO ANY MTA LICENSE OR SIMILAR AGREEMENT THAT ALLOWS USE OF THE PREMISES (SECTION 12).

4. ON THE EFFECTIVE DATE OF THIS FIRST AMENDMENT, PARAGRAPH 3 OF THE ORIGINAL MOU SHALL BE AMENDED TO ADD A NEW SUBPARAGRAPH (F) AS FOLLOWS:

"3. PREMISES/CONDITION.

"f. Reconfiguration of Premises. Upon one hundred eighty (180) days notice from Port to MTA, and subject to MTA approval, Port may reconfigure the Premises by altering the boundaries of Parcel A and/or Parcel B, such that the new Parcel A and/or Parcel B contain the same approximate square footage shown and outlined on Exhibit A of this MOU. MTA shall be solely responsible for relocating vehicles and its other operations to accommodate such a reconfiguration. MTA shall be entitled to rent credits for half of the remaining costs associated with relocating the fences, gates, lights, driveways, and other improvements pursuant to Section 5(e). Port may not require MTA to incur relocation costs that are eligible for rent credits under

this section if One Hundred Fifty percent (150%) of the total value of all rent credits claimed under this MOU exceeds the total rent due for the Term. Port shall not be liable in any manner, and MTA and its licensee hereby waive any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Port's or its designees' entry onto the Premises under this Paragraph, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Port or its designees and not contributed to by the acts, omissions or negligence of MTA or its licensees, Contactors or Invitees.

In order for rent credits to be authorized by Port for relocation costs under this section, MTA or its licensee must first obtain written approval from Port that the proposed costs are reasonable and MTA or its licensee must obtain all required governmental approvals including, but not limited to Port building permits for the work. After the completion of the work, as evidenced by a certificate of completion or its equivalent by the Port's Chief Harbor Engineer, MTA must deliver to Port an itemized statement of the actual costs expended, accompanied by documentation substantiating all said expenditures. Such documentation of expenditures shall include: (i) copies of executed contracts; (ii) copies of invoices for labor, services and/or materials, copies of bills of lading, and/or copies of other bills or receipts for goods, materials and/or services; (iii) copies of canceled checks, and (iv) such other proofs of expenditure as may be reasonably requested by Port. Such appropriate proofs of expenditure may include copies of canceled checks; copies of contracts or invoices for labor, services and/or materials marked "Paid", or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts, receipts for goods materials and/or services marked "Paid"; and such other proofs of expenditure as may be reasonably approved by Port. All such proofs of expenditure must be directly attributable to the approved project."

5. ON THE EFFECTIVE DATE OF THIS FIRST AMENDMENT, PARAGRAPH 4 OF THE ORIGINAL MOU SHALL BE DELETED AND REPLACED WITH THE FOLLOWING:

"4. Term, Early Termination; Holdover.

Term. The Term of this MOU shall expire on July 31, 2015 ("**Expiration Date**").

(a) Holdover. Any holding over after the Expiration Date ("**Holdover Period**") shall not constitute a renewal of this MOU, but be deemed a holdover tenancy upon the terms, conditions, and covenants of this MOU, except as provided in Section 5(c). Either party may cancel the holdover tenancy upon twelve (12) months written notice to the other party. "Term" shall refer to the total time period during which this MOU is effective, including any holdover period.

(b) Early Termination. Either the Port Executive Director or the MTA Executive Director or their designees shall have the right to terminate the MOU as to all or a portion of the Premises at any time for any cause or without cause during the Term (including any holdover period) upon providing twelve (12) months written notice to the other party specifying the portion(s) of the Premises affected. Concurrent with the effective date either party's early termination of all or a portion of the Premises, MTA shall amend or terminate the license with AutoReturn or any current licensee accordingly. In the event that Port seeks a partial termination under this paragraph, MTA shall be solely responsible for all costs associated with such modifications or reconfiguration that MTA in its sole discretion deems necessary, including all costs incurred by MTA or its licensee to relocate the operations, Premises, fences, gates, lights, driveways, and other improvements."

6. ON THE EFFECTIVE DATE OF THIS FIRST AMENDMENT, PARAGRAPH 5(B) OF THE ORIGINAL MOU SHALL BE DELETED AND REPLACED WITH THE FOLLOWING:

"b. Rent Adjustment. Commencing on the Effective Date of this MOU and on each anniversary date (the "Anniversary Date") thereafter, including any Anniversary Date during any holdover period, the Rent shall be adjusted on the first day of the month that immediately follows the Effective Date and on that same date in each succeeding year in direct proportion to the percentage increase in the SF Bay Area CPI for the month immediately preceding the applicable Anniversary Date ("Current Index") over the SF Bay Area CPI index for the month of June 2004 ("Base Index"). In no case shall the Rent, as adjusted, be less than the Rent in effect immediately prior to the Anniversary Date. If the Current Index has increased over the Base Index, the Adjusted Rent shall be determined by multiplying the Rent by a fraction, the numerator of which is the Current Index and the denominator of which is the Base Index, as follows:

$$\frac{\text{Current Index}}{\text{BASE INDEX}} \times \text{RENT} = \text{ADJUSTED RENT}"$$

7. ON THE EFFECTIVE DATE OF THIS FIRST AMENDMENT, PARAGRAPH 5(C) OF THE ORIGINAL MOU SHALL BE DELETED AND REPLACED WITH THE FOLLOWING:

"c. HOLDOVER PERIOD RENT. IF NEITHER THE PORT NOR MTA PROVIDES NOTICE OF EARLY TERMINATION BY JULY 31, 2014 AND MTA HOLDS OVER, MONTHLY RENT SHALL INCREASE AS PROVIDED IN SECTION 5(B) ON THE 5TH ANNIVERSARY DATE, WITH THE ADJUSTED RENT SO DERIVED MULTIPLIED BY ONE HUNDRED TEN PERCENT (110%) TO DETERMINE THE MONTHLY RENT FOR THE FIRST TWELVE (12) MONTHS OF THE HOLDOVER PERIOD. RENT WILL BE ADJUSTED AS PROVIDED IN SECTION 5(B) EFFECTIVE ON THE THIRTEENTH (13TH) MONTH OF THE HOLDOVER PERIOD. IF MTA HOLDS OVER MORE THAN EIGHTEEN (18) MONTHS, MONTHLY RENT SHALL INCREASED TO ONE HUNDRED TEN PERCENT (110%) OF THE MONTHLY RENT IN THE SEVENTEENTH (17TH) MONTH OF THE HOLDOVER PERIOD AND SHALL BE SUBJECT TO FURTHER INCREASES EVERY 12 MONTHS AS PROVIDED IN SECTION 5(B) ON EACH ANNIVERSARY DATE."

8. ON THE EFFECTIVE DATE OF THIS FIRST AMENDMENT, PARAGRAPH 5(D)(1) OF THE ORIGINAL MOU SHALL BE DELETED AND REPLACED WITH THE FOLLOWING:

"1. Rent Abatement and Credits. If the Premises cease to be used for towing operations at any time due to damage sustained during the Term by fire, earthquake, or other casualty rendering the Premises unsuitable for occupancy, as determined by the Port's Chief Harbor Engineer pursuant to the Port Building Code, or are otherwise deemed legally not useable in either case for reasons not attributable to MTA's or its licensee's acts or omissions, Rent hereunder shall be abated and MTA shall have the option to terminate the MOU and shall be entitled to a prorated refund of any Rent or deposits paid. In the event the Premises cease to be used for more than two (2) consecutive months for towing operations, Port, at its option, may terminate this MOU."

ON THE EFFECTIVE DATE OF THIS FIRST AMENDMENT, PARAGRAPH 5(D)(3) SHALL BE DELETED AND REPLACED WITH THE FOLLOWING:

"3. THE PARTIES AGREE THAT COSTS INCURRED TO MODIFY THE ORIGINAL CONFIGURATION OF THE PREMISES DUE TO A SURRENDER OF POSSESSION OF PARCEL B TO THE PORT DUE TO MTA'S INABILITY TO OBTAIN A BCDC PERMIT FOR USE OF PARCEL B CONSISTENT WITH THIS MOU MAY NOT BE OFFSET FROM THE RENT."

9. ON THE EFFECTIVE DATE OF THIS FIRST AMENDMENT, PARAGRAPH 5(D)(5) SHALL BE ADDED TO THE MOU TO READ AS FOLLOWS:

"5. Upon ninety (90) days prior written notice to MTA, Port may access up to fifteen percent (15%) of the Premises for purposes related to the development of Pier 70. MTA will cooperate to ensure that Port or its licensees, Contactors or Invitees have adequate access to the designated area(s) and shall be solely responsible for costs incurred by MTA or its licensee to relocate vehicles or its other operations to accommodate Port's access. MTA shall be entitled to rent credits pursuant to Section 5(e) or third-party reimbursement arranged by Port for all costs incurred by MTA or its licensee to relocate fences, gates, lights, driveways, and other improvements. Port may not require MTA to incur relocation costs that are eligible for rent credits under this section if One Hundred Fifty percent (150%) of the total value of all rent credits claimed under this MOU exceeds the total rent due for the Term. Notwithstanding the time and square footage limitations of Paragraph 5(d)(2), if the rights exercised by Port hereunder result in the loss of use of the designated area(s) of the Premises, MTA shall be entitled to a proportional abatement in Rent. Port shall not be liable in any manner, and MTA and its licensee hereby waive any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Port's or its designees' entry onto the Premises under this Paragraph, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Port or its designees and not contributed to by the acts, omissions or negligence of MTA or its licensees, Contactors or Invitees.

In order for rent credits or third party reimbursement to be authorized by Port for relocation costs under this section, MTA or its licensee must first obtain written approval from Port that the proposed costs are reasonable and MTA or its licensee must obtain all required governmental approvals including, but not limited to Port building permits for the work. After the completion of the work, as evidenced by a certificate of completion or its equivalent by the Port's Chief Harbor Engineer, MTA must deliver to Port an itemized statement of the actual costs expended, accompanied by documentation substantiating all said expenditures. Such documentation of expenditures shall include: (i) copies of executed contracts; (ii) copies of invoices for labor, services and/or materials, copies of bills of lading, and/or copies of other bills or receipts for goods, materials and/or services; (iii) copies of canceled checks, and (iv) such other proofs of expenditure as may be reasonably requested by Port. Such appropriate proofs of expenditure may include copies of canceled checks; copies of contracts or invoices for labor, services and/or materials marked "Paid" or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts, receipts for goods materials and/or services marked "Paid"; and such other proofs of expenditure as may be reasonably approved by Port. All such proofs of expenditure must be directly attributable to the approved project."

10. ON THE EFFECTIVE DATE OF THIS FIRST AMENDMENT, PARAGRAPH 5(E) OF THE ORIGINAL MOU SHALL BE DELETED AND REPLACED WITH THE FOLLOWING:

"e. Formula for Abatement/Credit. All rent credits available to MTA permitted by Section 3(f), Section 5(d)(4) and Section 5(d)(5) shall be applied against Rent

payment obligation during the Term at a rate not greater than one half (½) of the applicable month Rent payment and shall be applied if and only if MTA is in good standing and is not in default of any of the terms of this MOU. In the event that the total of rent credits available to MTA pursuant to Section 3(f), Section 5(d)(4) and Section 5(d)(5) of this MOU exceeds an amount equal to one half (½) of the Rent payment for any one calendar month, the remaining available Rent Credit shall be carried forward to successive calendar months at a rate not to exceed one half (½) of the applicable Rent payment, until all available rent credits have been fully applied. In no event, however, shall MTA be entitled to the application of any rent credits or the value thereof, beyond the expiration or earlier termination of this MOU."

11. SECTION 15, NOTICES, SHALL BE REVISED BY REPLACING MTA'S ADDRESS WITH

"And if to MTA to:

San Francisco Municipal Transportation Agency
Attention: Steve Lee
One South Van Ness Avenue, 7th Floor
San Francisco, California 94103"

12. PRESENCE OF HAZARDOUS MATERIALS. CALIFORNIA LAW REQUIRES LANDLORDS TO DISCLOSE TO TENANTS THE PRESENCE OR POTENTIAL PRESENCE OF CERTAIN HAZARDOUS MATERIALS. ACCORDINGLY, MTA IS HEREBY ADVISED THAT THE REPORTS LISTED IN SCHEDULE I, COPIES OF WHICH HAVE BEEN MADE AVAILABLE TO MTA DESCRIBE KNOWN OR SUSPECTED HAZARDOUS MATERIALS (AS DEFINED IN THE LICENSE) ON OR NEAR THE PREMISES. MTA ACKNOWLEDGES THAT THE NOTICE SET FORTH IN THIS SECTION SATISFIES THE REQUIREMENTS OF CALIFORNIA HEALTH AND SAFETY CODE SECTION 25359.7 AND RELATED LAWS. MTA MUST DISCLOSE THE INFORMATION CONTAINED IN THIS SECTION TO ANY SUBTENANT, LICENSEE, TRANSFEREE, OR ASSIGNEE OF MTA'S INTEREST IN THE PREMISES. MTA ALSO ACKNOWLEDGES ITS OWN OBLIGATIONS PURSUANT TO CALIFORNIA HEALTH AND SAFETY CODE SECTION 25359.7 AS WELL AS THE PENALTIES THAT APPLY FOR FAILURE TO MEET SUCH OBLIGATIONS.

13. SOUTHERN WATERFRONT BENEFITS. THE PORT'S "POLICY FOR SOUTHERN WATERFRONT COMMUNITY BENEFITS AND BEAUTIFICATION" IDENTIFIES BEAUTIFICATION AND RELATED PROJECTS IN THE SOUTHERN WATERFRONT (FROM MARIPOSA STREET IN THE NORTH TO INDIA BASIN) THAT REQUIRE FUNDING. UNDER THIS POLICY, MTA SHALL PROVIDE THE FOLLOWING COMMUNITY BENEFITS AND BEAUTIFICATION MEASURES IN CONSIDERATION FOR THE USE OF THE PREMISES. ALL IMPROVEMENTS MUST BE PERFORMED IN ACCORDANCE WITH PARAGRAPH 14(F) OF THIS MOU.

(a) Not sooner than Eighteen (18) months after the Effective Date of this First Amendment and not later than Twenty Four (24) months after the Effective Date of this First Amendment unless otherwise approved by Port, MTA or its licensee shall expend not less than Fifty Thousand Dollars (\$50,000) to design, produce and install signs and other interpretive devices describing the historic significance of the Port's Pier 70 site. The form, content and placement of such signs and other devices are subject to Port's consent in its sole discretion.

(b) MTA shall require its licensee to perform repairs as specified by Port to Building 12 Complex with costs not to exceed Four Hundred Fifty Thousand dollars (\$450,000.00). Port shall not require repairs to be conducted at the same time that it implements an extension of 22nd Street under Paragraph 5(d)(4). In consideration for completion of the repairs and expenditures related thereto, and upon approval by Port of Construction Costs, Port shall issue an appropriate rent credit (herein "**Building 12 Complex Repair Rent Credit**") to MTA in accordance with the terms of this Paragraph. "**Construction Costs**" are the actual costs incurred for labor, materials, contractor fees, and reasonable architecture and engineering fees in connection with the project

pursuant to a bid obtained under a guaranteed not-to-exceed construction bid that is approved by the Port prior to issuance. The Building 12 Complex Repair Rent Credit shall be a sum equal to the Construction Costs or a sum not to exceed Four Hundred Fifty Thousand dollars (\$450,000.00), whichever is the lesser amount. The timing, scope and specification of the repairs shall be in the Port's sole discretion except that Port may not require Building 12 Complex repairs if the remaining rent owed by MTA for the Term minus rent credits owed to MTA pursuant to Section 3(f) and Section 5(d)(5) is less than One Hundred Fifty percent (150%) of the guaranteed not-to-exceed construction bid.

All rent credits available to MTA under this Paragraph shall be applied against Rent during the Term at a rate of 100% of the applicable month Rent payment and shall be applied if and only if MTA is in good standing and is not in default of any of the terms of this MOU. In the event that the total of rent credits available to MTA pursuant to this Paragraph exceeds an amount equal to 100% of the Rent payment for any one calendar month, the remaining available Rent Credit shall be carried forward to successive calendar months at a rate not to exceed 100% of the applicable Rent payment, until all available rent credits have been fully applied. In no event, however, shall MTA be entitled to the application of any rent credits or the value thereof, beyond the expiration or earlier termination of this MOU.

In order for construction of the project to be authorized by Port: MTA must first obtain, prior to commencing the project, written approval from Port that the Construction Costs of the proposed project are reasonable; and MTA, or its licensee, must obtain all required governmental approvals, including, but not limited to building permits from the Port. After the completion of the approved project as evidenced by a certificate of completion or its equivalent by the Port's Chief Harbor Engineer, MTA must deliver to Port an itemized statement of the actual Construction Costs expended on the approved project, accompanied by documentation substantiating all said expenditures. Such documentation of expenditures shall include: (i) copies of executed contracts; (ii) copies of invoices for labor, services and/or materials, copies of bills of lading, and/or copies of other bills or receipts for goods, materials and/or services; (iii) copies of canceled checks, and (iv) such other proofs of expenditure as may be reasonably requested by Port. Such appropriate proofs of expenditure may include copies of canceled checks; copies of contracts or invoices for labor, services and/or materials marked "Paid", or otherwise evidenced as having been paid; bills of lading marked "Paid"; other bills, contracts, receipts for goods materials and/or services marked "Paid"; and such other proofs of expenditure as may be reasonably approved by Port. All such proofs of expenditure must be directly attributable to the approved project."

14. RELOCATION STUDY. WITHIN SIX (6) MONTHS OF A WRITTEN REQUEST BY THE PORT, MTA WILL EXAMINE OPTIONS TO RELOCATE AUTORETURN OR ITS CURRENT LICENSEE AND DELIVER A RELOCATION STUDY REPORT TO THE PORT IN A FORM AND MANNER JOINTLY AGREED TO BY PORT AND MTA.

15. CONTRACT MONITOR. THE CONTRACT MONITOR, AS DEFINED IN SECTION 8.8 OF APPENDIX A, SCOPE OF WORK, OF THE TOWING AGREEMENT SHALL COOPERATE WITH AND PROVIDE TO PORT SUCH INFORMATION IN A FORM AND FREQUENCY AS PORT REASONABLY REQUESTS TO AID PORT'S DETERMINATION OF COMPLIANCE WITH THIS MOU.

16. ENTIRE AGREEMENT. THIS FIRST AMENDMENT CONTAINS ALL OF THE REPRESENTATIONS AND THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT.

17. MISCELLANEOUS. THIS FIRST AMENDMENT SHALL BIND, AND SHALL INURE TO THE BENEFIT OF, THE SUCCESSORS AND ASSIGNS OF THE PARTIES HERETO. THIS FIRST AMENDMENT IS MADE FOR THE PURPOSE OF SETTING FORTH CERTAIN RIGHTS AND

OBLIGATIONS OF MTA AND THE PORT, AND NO OTHER PERSON SHALL HAVE ANY RIGHTS HEREUNDER OR BY REASON HEREOF AS A THIRD PARTY BENEFICIARY OR OTHERWISE. AS AMENDED HEREBY, THE MOU IS HEREBY RATIFIED AND CONFIRMED IN ALL RESPECTS AND SHALL REMAIN IN FULL FORCE AND EFFECT. IN THE EVENT OF ANY INCONSISTENCIES BETWEEN THE TERMS OF THIS FIRST AMENDMENT AND THE MOU, THE TERMS OF THIS AMENDMENT SHALL PREVAIL. NEITHER THIS FIRST AMENDMENT NOR ANY OF THE TERMS HEREOF MAY BE AMENDED OR MODIFIED EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY ALL THE PARTIES HERETO.

18. EFFECTIVE DATE. THE EFFECTIVE DATE OF THIS FIRST AMENDMENT IS AUGUST 1, 2010.

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IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through THE SAN FRANCISCO PORT COMMISSION

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation operating by and through its SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

By: _____
MONIQUE MOYER
Executive Director
Port of San Francisco

By: _____
NATHANIEL FORD
Executive Director
San Francisco Municipal Transportation Agency

Dated: _____

Dated: _____

Port Commission Reso. _____

MTA Board Reso. _____

Adopted: _____

Attest: _____
Secretary, MTA Board

REVIEWED:
DENNIS J. HERRERA, City Attorney

By: _____
Deputy City Attorney

Amendment Prepared By: Brad Benson _____
(initial)

SCHEDULE 1

ENVIRONMENTAL REPORTS AND DOCUMENTS REGARDING HAZARDOUS MATERIALS

SF MTA / AUTORETURN

MAY 11, 2010

PIER 70

1999 Annual Ground Water Monitoring Report For Piers 70 And 94, Tetra Tech, Inc., February 2000.

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Activity Summary Report, Pier 70, Sca Environmental, Inc., 8/5/02.

Amended Report Of Waste Discharge Pier 70 Solid Waste Disposal Site, The Mark Group 8-20-90, Mark Group, August 20, 1990.

Appendices F And G - Chemical And Physical Data Tables, Volume 2 Of 3, Subchapter 15 Compliance, Pier 70, Solid Waste Disposal Site, Geo/Resource Consultants, Inc., December 1989.

Appendix H - Laboratory Data Reports, Volume 3 Of 3, Subchapter 15 Compliance, Pier 70, Solid Waste Disposal Site, Geo/Resource Consultants, Inc., December 1989.

Article 22a Compliance; City Tow, Pier 70, San Francisco; Pr0249798, Iris Environmental, January 9, 2004.

Article 22a Compliance; Former Car Crusher Building

Former City Tow, Pier 70; Ehs-Hwu Case Number 69, San Francisco Department Of Public Health, September 1, 2005.

Asbestos Abatement Report, Pick Your Part, Inc. Pier 70, Iris Environmental, May 21, 2001, Iris Environmental, May 21, 2001.

Assessment Of Suspect Asbestos-Containing Materials At The Pier 70 Office Building, 20th And Illinois Streets, Clayton Environmental Consultants, April 9, 1996.

Certification Report; Pick Your Part, Inc.; Pier 70, San Francisco, Ca, Iris Environmental, December 19, 2003.

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1989.

Final Summary Report, Soil Boring Sampling And Well Installation For Pier 70 Building Pcb Remedial Investigation, Pier 70 Mixed Use Opportunity Area

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Groundwater Data Summary And Request To Rescind Waste Discharge Requirements; Pier 70 (Order 87-060) And Pier 94 (Order 87-061 Disposal Sites / Port Of San Francisco, Port Of San Francisco, August 17, 1999.

Hazardous Materials Investigation Of The Mariposa Facilities Project Area, July 1990, Erm-West, Inc., July, 1990.

Health And Safety Plan & Dust Control Mitigation And Monitoring Plan For Utility Installation And Soil Load Out Activities, Building 116 At Pier 70, Sca Environmental, Inc., 10/13/2009.

Order No. 00-030 / Rescission Of Waste Discharge Requirements In Order No. 87-060; City And County Of San Francisco / Pier 70 Class Iii Landfill, California Regional Water Quality Control Board, April 20, 2000.

Order No. 87-060 Updated Requirements; City And County Of San Francisco / Pier 70 Class Iii Landfill, California Regional Water Quality Control Board, 1987.

Pcb Removal, Corrective Action Plan, Pier 70, Building 50, Engineering-Remediation Resources Group, Inc. August 2003, Engineering/Remediation Resources Group, Inc., August 2003.

Phase 1 Environmental Site Assessment For Pier 70, Mixed Use Opportunity Area, Corner Of Illinois Street And 20th Street, Vol. I Of Ii, Environmental Site Assessment, Tetra Tech, Inc., August 1998.

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Phase I Environmental Site Assessment For Pier 70, Mixed Use Opportunity Area, Corner Of Illinois Street And 20th Street. Tetra Tech, Inc. August 1998 (Vol. I), Tetra Tech, Inc., August 1998.

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Phase I Environmental Site Assessment, One-Acre Parcel On Swl 349, Pier 70. Iris Environmental, October 23, 2003, Iris Environmental, October 23, 2003.

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Pier 70, Mixed Use Opportunity Area, Phase II Brownfields, Targeted Site Assessment, Sampling And Analysis Plan, Ecology And Environment, Inc., June 2000.

Removal Of Underground Tanks, Pier 70, Harding Lawson Associates, March 31, 1988.

Sample Analysis Plan, Pier 70 Building 50 Pcb Remedial Investigation, Pier 70 Mixed Use Opportunity Area, Engineering Remediation Resources Group Inc, September 2004, Engineering/Remediation Resources Group, Inc., September 2004.

Sampling And Analytical Report, Pier 70, Building 6, Curtis & Tompkins, Ltd, November 1983.

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Site History Report And Work Plan, City Tow, Pier 70, Iris Environmental, February 7, 2002.

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Soils Analysis Report And Mitigation Plan For The City Tow Facility; Pier 70, San Francisco, Ca, San Francisco Department Of Public Health, July 29, 2002.

Soils Analysis Report And Mitigation Plan, City Tow, Pier 70, Iris Environmental, 7/10/02.

Soils Analysis Report And Mitigation Plan; City Tow; Pier 70, San Francisco Pr0249798, San Francisco Department Of Public Health, October 10, 2002.

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Submittals For: Pier 70, Corner Of 20th And Illinois, Bluewater Environmental Services, 1992-1996.

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Subsurface Investigation For Port Of San Francisco, Pier 70. Tetra Tech, Inc., December 1997, Tetra Tech, Inc., December 1997.

Subsurface Investigation, Pier 70, Tetra Tech, Inc., December 1997.

Summary Report: Asbestos And Lead-Based Paint Survey, Pier 70, Buildings 36, 40, 101, 102, 104 And 109, 20th And Illinois Streets, Sca Environmental, Inc., May 1998.

Summary Report: Bulk Asbestos And Exterior Paint Survey, Pier 70, Building 104, Sca Environmental, Inc., October 1999.

Summary Report: Bulk Asbestos And Lead-Based Paint Survey, Building 111, Pier 70, Sca Environmental, Inc., March 1995.

Summary Report: Bulk Asbestos And Lead-Based Paint Survey, Pier 70 Crane #30, Sca Environmental, Inc., February 1996.

Summary Report: Hazardous Materials Assessment, Port of SF Pier 70 Building 21, Sca Environmental, Inc., 4/2008.

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Seawall Lot 349

Analysis Of Bay Discharge, North Embarcadero Roadway Project, Camp Dresser & Mckee, 9/27/94.

Bunker Oil Characterization, North Embarcadero Roadway And F-Line Extension, Camp Dresser & Mckee, 12/29/95.

Embarcadero Roadway Urban Design Project, Hazardous Waste Investigation, Site History Report, Bechtel Environmental, Inc., August 11, 1989.

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Railway Track Ballast Survey, Sampling Results And Summary, North Embarcadero Roadway Project, Cky Environmental Service, 3/1/93.

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Site History Report, Embarcadero Roadway Urban Design Project, Hazardous Waste Investigation, Appendix Iv, Agency Site Files, Volume 4 Of 4, Bechtel Environmental, Inc., August 1989.

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

DIVISION: Administration, Taxis & Accessible Services

BRIEF DESCRIPTION:

Adopting, as required by Charter Section A8.409-4(e), the arbitration award setting the terms of a successor Collective Bargaining Agreement (CBA) between the San Francisco Municipal Transportation Agency (SFMTA) and the International Brotherhood of Electrical Workers (IBEW) Local 6.

SUMMARY:

- Charter Sections 8A.104 provides that SFMTA shall bargain labor agreements with employee organizations representing employees in service critical classifications.
- The CBA between SFMTA and IBEW, Local 6 expires June 30, 2010.
- The SFMTA and IBEW, Local 6 representatives reached tentative agreement on a number of issues, including language updates to reflect the new Muni Metro East facility; a two-year duration of the agreement with a economic reopener in the second year; changes to the vacation bidding time lines; expiration of the Wellness Program; increase in the number of days in advance to request vacation; and the addition of the Cable Splicer job class to the Lead Electrician Premium list.
- The parties reached impasse on the major economic issues and proceeded with the mediation-arbitration process required by the Charter. The Mediation-Arbitration Board issued an award on May 11, 2010 granting a 3.75% reduction in base wages and placing a cap on the SFMTA's contribution amount for medically-single employees enrolled in the City Plan. The award also carried over certain provisions applicable to employees of SFMTA's Sustainable Streets Division that formerly appeared in the City's MOU with Local 6. The arbitrator's award will result in savings of \$1,467,053.00 for Fiscal Year 2011 and absent any changes negotiated during the reopener, \$1,447,053.00 for Fiscal Year 2012.

ENCLOSURES:

1. SFMTAB Resolution
2. Labor Cost Analysis

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM

FINANCE

DIRECTOR

SECRETARY

ADOPTED RESOLUTION
TO BE RETURNED TO

_____ Rumi Ueno _____

ASSIGNED MTAB CALENDAR DATE:

PAGE 2.

PURPOSE

To amend the CBA between SFMTA and IBEW, Local 6 to reflect a stipulated arbitration award granting a wage reduction of 3.75% and placing a cap on the Dependent Health Care pick-up, for the medically-single/Employee-Only category, at an amount equivalent to the second highest cost plan for medically-single/Employee-Only enrollees. Incorporate non-economic changes agreed to by the parties, extending the term of the CBA to June 30, 2012.

GOAL

The proposed agreement meets the following goals:

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

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.

DESCRIPTION

Charter Section A8.104 gives SFMTA authority to negotiate labor agreements covering wages, hours, working conditions, and benefits with labor organizations representing employees at SFMTA in service critical classifications.

SFMTA negotiated a Collective Bargaining Agreement with IBEW, Local 6 on August 21, 2009 which expires June 30, 2010.

SFMTA and IBEW, Local 6 representatives reached a tentative agreement on a number of non-economic issues. The parties subsequently reached impasse pursuant to Charter Section A8.409 and 8A.104 on economic issues and proceeded to mediation-arbitration. After the parties presented evidence to the Mediation-Arbitration Board, a stipulated arbitration award was issued on May 14, 2010 which granted a 3.75% base wage reduction for IBEW, Local 6 represented employees, also placing a cap for the Dependent Health Care pick-up, for the medically-single/Employee-Only category, at an amount equivalent to the second highest cost plan for medically-single/Employee-Only enrollees.

The CBA for IBEW Local 6 was provided to the SFMTA Board on June 1, 2010 when the agreement was formally sunshined.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

If the amendment is not approved, the savings resulting from a 3.75% wage reduction will not be realized. The Labor Cost Analysis is attached.

FUNDING IMPACT:

The cost savings for FY11 is \$1,467,053.00 and for FY12 \$1,447, 053.00.

PAGE 3.

RECOMMENDATION

Staff recommends that the SFMTA Board approve the stipulated arbitration award regarding the CBA between SFMTA and IBEW, Local 6.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Under Section A8.104 of the Charter, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors succeeded to the powers of the Board of Supervisors with respect to collective bargaining for employees in service critical classifications; and,

WHEREAS, The current Collective Bargaining Agreement (CBA) between SFMTA and The International Brotherhood of the Electrical Workers (IBEW), Local 6, expires June 30, 2010; and,

WHEREAS, After impasse pursuant to the provisions of Charter A8.409-4, the parties entered into binding arbitration on May 5 and 6, 2010, based on the factors set forth in Charter Section A8.409-4(d) and A8.104(n), including the interest and welfare of transit riders, residents and other members of the public; and,

WHEREAS, Subsequent to the parties' presentation of evidence, the parties entered into a stipulated arbitration award providing for base wage reduction of 3.75% and the capping of the Dependent Health Care pick-up, for the medically-single/Employee-Only category, at an amount equivalent to the second highest cost plan for medically-single/Employee-Only enrollees; and,

WHEREAS, The proposed amendment of the CBA, which shall be in effect July 1, 2010 through June 30, 2012, and all other required information were publicly disclosed in accordance with Charter Section A8.104(p) on June 2, 2010 and are now on file with the Secretary of the SFMTA Board of Directors; now therefore, be it

RESOLVED, That the SFMTA Board of Directors hereby approves the stipulated arbitration award amending the Collective Bargaining Agreement between the SFMTA and the International Brotherhood of Electrical Workers, Local 6, and extending its term to June 30, 2012.

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

Secretary, Municipal Transportation Agency Board

Estimated Cost Savings from Proposals & Ratified Agreements

Date: May 27, 2010

Emp Org Title	Agreement	FY 2011 Count	FY 2011 Salary Costs	Ratification Savings Amount - FY 2011	FY 2012 Count	FY 2012 Salary Costs	Ratification Savings Amount - FY 2012
IBEW LOCAL 6, ELECTRICAL WORKERS Total	Arbitration - 3.75%	444.00	39,121,420	1,467,053	444.00	39,121,420	1,467,053

Based on Active employees provided on HR Report Dated April 26, 2010

** Represents Craft Classification*

Revised May 27, 2010

Reflects change of 6 furlough days for PCO's

THIS PRINT COVERS CALENDAR ITEM NO.: 10.8

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

DIVISION: Administration, Taxis & Accessible Services

BRIEF DESCRIPTION:

Approving the negotiated successor agreement between the San Francisco Municipal Transportation Agency (SFMTA) and employees in Service Critical Classifications represented by Transport Workers' Union (TWU) Local 200, for the term of the Memorandum of Understanding (MOU) from July 1, 2010 to June 30, 2012 which reduces the SFMTA obligations.

SUMMARY:

- Charter Section 8A.104 authorizes the SFMTA to bargain labor agreements with employee organizations representing employees in service critical classifications.
- The Collective Bargaining Agreement (CBA) between SFMTA and TWU Local 200 expires on June 30, 2010.
- The SFMTA negotiated the existing CBA with TWU Local 200 for a term of two years through June 30, 2012.
- The CBA is scheduled for a ratification vote the week of June 14, 2010 by the membership of TWU Local 200.
- The tentative agreement includes the following concessions:
 - 12 unpaid furlough days in FY11; 12 additional floating holidays in FY11;
 - 12 unpaid furlough days in FY12; 12 additional floating holidays in FY12;
 - Health Plan Savings in FY11&12;
 - No layoffs between July 1, 2010 to December 31, 2010; and
 - Changes in grievance and release time procedures for Union officials.

ENCLOSURES:

1. SFMTAB Resolution
2. Labor Cost Analysis

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM

FINANCE

DIRECTOR

SECRETARY

ADOPTED RESOLUTION
TO BE RETURNED TO

_____ Rumi Ueno _____

ASSIGNED MTAB CALENDAR DATE:

PAGE 2.

PURPOSE

To approve the CBA between SFMTA and the TWU Local 200 for a term from June 30, 2010 to June 30, 2012.

GOAL

The proposed agreement meets the following strategic goals:

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

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 with an evolving technology-driven future.

DESCRIPTION

Charter Section 8A.104 (K) gives the SFMTA the authority to negotiate labor agreements covering wages, hours, working conditions, and benefits with labor organizations representing employees at SFMTA in service critical classifications.

The SFMTA amended the collective bargaining agreement (CBA) with TWU Local 200 which expires on June 30, 2010.

SFMTA representatives and representatives of TWU Local 200 negotiated a successor CBA. The agreement is pending ratification by the membership of TWU Local 200.

The agreement amended the existing CBA as follows: the term of the agreement is two years from July 1, 2010 to June 30, 2012. Additionally, the following concessions were agreed to: 12 unpaid furlough days in FY 10/11 and 12 unpaid furlough days in FY 11/12; 12 additional floating holiday in FY 10/11 and FY 11/12; Health Plan Savings in FY 11-12; no layoffs between July 1, 2010 to December 31, 2010; and changes in the grievance procedure. There are no other changes with the exception of updating dates and language where appropriate. The CBA will be in effect from July 1, 2010 through June 30, 2012.

The CBA for TWU Local 200 was provided to the SFMTA Board on June 1, 2010 when the agreement was formally sunshined.

ALTERNATIVES CONSIDERED

If the CBA is not approved, the cost savings that this agreement provides will not be realized and SFMTA would not have a labor contract for employees represented by TWU Local 200

The City Attorney has reviewed this calendar item.

PAGE 3.

FUNDING IMPACT

Labor Cost Analysis is attached.

The cost savings for TWU Local 200 for FY 2011 is \$1,073,932; for FY 2012 is \$1,073,932.

RECOMMENDATION

Staff's recommendation is for the SFMTA Board to adopt the Resolution approving the amendment of the CBA between SFMTA and TWU Local 200.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Under Section 8A.104 of the Charter, the San Francisco Municipal Transportation Agency Board of Directors succeeded to the powers of the Board of Supervisors with respect to collective bargaining for employees in service critical classifications; and

WHEREAS, The current Collective Bargaining Agreement (CBA) between the San Francisco Municipal Transportation Agency (SFMTA) and Transport Workers' Union (TWU) Local 200 expires on June 30, 2010; and

WHEREAS, In June 2010 the SFMTA and TWU Local 200 negotiated the CBA for the term from July 1, 2010 to June 30, 2012; and

WHEREAS, This agreement was ratified by the members of TWU, Local 200; and

WHEREAS, The proposed CBA, which shall be effective July 1, 2010 through June 30, 2012, and all other required information were publicly disclosed in accordance with Charter Section 8A.104(p) on June 15, 2010 and are on file with the Secretary of the SFMTA Board of Directors; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors hereby approves the CBA between the SFMTA and TWU, Local 200, to implement negotiated concessions and extend its term of agreement to June 30, 2012.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Estimated Cost Savings from Proposals & Ratified Agreements

Date: May 27, 2010

Emp Org Title	Agreement	FY 2011 Count	FY 2011 Salary Costs	Ratification Savings Amount - FY 2011	FY 2012 Count	FY 2012 Salary Costs	Ratification Savings Amount - FY 2012
TWU LOCAL 200, SEAM, TWU - SEAM Total	12 Furlough - 4.62%	252.00	23,245,274	1,073,932	252.00	23,245,274	1,073,932

Based on Active employees provided on HR Report Dated April 26, 2010

**** Represents Craft Classification***

Revised May 27, 2010

Reflects change of 6 furlough days for PCO's

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Administration, Taxis & Accessible Services

BRIEF DESCRIPTION:

Approving the negotiated successor agreement between the San Francisco Municipal Transportation Agency (SFMTA) and the Transport Workers Union, Local 250A - 9132, Transit Fare Inspectors (TWU Local 250A - 9132), which reduces the SFMTA obligations for the term of the CBA from July 1, 2010 through June 30, 2012.

SUMMARY:

- Charter Section 8A.104 provides that the SFMTA shall bargain labor agreements with employee organizations representing employees in service critical classifications.
- The Collective Bargaining Agreement (CBA) between SFMTA and TWU Local 250A - 9132 expires on June 30, 2010.
- The SFMTA negotiated a successor agreement that includes concessions by TWU Local 250A - 9132 to save the agency approximately \$249,426. The tentative agreement between the parties includes the following concessions:
 - 12 unpaid furlough days in FY11;
 - 12 unpaid furlough days in FY12;
 - Cost Neutral Employer Paid Member Contribution (EPMC) “swap,” employees will pay 7.5% pension contribution effective July 1, 2010.
 - The Pilot Wellness Program will sunset close of business June 30, 2010.
- The membership vote by the membership of TWU Local 250A-9132 ratified the agreement on June 10, 2010.
- The successor agreement with TWU Local 250A - 9132 is for a two-year term from July 1, 2010 through June 30, 2012.

ENCLOSURES:

1. SFMTAB Resolution
2. Labor Cost Analysis

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
TO BE RETURNED TO

_____ Rumi Ueno _____

ASSIGNED MTAB CALENDAR DATE:

PAGE 2.

PURPOSE

To approve the negotiated Collective Bargaining Agreement (CBA) between SFMTA and the TWU Local 250A - 9132 from June 30, 2010 through June 30, 2012 and implement the negotiated concessions/terms.

GOAL

The proposed agreement meets the following strategic goals:

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

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.

DESCRIPTION

Charter Section 8A.104 gives the SFMTA the authority to negotiate labor agreements covering wages, hours, working conditions, and benefits with labor organizations representing employees at SFMTA in service critical classifications.

The SFMTA and TWU Local 250A - 9132 were successful in reaching a tentative agreement, and that agreement was ratified by a vote of the Union membership on June 8, 2010.

The negotiated agreement amends the existing CBA as follows: the term of the CBA will be two years with an expiration date of June 30, 2012. Additionally, the following concessions were agreed to: covered employees will take 12 unpaid furlough days in Fiscal Year 2011 and 12 unpaid furlough days in Fiscal Year 2012; the Pilot Wellness program will sunset close of business June 30, 2010; and a cost-neutral Employer Paid Member Contribution (EPMC) swap, employees will pay their retirement contribution. In return, covered employees have layoff protection through December 31, 2010. There are no other substantial changes to the CBA with the exception of updating dates and language where appropriate. The CBA as negotiated will be in effect through June 30, 2012.

The CBA for TWU Local 250A – 9132 was provided to the SFMTA Board on June 1, 2010 when the agreement was formally sunshined.

ALTERNATIVES CONSIDERED

If the CBA is not approved, the cost savings that this agreement provides will not be realized and the SFMTA would not have a labor contract for employees represented by TWU Local 250A - 9132.

PAGE 3.

The City Attorney has reviewed this calendar item.

FUNDING IMPACT

Labor Cost Analysis is attached, please see attachment number three.

The cost savings for TWU Local 250A - 9132 for FY 2011 is \$124,713; for FY 2012 is \$124,713.

RECOMMENDATION

Staff recommends that the SFMTA Board adopt the Resolution approving the CBA between SFMTA and TWU Local 250A - 9132.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Under Section 8A.104 of the Charter, the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors succeeded to the powers of the Board of Supervisors with respect to collective bargaining for employees in service critical classifications; and,

WHEREAS, The current Collective Bargaining Agreement (CBA) between SFMTA and the Transport Workers' Union, Local 250A - 9132, Transit Fare Inspectors expires on June 30, 2010; and,

WHEREAS, The SFMTA and the TWU Local 250A - 9132 negotiated a successor agreement to the current CBA which reduces SFMTA obligations and establishes a new two-year term through June 30, 2012; and

WHEREAS, The CBA was ratified by the membership of TWU Local 250A – 9132: and,

WHEREAS, The proposed CBA, which shall be effective July 1, 2010 through June 30, 2012, and all other required information were publicly disclosed in accordance with Charter Section 8A.104(p) on June 1, 2010 and are on file with the Secretary of the SFMTA Board of Directors; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors hereby approves the CBA between the SFMTA and TWU Local 250A - 9132, Transit Fare Inspectors to implement negotiated concessions and extend its term to 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

Estimated Cost Savings from Proposals & Ratified Agreements
Date: May 27, 2010

Emp Org Title	Agreement	FY 2011 Count	FY 2011 Salary Costs	Ratification Savings Amount - FY 2011	FY 2012 Count	FY 2012 Salary Costs	Ratification Savings Amount - FY 2012
TWU LOCAL 250-A, TWU - 9132 TRANSIT FARE INSPECTORS Total	12 Furlough - 4.62%	42.00	2,699,424	124,713	42.00	2,699,424	124,713

Based on Active employees provided on HR Report Dated April 26, 2010

**** Represents Craft Classification***

Revised May 27, 2010

Reflects change of 6 furlough days for PCO's

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to implement the SFMTA Fare Media Transition Plan for transitioning all Muni paper fare media and tokens to the TransLink®/ClipperSM card.

SUMMARY:

- On July 22, 2009, the SFMTA Board of Directors received information summarizing the plan for transitioning fare media to the TransLink® (renamed "ClipperSM") card.
- On February 24, 2010, the Metropolitan Transportation Commission (MTC) adopted Resolution 3866 which updates the region's Transit Coordination and sets forward deadlines for transitioning fare media to ClipperSM.
- On March 2, 2010, the SFMTA Board of Directors requested that the Fare Media Transition Plan Board Item be referred to the Policy and Governance Committee (PAG).
- On April 13, 2010, and May 11, 2010, the project team presented an update on the TransLink®/ClipperSM project to the PAG Committee, which expressed concerns regarding the provision to allow intra-agency transfers on ClipperSM cards only.
- Adoption of the proposed resolution would approve implementation of the Transition Plan, as modified to eliminate the requirement to transition Muni cash transfers to ClipperSM, in response to feedback received from members of the PAG Committee.

ENCLOSURES:

1. MTC Resolution 3866
2. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Diana Hammons

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The purpose of the calendar item is to authorize the Executive Director/CEO to execute the Fare Media Transition Plan, to transition current Muni fare media to the ClipperSM card.

GOALS

The execution of the Fare Media Transition Plan 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.

Objective 1.4 – Improve accessibility across transit services.

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

Goal 2: External Affairs/Community Relations: To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is a leader in the industry.

Objective 3.4 – Enhance proactive participation and cooperatively strive for improved regional transportation.

Goal 3: Financial Capacity: To ensure financial stability and effective resource utilization.

Objective 4.2 – Ensure the effective use of resources.

DESCRIPTION

Background:

SFMTA and other regional transit agencies have been working with the Metropolitan Transportation Commission (MTC) and the Translink® Management Group (TMG), the governing body of the TransLink® Consortium, to each develop a Fare Media Transition Plan ("Transition Plan"). The purpose of this endeavor was not only to receive commitment from the transit agencies to ensure the successful implementation of the ClipperSM Program, but also to update the Bay Area's Transit Coordination Implementation Plan with each agency's transition plan, as outlined in MTC's Resolution 3866, which was adopted on February 24, 2010.

The Bay Area's Transit Coordination Implementation Plan is prepared by MTC and conforms to state laws (such as SB 1474) that establish MTC's authority to coordinate the region's transit services and implement a regional approach for collecting fares. The ClipperSM Program is designed to provide this region's commuters with a single fare instrument for paying fares on any transit system in the area.

Below is a table summarizing the timelines for transitioning various fare media to ClipperSM. In response to feedback from the SFMTA Board of Directors Policy and Governance Committee, the Transition Plan has been amended to remove the requirement to transition cash transfers between Muni vehicles to ClipperSM. Staff will submit a request to MTC to amend Resolution 3866 to reflect this change to the SFMTA Transition Plan.

Fare Media	Date for Ending Acceptance of Current Muni Fare Media	Transition Plan Overview
Monthly Passes		
Adult BART/Muni Monthly Fast Pass®	8/1/10	Available on Clipper SM only.
Adult Muni Monthly Fast Pass®	4/1/11	Transition will be executed upon completion of replacing Metro faregates with Clipper SM -enabled faregates.
Senior and Youth Muni Monthly Fast Pass®	2/1/11	SFMTA will validate qualifications and collect applications. MTC will enter data, process and mail Clipper SM card.
RTC/Disabled Monthly Pass	9/30/10	RTC customers will be instructed on how to use the full features of their current Clipper SM card.
Lifeline	TBD	SFMTA is awaiting a proposal from the Clipper SM Contractor on submission of scope, budget and timeline to implement this product.
Senior and Disabled Monthly Fast Pass® + BART	TBD	Fare product currently under Pilot Program Agreement with BART. Proposal received from Contractor on budget, scope and timeline to implement new fare product. SFMTA will work with BART to evaluate proposal to make this product publicly available.
Visitor/Cable Car		
1 Day Passport	6/30/11	Requires implementation of read/write Handheld Card Reader (HCR) to validate the availability of the product on the Limited Use Clipper SM Ticket.
3 Day Passport	6/30/11	Same as above

Fare Media	Date for Ending Acceptance of Current Muni Fare Media	Transition Plan Overview
Visitor/Cable Car		
7 Day Passport	6/30/11	Same as above
Ticket Books/Tokens		
Adult Single Ride Ticket Book	4/30/10	The 10-Ride Ticket Book will be available on TransLink®/Clipper SM only.
Adult Single Token	4/1/11	Pending availability of pre-encoded Limited Use TransLink®/Clipper SM Tickets.
Inter-Agency Transfers		
Golden Gate Ferry and Transit	3/30/10/10	Transfer discount only available on TransLink®/Clipper SM .
BART Downtown Transfer Discount	8/1/10	Transfer discount only available on TransLink®/Clipper SM .
Daly City Transfer	8/1/10	Pending evaluation of transfer policy.
Institutional Pass		
Class Pass	TBD	Pending development of distribution plan.

ALTERNATIVES CONSIDERED

The proposed Transition Plan conveyed in the above table was built on a comprehensive review of existing constraints, requirements and input from internal and external stakeholders.

FUNDING IMPACT

MTC has established a draw-down account for each ClipperSM operator’s start-up operating costs. There is currently \$2,242,863.11 remaining in the SFMTA regional “incentive fund” account (estimated as of October 2009 by MTC). Based on current estimates of expenditures, approximately \$8 million in FY 2011 and \$8.5 million in FY 2012 has been included in the operating budget to cover increased costs associated with ClipperSM. The SFMTA intends to use the one-time draw-down account to offset some expenditures during FY 2011, resulting in net ClipperSM operating costs of slightly less than \$6 million.

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OTHER APPROVALS OBTAINED OR STILL REQUIRED

On April 19, 2010, the San Francisco Planning Department determined that fare changes resulting from changes in the transfer discount program with Golden Gate Transit are statutorily exempt under Public Resources Code Section 21080(b)(8) and CEQA guidelines Section 15273.

RECOMMENDATION

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Executive Director/CEO (or his designee) to take all necessary action to execute the Fare Media Transition Plan as proposed.

Date: February 24, 2010
W.I.: 1227
Referred By: Operations Committee

ABSTRACT

Resolution No. 3866

This resolution updates and adopts MTC's Transit Coordination Implementation Plan pursuant to the requirements of California Government Code §§ 66516 (SB 1474) and 66516.5; Public Utilities Code §§ 99282.51 and 99314.7; and Streets and Highways Code § 30914.5.

This resolution supersedes Resolution No. 3055, as amended.

Date: February 24, 2010
W.I.: 1227
Referred By: Operations Committee

Re: Transit Coordination Implementation Plan

METROPOLITAN TRANSPORTATION COMMISSION

RESOLUTION NO. 3866

WHEREAS, pursuant to Section 66516 of the California Government Code, the Metropolitan Transportation Commission (MTC) is required to adopt rules and regulations to promote the coordination of fares and schedules for all public transit systems within its jurisdiction and to require every system to enter into a joint fare revenue sharing agreement with connecting systems; and

WHEREAS, pursuant to Section 66516.5 of the Government Code, MTC may identify and recommend consolidation of those functions performed by individual public transit systems that could be consolidated to improve the efficiency of regional transit service and;

WHEREAS, pursuant to Section 99282.5 of the California Public Utilities Code (PUC), MTC is required to adopt rules and regulations to provide for governing interoperator transfers so that the public transportation services between public transit operators are coordinated; and

WHEREAS, pursuant to Section 99314.7 of the Public Utilities Code, MTC is required to evaluate an operator's compliance with coordination improvements prior to an operator receiving allocations of State Transit Assistance (STA) funds; and

WHEREAS, pursuant to Section 30914.5 of the Streets and Highways Code, MTC must adopt, as a condition of Regional Measure 2 fund allocation, a regional transit connectivity plan to be incorporated in MTC's Transit Coordination Implementation Plan pursuant to Section 66516.5, requiring operators to comply with the plan, which must include Policies and procedures for improved fare collection; and

WHEREAS, MTC previously adopted Resolution No. 3055 to implement these requirements; and

WHEREAS, in order to ensure progress toward implementing coordination recommendations, MTC wishes to formalize these recommendations by adopting the rules and requirements required pursuant to Government Code Section 66516 and PUC Section 99282.5 as set forth in this MTC Transit Coordination Implementation Plan, which includes a regional Transit Connectivity Plan and Implementation Requirements, attached to this Resolution as Attachments A and B, and incorporated herein as though set forth at length;

WHEREAS, MTC has consulted with the region's transit agencies to develop the regional Transit Connectivity Plan and Implementation Requirements, as required by Government Code §§ 66516 and Streets and Highways Code § 30914.5; now therefore be it

RESOLVED, that MTC adopts the Transit Connectivity Plan ("Plan") as set forth in Attachment A; and be it further

RESOLVED, that MTC adopts the Implementation Requirements, as set forth in Attachment B; and, be it further

RESOLVED, that prior to determining fund programming and allocations for an operator, MTC shall review the efforts made by the operator to implement the requirements identified in Attachments A and B, and if MTC determines that the operator has not made a reasonable effort to implement the requirements of Attachments A and B, MTC may, at its discretion, withhold, restrict or re-program funds and allocations to such operator to the extent allowed by statute, rule, regulation, or MTC policy; and, be it further

RESOLVED, that all funds subject to programming and/or allocation by MTC are covered by this resolution including but not limited to State Transit Assistance, Transportation Development Act, Regional Measure 2, Congestion Mitigation and Air Quality, Surface Transportation Program and Transit Capital Priorities funds, to the extent permitted by statute; and, be it further

RESOLVED, that this resolution shall be transmitted to the affected transit operators to guide them in development of their annual budgets and short-range transit plan revisions; and, be it further

RESOLVED, that the Operations Committee is authorized to approve amendments to Attachments A and B, following consultation with the affected transit operators; and be it further

RESOLVED, this resolution supersedes Resolution No. 3055.

METROPOLITAN TRANSPORTATION COMMISSION

Scott Haggerty, Chair

The above resolution was entered into by
the Metropolitan Transportation Commission
at a regular meeting of the Commission held in
Oakland, California, on February 24, 2010

Date: February 24, 2010
W.I.: 1227
Referred By: Operations Committee

Attachment A
Resolution No. 3866
Page 1 of 1

Attachment A

MTC Transit Connectivity Plan

This Attachment A incorporates by reference the Transit Connectivity Plan, previously approved by MTC in MTC Resolution No. 3055, which may be downloaded at:
<http://www.mtc.ca.gov/planning/connectivity/index.htm>.

Date: February 24, 2010
W.I.: 1227
Referred By: Operations Committee

Attachment B
Resolution No. 3866
Page 1 of 24

Attachment B Implementation Requirements

The purpose of these Implementation Requirements is to establish the expectations and requirements for each transit agency with respect to implementing the recommendations of the Commission's Transit Connectivity Plan (2006) and maintaining other transit coordination programs, to outline the process by which MTC will involve transit operators in changes to coordination requirements, and to establish the process for Commission action in the event of transit agency non-compliance with these implementation requirements. A copy of this Resolution 3866 is available for download at <http://www.mtc.ca.gov/planning/tcip/>.

Per the Transit Connectivity Plan, MTC places high priority on improvements that:

- Accomplish tangible improvements for the passenger;
- Benefit the largest number of transit users, including both inter- and intra-system transit riders, to the extent possible;
- Improve system productivity by sharing agency resources; and
- Enhance the ability of transit riders to reach significant destinations in adjoining jurisdictions and along regional corridors by (1) improving the connections between system services and (2) providing through service to adjoining jurisdictions in those cases where the market clearly justifies such service.

In order to manage resources effectively, MTC will focus on a limited number of high priority improvements, transfer project leadership from MTC to one or more transit agencies where possible upon agreement of project partners, and establish priorities for implementing new projects.

The Commission has established specific transit operator requirements to implement a coordinated regional network of transit services and to improve overall service productivity as defined in the Transit Connectivity Plan. Any agency that is an eligible recipient of funds subject to allocation or programming by MTC is subject to these requirements, including, but not limited to the following:

1. Altamont Commuter Express
2. Alameda-Contra Costa Transit District
3. Bay Area Rapid Transit District
4. Caltrain
5. Capital Corridor Joint Powers Authority
6. Central Contra Costa Transit Authority
7. Dumbarton Bridge Route Operating Consortium
8. Eastern Contra Costa Transit Authority
9. Golden Gate Bridge, Highway and Transportation District
10. Livermore Amador Valley Transit Authority
11. Marin County Transit District
12. Napa County Transportation Planning Agency
13. San Francisco Municipal Transportation Agency
14. San Mateo County Transit District
15. Santa Clara Valley Transportation Authority
16. Solano Transportation Authority
17. Sonoma County Transit
18. Sonoma Marin Area Rail Transit
19. Transbay Joint Powers Authority
20. Union City Transit
21. Water Emergency Transportation Authority
22. Western Contra Costa Transit Authority
23. City of Alameda
24. City of Benicia
25. City of Cloverdale
26. City of Dixon
27. City of Emeryville
28. City of Fairfield/Suisun City Transit
29. City of Healdsburg
30. City of Petaluma
31. City of Rio Vista
32. City of Santa Rosa
33. City of Vacaville
34. City of Vallejo

A. Operator Implementation Requirements

1. Implementation Requirements

The region has a history of implementing projects to improve transit coordination. Early efforts focused on regional programs and policies such as disseminating tax-free transit benefits and making paratransit eligibility determinations. More recent efforts, such as the Transit Connectivity Plan, identified improvements to (1) designated regional transit hubs, including way-finding signage and transit information, real time transit information, schedule coordination, last-mile services and hub amenities, and (2) system wide connectivity improvements, including 511 information and TransLink®.

Specific implementation requirements for transit operators are listed in Appendices to this Attachment:

- Appendix B-1, 511 Transit Program Requirements (including real-time transit);
- Appendix B-2, Regional Transit Hub Signage Program Requirements;
- Appendix B-3, TransLink® Implementation Requirements; and
- Appendix B-4, Maintenance of Existing Coordinated Services.

As MTC continues to address recommendations from the Transit Connectivity Plan and other emerging issues such as Transit Sustainability, new implementation requirements may become necessary. The appendices may be modified to reflect changes in implementation responsibilities, following the procedures outlined in this Attachment B, and subject to approval by the Commission.

2. SB 602 Fare and Schedule Coordination Requirements

Currently, each operator certifies its adherence to the provisions of SB 602 (Statutes 1989, Chapter 692, Government Code Section 66516, and as subsequently amended) as part of the annual allocation process for TDA and STA funds when requests for these funds are submitted to MTC. The SB 602 requirements are now incorporated into this Res. 3866, and each operator's compliance will be monitored accordingly. Per the requirements of SB 602, each transit agency in the region has a revenue sharing agreement with every connecting agency. In some cases, this takes the form of a reciprocal agreement to accept each other's passengers free of charge or to honor each other's period passes or single-trip transfers for a discounted fare. The BART/Muni FastPass is an example of a joint fare instrument to address SB602 requirements. Each transit agency in the region is required to maintain these reciprocal agreements as a condition of receiving STA funds (Gov. Code 66516).

3. Preserve Ability to Post and Disseminate Transit Information

MTC expects transit operators to preserve rights for MTC and connecting transit operators to post and disseminate connecting transit information for free within their facilities. This would include but not be limited to route, schedule, fare, real-time transit information and information about regional transit projects (511, TransLink®). For any transit agency that has already entered into a third-party agreement that compromises these rights, MTC expects the transit agency to make good faith efforts to reinstate these rights in their agreement at the earliest opportunity and, at a minimum, to reinstate such rights in future agreements or renewals entered into after adoption of this Resolution. Nothing herein shall be interpreted as requiring transit agencies to display advertising. Rather, the objective is to provide transit customers with pertinent information that improves their transit experience.

B. Cost-Sharing

Implementation activities and other new transit connectivity and coordination efforts added to these Implementation Requirements will be funded with MTC discretionary funds, transit agency funds, and/or in-kind contributions of MTC and transit agency staff resources. If MTC considers adding new projects or services, MTC would implement the consultation process described in Section C below to vet any expected cost impacts on the operators. Transit agencies are required to waive all agency fees (for permits, etc.) they would otherwise charge to MTC, other transit operators or third-party contractors to implement and maintain regional transit coordination projects detailed in these requirements. Unless otherwise noted, MTC and transit agencies are

expected to cover the cost to implement their respective roles and responsibilities as identified in these requirements or in pre-existing agreements. As specific initiatives move to implementation, a lead agency may be designated to coordinate implementation activities on behalf of the other participating transit agencies. Any agency that assumes this lead role and incurs costs that it would otherwise not assume in order to perform this function may be reimbursed, based upon an equitable agreement with the participating agencies, on a marginal cost basis (i.e., the additional cost the transit operator incurs to perform the work).

C. Consultation Process

MTC will consult with transit agencies when defining new coordination requirements for inclusion in Res. 3866 or when updating or revising requirements already in Res. 3866.

MTC will first consult with one or more of its technical advisory committees (TACs) to receive transit agency input on the specific implementation requirements. MTC will notify TAC members of the meetings and provide agendas in advance, and facilitate TAC discussions. Affected transit operators are expected to participate. Transit agencies are responsible for ensuring that the appropriate staff attends TAC meetings, that they participate in discussions in good faith, and that they communicate with other relevant staff within their agency (including those employees whose work may be affected) and executive management so that timely and constructive agency feedback can be provided to MTC. MTC will consider TAC input when formulating draft policy. In cases where there is no relevant TAC to address the issue under consideration, MTC will formulate draft policy and solicit feedback from general advisory groups, such as the Partnership Technical Advisory Committee (PTAC) or the Transit Finance Working Group.

At its discretion, MTC may also solicit input from the Partnership Board, the Partnership Technical Advisory Committee, the Transit Finance Working Group and MTC's Policy Advisory Council prior to Commission action. Following consultation with the TAC(s) and/or other advisory groups, MTC will solicit feedback from the Partnership Transit Coordination Committee. MTC will provide notification of the proposed PTCC meeting and agenda through written communication to transit general managers and transit program coordinators and posting of the meeting materials on MTC's web site.

Lastly, MTC will forward staff's recommendations to the MTC Operations Committee and the Commission.

D. Sanctions

The Commission expects each transit agency to comply with the requirements outlined in this Resolution and its Attachments as a condition of eligibility for STA and TDA funds, Regional Measure 2 funds, transit capital funds (including federal transit formula funds, STP, CMAQ and STIP funds) and other funds subject to Commission programming and allocation actions. MTC intends that the region's transit agencies will implement these requirements in good faith and cooperation among themselves and with MTC. The sanction of withholding, restricting or re-programming funds to enforce cooperation will be exercised by MTC in cases where an agency fails to meet or fails to exhibit good faith in meeting these requirements. In such cases, MTC staff will notify the agency of the possibility that a sanction may be imposed. This notification will also recommend corrective actions that the agency should take to meet the implementation

requirements. The notification will be sent no less than sixty (60) days prior to forwarding an MTC staff recommendation to the Commission.

Appendix B-1

511 Transit Information Requirements

MTC provides static transit data (i.e. schedules/trip planning information) through the 511 phone and web service and real-time transit departure information through the 511 phone and web services and the Regional Hub Signage Program. MTC requires the full participation and support of all transit agencies to deliver quality and timely information. MTC and the transit agencies have jointly developed data transfer mechanisms for schedule, trip planner and real-time transit data and identified appropriate roles and responsibilities for all parties, as documented in “*511 Transit Program Roles and Responsibilities*.” MTC will review these requirements on an as-needed basis with transit agency partners. Additionally, MTC and the Real-Time Transit TAC developed “*Real-time Transit Information System System Requirements*” that detail the system requirements for all parties. The two documents are available at: <http://www.mtc.ca.gov/planning/tcip/>. The key roles and responsibilities to provide transit agency data on 511 services are as follows:

Transit Agencies will:

Generally:

1. Participate in MTC’s 511 RTIS and Real-Time Transit Technical Advisory Committees.
2. Support, fund and staff their roles and responsibilities related to the 511 services as described below.
3. Notify transit customers of the availability of 511 information and 511.org on transit agency web sites, in printed materials, at bus stops/rail stations, and on other transit agency information channels.

For Static Transit Information (Schedules/Trip Planner):

4. Provide accurate, complete, timely information regarding transit routes, stops, schedules, fares for dissemination on all 511 features and services.
5. Transmit schedule and other transit service information to MTC in advance of any schedule changes to allow for MTC’s timely inclusion in the 511 Transit website. MTC will provide a schedule identifying the necessary advance time.
6. Perform quality control review (focusing on data changed for upcoming service revisions) on a representative sample of agency service data prior to transmittal to MTC for MTC’s timely inclusion in 511’s features and services.

For Real-time Transit Information:

7. Provide prediction data to the Regional System by establishing and maintaining a data connection to the Regional System and operating and maintaining an interface application.
8. Meet requirements, as defined in “*Real-time Transit Information System System Requirements*”, including the standard interface requirements, and in “*511 Transit Program Roles and Responsibilities*”.
9. Conduct on-going performance monitoring to ensure accurate and timely transfer of data to the Regional System and accurate provision of prediction data to the public, in collaboration with MTC.
10. Ensure that there is no impact to its provision of prediction data to 511 in the event that the transit agency provides its specific prediction data to a third party.
11. Provide service disruption information to 511 where available and logistically feasible through agreed upon formats.

MTC will:

Generally:

1. Organize and facilitate MTC's 511 Transit RTIS and Real-time Transit Technical Advisory Committees (TAC).
2. Fund, operate, and maintain the 511 services for regional transit information, including 511.org, the 511 transit website, 511 phone, regional real-time transit signs at transit hubs, and other relevant new applications.
3. In collaboration with transit agencies, conduct performance monitoring to ensure accurate and timely transfer of both static and real-time transit data to the Regional 511 System.

For Static Transit Information (Schedules/Trip Planner):

4. Notify transit customers of the availability of transit agency websites at appropriate locations on web site pages of 511.org.

For Real-time Transit Information:

5. Share with third party vendors and the general public the real-time transit data as described in "*511 Transit Program Roles and Responsibilities*".
6. Provide agencies with contact information for the 511 Traveler Information Center (TIC) to allow for the posting of real-time transit service disruption/emergency information on 511.

Appendix B-2

Regional Transit Hub Signage Program Requirements

MTC and transit agencies have developed the Regional Transit Hub Signage Program Technical Standards and Guidelines (e.g. ‘the Standards’) to ensure consistency across the region as the signage is deployed and maintained. A detailed version of the Standards is available at: <http://www.mtc.ca.gov/planning/tcip/>. The Standards may be periodically updated to reflect their evolution through the Concept Plan and Design/Plan, Specification and Estimates phases of implementation.

The Standards include:

1. Four main sign types: directional signs, wayfinding kiosks, transit information displays, real-time transit information displays.
2. Guidance to locate signs at key decision points between transit operator services.
3. Design elements to establish a common “look” and “feel” for the signage including:
 - Orange ‘i’ icon on a green background;
 - Standard logos, icons, arrows and messages and an organizing hierarchy;
 - Standard ‘frutiger’ font;
 - Hierarchy for the location of information in each sign;
 - Consistent map orientation and colors;
 - Directional map compass and walking distance/time radius;
 - Transit stop designation through agency logo/mode icon/route number ‘bubbles’; and
 - Prominent 511 logo/message and regional transit program information.

Transit Agencies will:

1. Lead and/or actively participate in the process to implement the Hub Signage Program. Participate on the Transit Connectivity TAC.
2. Comply with the Standards which generally apply to the 21 regional transit hubs identified in the Transit Connectivity Plan and three airports. Where exceptions to the Standards are desired, transit operators must seek prior approval from MTC. Where ambiguity in the Standards exists, transit operators shall request clarification from MTC.
3. Comply with cost responsibilities. Per Res. 3771 (July 2006), costs associated with implementing the Regional Transit Hub Signage Program at the 24 hubs are shared. A revised matrix clarifying cost responsibility by sign type is included as Appendix B-2, Attachment 1. After initial installation, maintenance and replacement of each sign shall be the responsibility of the assigned transit agency.
4. Comply with task responsibilities (O&M, replacement and ownership) further detailed in Appendix B-2, Attachment 1. MTC expects that transit agencies will jointly confirm task responsibility for each sign at each hub during the Concept Plan phase, prior to sign installation, which will ultimately be documented in a table titled “Hub Signage Program Sign Ownership”, incorporated herein by reference, and posted on MTC’s website at <http://www.mtc.ca.gov/planning/tcip/>. In most cases, the transit agency that owns the property on which the sign is installed will be assigned responsibility. For signs installed on property not owned by a transit agency, the transit agency providing the most service (passenger boardings) in the area of the sign will be assigned responsibility. Some negotiation between transit agencies may be necessary depending on sign location. Signs

will not be installed until task responsibilities are final. Once installed, transit agencies must comply with the agreed-upon task responsibilities.

5. Facilitate the permitting of signs by waiving all fees that a transit agency would usually charge for sign installation on its property or leased operating area.
6. As transit agencies plan new facilities or prepare for major remodels of existing facilities, they shall consult with MTC early in the planning process for applicability of the Standards to the project.

MTC will:

1. Develop, document and periodically update regional sign Standards.
2. Support coordination of Hub Signage Program implementation at all 24 hubs.
3. Comply with cost and task responsibilities detailed in Appendix B-2, Attachment 1.
4. Solicit feedback from transit agencies on significant changes to regional policy affecting the 24 hubs through the Transit Connectivity Technical Advisory Committee.
5. As resources permit, provide technical assistance to transit agencies wishing to extend the regional sign Standard to non-regional hubs.

Appendix B-2, Attachment 1: Hub Signage Program Cost/Task Responsibilities

*In most cases, the transit agency who owns the property on which the sign is installed is responsible. For signs installed on property not owned by a transit operator, the transit agency providing the most service (passenger boardings) in the area of the sign is responsible. Sign responsibility will be confirmed as part of project planning prior to installation.

Task	Est. Cost	Regional Cost Responsibility	Operator Cost Responsibility	Regional Task Responsibility	Operator Task Responsibility
All Sign Types					
1. Initial Deployment	\$10,053,000				
Concept Plans; Design/PSEs, Procure, Fabricate & Install		X		MTC-led hubs	BART Santa Rosa
Directional/Wayfinding Signs (including hub identification signs)					
2. Annual Operations and Maintenance (O&M), including:	\$680,000				
Info. content, electricity, cleaning, graffiti removal, repairs			X		X
3. Lifecycle Replacement	(included in #2)				
Planning, procurement, coordination, installation			X		X
4. Ownership	(included in #2)				
Insurance liability, warranty claims			X		X
Wayfinding Kiosks					
5. Annual Operations and Maintenance (O&M), including:	(included in #2)				
Electricity, regular cleaning and graffiti removal, repairs			X		X
Information content, quarterly cleaning		X		X	
6. Lifecycle Replacement	(included in #2)				
Planning, procurement, coordination, installation			X		X
7. Ownership	(included in #2)				
Insurance liability, warranty claims			X		X
Real-Time Transit Signs					
8. Annual Operations and Maintenance (O&M), including:	\$254,000				
Electricity, communications, cleaning, graffiti removal, repairs, status reporting			X		X
Information content		X		X	
9. Lifecycle Replacement	\$240,000				
Planning, procurement, coordination, installation		X			X
10. Ownership	(included in #8)				
Insurance liability, warranty claims			X		X
Transit Information Displays					
11. Annual Operations and Maintenance (O&M), including:	\$177,000				
Regular cleaning, damage/graffiti reporting			X		X

Task	Est. Cost	Regional Cost Responsibility	Operator Cost Responsibility	Regional Task Responsibility	Operator Task Responsibility
Information content, electricity, communications, quarterly cleaning/graffiti removal, repairs, status reporting		X		X	
12. Lifecycle Replacement	(included in #11)				
Planning, procurement, coordination, installation			X		X
13. Ownership	(included in #11)				
Insurance liability, warranty claims			X		X
Totals					
Initial Capital Costs	\$10,053,000				
Annual O&M, Replacement Costs	\$1,351,000				

Appendix B-3 TransLink Implementation Requirements

This Appendix defines the Commission's expectations of the transit agencies to ensure a successful operation of the TransLink[®] system in four sections:

- I. Participation Requirements
- II. Regional TransLink[®] Communications and Marketing Activities
- III. TransLink[®] Card Distribution Program for Seniors and Youths
- IV. Fare Media Transition Schedules by Specific Operators

Section I describes general TransLink[®] implementation requirements for participating operators.

Sections II and III define expectations for two program areas critical to smooth implementation of a full transition to TransLink[®] that can only be addressed through a collaborative, regional approach: customer awareness of and knowledge about TransLink[®]; and eligibility, validation and distribution of youth and senior cards; respectively.

Section IV establishes the dates by which the five transit agencies that are currently operating TransLink[®] will transition their existing prepaid fare media to TransLink[®]-only availability.

I. Participation Requirements

The following transit agencies are currently operating TransLink[®] as their fare payment system: AC Transit, BART, Caltrain, Golden Gate Ferry and Transit, and SFMTA. Additionally, MTC expects to declare SamTrans and VTA as TransLink[®] revenue-ready in 2010. Together these six agencies and one joint powers authority (Caltrain) were slated to be the first to operate TransLink[®] and were classified as charter members in the TransLink[®] Consortium, formed on December 12, 2003 by MTC and six transit operators entering into the TransLink[®] Interagency Participation Agreement (IPA).¹

The following describes general TransLink[®] implementation requirements for participating operators.² An operator's failure to meet one or more of these requirements may result in non-compliance with Resolution 3866.

1. Implement and operate the TransLink[®] fare payment system in accordance with the TransLink[®] Operating Rules, as adopted and amended from time to time by MTC. The current TransLink[®] Operating Rules (approved in April 2009) are incorporated herein by this reference. The TransLink[®] Operating Rules establish operating parameters and procedures for the consistent and efficient operation of

¹ MTC has given notice that it intends to withdraw from the Consortium effective July 1, 2010, as permitted by the IPA; however, certain of its provisions related to cost allocation and indemnification will continue to apply to MTC.

² Items 1-6 are based on provisions of the IPA, as amended on June 27, 2005 and December 4, 2007, revised in light of MTC's pending withdrawing from the Consortium.

TransLink[®] throughout the region and are available on MTC's website at <http://www.mtc.ca.gov/planning/tcip/>.

2. Pay its share of variable operating costs, according to the cost allocation formula set forth in Appendix A to the IPA, Cost Allocation and Revenue Sharing, except to the extent such costs are reduced by the incentive payments made by MTC (as referenced in Appendix A to the IPA).
3. Abide by the revenue sharing formula in Appendix A to the IPA.
4. Make its facilities and staff available to MTC and the TransLink[®] Contractor for implementation of TransLink[®]. Any Operator and MTC may agree to an Operator-Specific Implementation Plan, setting forth specific requirements regarding implementation and operation of TransLink[®] for such Operator.
5. Make determinations regarding the placement of TransLink[®] equipment on the Operator's facilities and equipment; perform necessary site preparation; attend TransLink[®] Contractor training on the use of the TransLink[®] equipment; and provide training to employees using the equipment.
6. Accept transfer of ownership of equipment one year following Conditional acceptance by each Operator, as defined in Section 8.3 of the TransLink[®] Contract (or for Phase 3 operators one year following Acceptance, as established by contract change order.³) Maintain and track a list of all equipment.
7. Perform actions necessary to support transfer of ownership of the TransLink[®] bank accounts from BART to MTC. MTC must have fiduciary responsibility for patrons' prepaid balances no later than the date on which MTC's withdrawal from the Consortium becomes effective.
8. Implement, operate and promote TransLink[®] as the primary fare payment system for each Operator. TransLink[®]'s primary market is frequent transit riders (i.e., commuters and transit passholders). Operators shall not establish other fare payment systems or fare policies that could deter or discourage these patrons' preference to use TransLink[®]. Operators shall set fares so that fares paid with TransLink[®] are equivalent or lower than fares paid either with cash or other forms of payment.

No new non-TransLink[®] prepaid fare product, other than for promotional, special event or limited-audience—e.g., tourist—fares, shall be created by any transit operator without consulting with and receiving prior approval from MTC.

Nothing in this provision is intended to discourage operators from providing leadership on new technologies or innovations that would offer improvement to

³ The TransLink[®] Contract refers to the Design Build Operate Maintain contract between MTC and Cubic Transportation Systems, Inc. for the TransLink[®] fare payment system. The contract was assigned to Cubic on July 2, 2009 and has an operating term extending through November 2, 2019.

fare collection operations or the customer experience. The expectation is that these new initiatives should leverage the attributes and assets of TransLink[®], not compete with TransLink[®] or undermine customers' preference to use TransLink[®].

9. Perform first-line maintenance upon TransLink[®] equipment located on their facilities or vehicles, promptly notify the TransLink[®] Contractor when second-line maintenance of TransLink[®] equipment is needed, Promptly notify MTC and the TransLink[®] Contractor of any issues affecting daily financial reconciliation or accuracy of system reports, issue all types of TransLink[®] cards and add value to existing TransLink[®] cards from all Ticket Office Terminals located at their business facilities, and provide at least the same level of front-line customer service to their patrons using TransLink[®] as to patrons using other forms of fare payment.
10. Sufficiently train and educate agency personnel who have TransLink[®]-related responsibilities so those personnel are able to carry out the requirements placed upon operators in this Resolution.
11. Assist MTC, as necessary, to develop a program for Transit Capital Priorities (TCP) funds for the purpose of procuring and installing end-of-lifecycle TransLink[®] equipment and to submit and administer grants for programmed TCP funds on a "pass-through" basis.
12. Upon transfer of ownership of equipment, take financial responsibility for replacement of equipment damaged in-service due to vandalism or any other cause not covered by the TransLink[®] Contract warranty.⁴
13. MTC has begun the process of changing the name of the TransLink[®] program and service to "ClipperSM". Once the new brand is implemented, all references to "TransLink[®]" in this resolution shall be deemed to refer to "ClipperSM".

II. Regional TransLink[®] Communications and Marketing Activities

1. Effective Date. For operators currently operating the TransLink[®] system, these TransLink[®] marketing and communications requirements are effective immediately. For operators not yet operating TransLink[®], the requirements are effective two months after MTC's approval of the TransLink[®] system as Revenue Ready for that operator.
2. General Requirements. Operators shall present TransLink[®] to customers, employees and media as a fully operational fare payment option. This includes, but is not limited to, identification of TransLink[®] as a fare payment option in brochures, websites, advertisements, schedules/timetables, email newsletters, internal memos, bulletins and training manuals, and any other materials that describe an operator's fare payment options. Operators shall present TransLink[®] as an option so that TransLink[®] has equal or greater prominence than the presentation of other payment options. Each operator shall incorporate and/or modify the

⁴ MTC shall procure replacement equipment on an operator's behalf, and operators shall pay for the full cost of the equipment including all installation costs and materials.

presentation of TransLink® in existing brochures, websites, schedules/timetables, etc. whenever the operator next updates the content of these items.

In all cases, operators' marketing and communications about TransLink®, whether in brochures, websites, advertisements or other forms, shall adhere to TransLink® brand guidelines developed by MTC with input from transit operators. The TransLink® Brand Guidelines are available at <https://www.translink.org/TranslinkWeb/toolbox.do>.

3. Equipment Identification. If not already identified as such, operators shall identify TransLink®-compatible fare payment and TransLink®-compatible vending equipment with a decal or other visual identifier to indicate the equipment's TransLink® compatibility.
4. Operator Training. Operators shall ensure appropriate TransLink®-related training for transit operator staff including, but not limited to, vehicle operators, station agents, conductors, customer service personnel, proof of payment officers, ticket sales staff and any other personnel responsible for interacting with customers concerning payment options.
5. Marketing Coordination. Operators shall participate in the development and implementation of a TransLink® marketing and communications initiative that will begin approximately June 1, 2010. This includes, but is not limited to:
 - Staff participation in the development and implementation of the initiative;
 - Dissemination of TransLink® brochures and/or other information materials on vehicles and/or in stations in a manner consistent with the operator's dissemination of other similar operational information; and
 - Providing information about TransLink® utilizing space available on vehicles and/or in stations that is already used by the operator for dissemination of operational information (space available includes, but is not limited to, car cards, posters, and electronic displays).
6. Funding. Funding for the initial phases of the communications and marketing program shall come from the marketing funds already in the TransLink® capital budget and previously assigned to individual operators.
7. Name Change. Operators shall cooperate with or participate in actions taken by MTC or the TransLink® Contractor to change the TransLink® brand name to "ClipperSM".

III. TransLink® Card Distribution Program for Seniors and Youths

Unless transit operators and MTC agree upon a different time or approach, as of April 1, 2010, transit operators accepting TransLink® shall distribute TransLink® cards to youths and seniors using the following standard region-wide approach:

1. Customers will be able to request cards at all transit agency ticket offices and any other locations approved by the TransLink® Consortium, e.g. senior centers;
2. Transit agency staff or staff at approved locations will verify a customer's date of birth and approve the customer's written application if the customer qualifies for discount fares on any participating agency (up to age 18 for youth cards and not less than age 65 for senior cards);

3. Transit agencies and other approved providers will send all approved applications to the TransLink[®] Service Bureau (TSB), which is operated by the TransLink[®] Contractor under contract to MTC;
4. TSB will fulfill all new and replacement cards with the encoded date of birth;
5. TSB will prevent issuance of duplicate cards, hotlist lost/stolen cards, and hotlist cards identified as used fraudulently;
6. TSB will issue the cards without photos;
7. Transit agency personnel may continue using existing tactics to verify that a customer qualifies for a discount; and
8. Transit agency personnel should report fraudulent cards to TSB for hotlisting.

AC Transit shall distribute cards directly to youths, i.e. without involvement from TSB. At its option, AC Transit may issue the cards with photos of the registered bearer of the card. AC Transit shall register the cards in the TransLink[®] system.

IV. Fare Media

In mid-2009, MTC requested that the five transit agencies which are currently operating TransLink[®] submit plans to describe how they will transition their existing prepaid fare media-- i.e., tickets and passes--to TransLink[®]-only availability within two years or less following their revenue-ready dates.

The tables below set forth *the fare media* that the designated operator shall convert to TransLink[®]-only availability and *the date* by which the operator shall no longer accept such fare media in its existing form. In general, MTC has emphasized with each operator a transition of those fare products which currently represent a significant portion of that operator's boardings.

An operator will be excused from compliance with a transition date requirement for particular fare media, if the TransLink[®] Contractor has not met at least 83% of the cardholder support service level standards set forth in Section B.1.12 of the TransLink[®] Contract for the two calendar months ending one month before the scheduled transition date. The operator's transition date requirement for the affected fare media will be reset to one month after the TransLink[®] Contractor has met at least 83% of the TransLink[®] Contract's cardholder support service level standards for two consecutive calendar months.

AC Transit will transition its existing fare media by the following dates:

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
EasyPass	Transition done	
31-Day Transbay Pass – Adult	Transition done	
Bear Pass (U.C. Berkeley Employee Pass)	Transition done	
10-Ride Ticket – Youth	12/31/2010	Sales of the non-TransLink [®] version of this pass/ticket will end no later than 9/30/2010.
10-Ride Ticket – Adult	12/31/2010	Same comment as above
31-Day Local Pass – Youth	12/31/2010	Same comment as above
31-Day Local Pass – Adult	12/31/2010	Same comment as above
10-Ride Ticket – Senior/Disabled	Requirement waived at this time	As a requirement prior to limiting this product to TransLink [®] -only availability, AC Transit has proposed implementation of additional TransLink [®] card readers at all vehicle entry points used by wheelchair customers.
Monthly Pass – Senior/Disabled	Requirement waived at this time	As a requirement prior to limiting this product to TransLink [®] -only availability, AC Transit has proposed implementation of additional TransLink [®] card readers at all vehicle entry points used by wheelchair customers.
Class Pass (U.C. Berkeley Student Pass)	Requirement waived at this time	AC Transit has opted not to make this pass available to TransLink [®] customers. AC Transit will make the pass available to TransLink [®] customers only following completion of the proposed integration of TransLink [®] and U.C. Berkeley campus identification card functions.
1-ride and 1-ride plus transfer (for social service agencies)	Requirement waived at this time	

BART will transition its existing fare media by the following dates:

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
EZ Rider card as payment for transit	10/1/2010	EZ Rider card will continue to be accepted after this date as payment for parking at BART lots, until TransLink [®] is available as payment for parking
High Value Discount (HVD) adult magnetic stripe ticket (blue)	3/1/2011	<ul style="list-style-type: none"> • BART Board approval planned for Aug 2010 • March 2011 date is when <u>sales</u> would end; acceptance of magnetic stripe tickets would continue until customers deplete their stock
Senior magnetic stripe ticket (green)	5/1/2011	May 2011 date is when sales would end. Date is subject to further analysis of possible legal constraints.
Youth and disabled magnetic stripe ticket (red)	5/1/2011	May 2011 date is when sales would end. Date is subject to further analysis of possible legal constraints.
Student magnetic stripe ticket (orange)	Requirement waived at this time	Pending evaluation and implementation of eligibility verification and distribution processes for a TransLink [®] version of this fare product
BART Plus Ticket	Requirement waived at this time	MTC defers transition of this fare medium until all other transit agencies which also accept the BART Plus Ticket have begun to accept TransLink [®] , and subject to MTC's evaluation of the operational and financial feasibility of a transition of this product to TransLink.

Caltrain will transition its existing fare media by the following dates:

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
Full Fare Monthly Pass	1/31/2011	None
8-ride Ticket	1/31/2011	None
Caltrain + Muni Monthly Pass	1/31/2011	None
Eligible Discount Monthly Pass	1/31/2011	None
Go Pass	1/31/2011	None
8-ride Eligible Discount Ticket	1/31/2011	None

In addition, because Caltrain will not be transitioning its fare media to TransLink[®] within two years of Revenue Ready as originally requested by MTC, the following additional obligations are placed upon Caltrain:

Media Type or Function	Minimum Sales Per Month of TransLink[®] Version, or %	Date By Which to Achieve:
Monthly Pass	1,000	May 31, 2010
Monthly Pass	5,000	November 30, 2010
8-Ride Tickets	3,000	May 31, 2010
8-Ride Tickets	10,000	November 30, 2010
Autoload of Caltrain fare products	At least 50%	November 30, 2010

Golden Gate Transit and Ferry will transition its existing fare media by the following dates:

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
\$25 Value Card	8/1/2010	June 30, 2010 is the last day these Value Cards will be sold
\$50 Value Card	8/1/2010	Same comment as above
\$75 Value Card	8/1/2010	Same comment as above

The fare products listed below are issued by Marin Transit, yet accepted on vehicles operated by Golden Gate Transit within Marin County. If MTC and Marin Transit reach agreement whereby Marin Transit begins to accept TransLink[®] as a fare payment method, each of the fare media listed below shall be converted to TransLink[®]-only availability within six months after implementation of a TransLink[®] version of such fare media.

- \$18 Value Card
- \$36 Value Card
- Marin Local 1-Day Pass
- Marin Local 7-Day Pass
- Marin Local 31-Day Pass
- Marin Youth Pass

San Francisco MTA will transition its existing fare media by the following dates:

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
Monthly Passes		
Adult BART/Muni Monthly Pass	8/1/10	None
Adult Muni Monthly Pass	4/1/11	New product available for Jan 1 2010 sales period. Transition schedule dependent on completion of Metro faregates program.
Senior Muni Monthly Pass	2/1/11	.
RTC/Disabled Monthly Pass	9/30/10	Date shown assumes availability on TransLink® of the Senior/Disabled BART/Muni Monthly Pass. In no event shall the transition date for this product be later than February 1, 2011.
Youth Monthly Pass	2/1/11	None
Senior/Disabled BART/Muni Monthly Pass	Date to be set after product development schedule and budget provided by Contractor	New product development and coordination with BART required for implementation.
Lifeline	Date to be set after product development schedule and budget provided by Contractor	SFMTA to submit to MTC an implementation strategy and proposed transition date by March 31, 2010.
Visitor/Cable Car		
1 Day Passport	6/30/11	Schedule dependent on availability of fare payment handheld card reader and availability of product on limited use card.
3 Day Passport	6/30/11	Same as above
7 Day Passport	6/30/11	Same as above
Ticket Books/Tokens		
Adult Single Ride Ticket Book	4/30/10	This is the 10-ridebook in TransLink.
School/Youth Ticket Book	Requirement waived at this time	Pending development of limited use card.

Fare Media	Date for Ending Acceptance of Listed Prepaid Fare Media	Comments
Ticket Books/Tokens		
Adult Single Token	4/1/11	Pending development of limited use card; this product is a one-time use ride distributed by non-profits to clients.
Inter-Agency Transfers		
BART Two-Way Transfer	8/1/10	May require SFMTA Board action
BART/Daly City Two-Way Transfer	8/1/10	May require SFMTA Board action
Golden Gate Ferry Two-Way Transfer	3/30/10	None
Institutional Pass		
Class Pass	To be set after product development schedule and budget provided by Contractor	SFMTA to determine distribution strategy for fare product by June 30, 2010.
Transfers		
Bus Transfers	9/30/11	Requires SFMTA Board action
Metro/Subway Transfers	9/30/11	Requires SFMTA Board action
ADA Transfers	3/31/11	Requires SFMTA Board action
BART Plus Ticket	Requirement waived at this time	Transition requirement for this fare medium is suspended until all transit agencies which accept the BART Plus Ticket have begun to accept TransLink [®] , and subject to MTC's evaluation of the operational and financial feasibility of a transition of this product to TransLink.

The following are general TransLink[®] implementation and fare media transition requirements for operators not yet operating TransLink[®]. Following MTC's approval of the TransLink[®] system as Revenue Ready for a given operator, MTC will work with the operator to identify more specific fare media transition plans. Unless otherwise approved by MTC, operators shall begin accepting TransLink[®] for fare payment by customers no more than two months following MTC's approval of the TransLink[®] system as Revenue Ready for a given operator.

Operator	Date for Ending Acceptance of Prepaid Non-TransLink[®] Fare Media
SamTrans	One year after Revenue Ready milestone is achieved and TransLink [®] equipment has been installed on the new SamTrans vehicles currently being manufactured by Gillig.
VTA	One year after Revenue Ready milestone is achieved and VTA's day pass has been deployed as a TransLink [®] fare product.
Other operators	One year after Revenue Ready milestone

Appendix B-4

Maintenance of Existing Coordinated Services

The Commission's previously adopted Transit Coordination Implementation Plan (Resolution No. 3055) included a number of coordination programs that were not modified by the Transit Connectivity Plan. Of these, the Commission expects the transit operators to continue to support the following:

1. Regional Transit Connection (RTC) Discount Card Program – Provides identification cards to qualified elderly and disabled individuals for reduced fares on transit. Transit operators and MTC maintain memorandums of understanding about roles and responsibilities for program implementation. The RTC Discount Card is being incorporated into the TransLink[®] program
2. ADA Paratransit Eligibility Program – Consists of a regional application, a regional eligibility database administered by a transit agency on behalf of the region and universal acceptance across transit systems of all eligibility determinations. Transit operators have flexibility to tailor the application process to screen applicants to facilitate eligibility determinations.
3. Interagency ADA Paratransit Services – Establishes policies to promote a consistent approach to interagency paratransit passenger transfers (see Appendix A-4, Attachment 1).
4. Regional Transportation Emergency Management Plan – The Regional Transportation Emergency Management Plan (formerly know as the Trans Response Plan) is a framework to coordinate transit services during regional emergencies. Transit operators are required to participate in regional exercises to test the implementation of the plan. Transit agencies certify compliance through their annual State Transit Assistance (STA) funding claims process, and also address emergency coordination planning through their Short Range Transit Plans.
5. Regional Links/Express Bus/Feeder Bus Services – Regional Links include bus service across the Bay Bridge, Dumbarton Bridge, the San Mateo Bridge and the Richmond/San Rafael Bridge that has been incorporated into the Express Bus Services program funded with Regional Measure 2 (RM2), and will be monitored per RM2 requirements. Express Bus Services also include Owl Service which operates along the BART rail lines at night when BART is closed. Express feeder bus services to/from BART stations during peak periods are maintained through direct allocation of BART's STA funds to transit agencies as specified in the annual Fund Estimate. If STA is unavailable, BART's General Fund up to \$2.5 million is available to support these services per existing agreement. If additional funding is needed, it will be subject to discussion on an annual basis.

Appendix B-4, Attachment 1

Requirements for Interagency ADA Paratransit Services

Note: Transit operators developed guidelines for interagency ADA paratransit services. MTC adapted these guidelines for the purpose of defining coordination requirements.

Consistent with the Americans with Disabilities Act (ADA) requirement to provide paratransit services that are complementary to fixed-route transit services, Bay Area transit operators have identified a transfer-oriented network of interagency paratransit services. Interagency paratransit trips may require a transfer between connecting paratransit providers at a location specified by the transit operator. The following regional requirements are intended to improve connections between paratransit services for both passengers and paratransit providers. The requirements establish regional protocol for how the system will operate as well as specify the responsibilities of paratransit providers to assure an efficient, user-friendly system.

1. All public transit agencies in the San Francisco Bay Area will honor the regional ADA Eligibility Process [as approved by transit agencies] when certifying an individual for ADA paratransit services.
2. Eligibility for an individual requesting interagency paratransit services will be verified through the ADA Paratransit Regional Eligibility Database.
3. Transit operators will develop and make available customer information on how to access and use interagency paratransit services. This information will be made readily available in accessible formats.
4. Interagency paratransit trips will usually require a transfer between connecting paratransit providers at a location specified by the transit operator. Transit operators will transfer passengers at designated transfer locations that, to the extent possible, are also used as fixed-route transfer sites. For operational efficiency or customer service quality, use of other transfer sites is not precluded. Operators will seek to establish transfer locations that are clean, safe, sheltered and well-lit with accessible telephones and restrooms nearby. Established interagency paratransit transfer locations on transit properties will be clearly marked with a consistent sign designed and adopted at the regional level.
5. For operational efficiency or customer service reasons, transit operators may:
 - transfer passengers to a connecting paratransit provider at a transfer location, including having the passenger wait without assistance until the connecting provider arrives; or
 - provide through-trip service into an adjoining transit agency's service area (not requiring a transfer); or
 - provide transfer assistance to passengers at transfer points (waiting with the passenger until connecting provider arrives); and
 - coordinate their schedules and dispatch procedures with connecting provider(s) on the day of service.

6. Coordinating Bay Area interagency paratransit reservations shall be the responsibility of paratransit providers. Subject to availability of rides, a single transit coordinator will be responsible to schedule an interagency paratransit trip (including round-trip service). For trips requiring coordination between only two transit operators, the operator in whose jurisdiction the trip originates will usually perform the function of trip coordinator to schedule the entire trip and to serve as a point of contact for passenger inquiries. For trips involving three or more paratransit providers, a regional trip coordinator may perform these functions.
7. Transit operators shall accept reservations for interagency paratransit trips according to their local advance reservation policies. When coordinating a trip, the shorter advance reservation period of the connecting agencies will apply. In some cases, the scheduling operator will be unable to determine the availability of a requested interagency paratransit trip until the shortest advance reservation period is open. If, due to differences in advance reservation periods, trip availability cannot be determined at the time the trip is requested, the scheduling operator will inform the passenger of when to call to complete the trip reservation process. In the meantime, the scheduling operator may book available legs of the requested trip according to local advance reservation policies.
8. Transit operators will charge a fare consistent with each individual operator's fare payment policy. All fares will be communicated to the passenger by the operator scheduling the first leg of the interagency paratransit trip at the time the ride is confirmed. Operators and MTC will work toward a regional fare payment method and/or regional fare policy for paratransit services.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, TransLink®, recently renamed ClipperSM, is a regional fare media program under the management of the Metropolitan Transportation Commission (MTC); and,

WHEREAS, Full rollout of ClipperSM will improve regional accessibility to transit by simplifying fare payment and customer transfers across multiple operators; and,

WHEREAS, MTC has directed transit agencies to develop a fare media transition plan that would phase out the use paper fare media and tokens and promote the use of ClipperSM as the primary fare media and payment system; and,

WHEREAS, The SFMTA has developed a Transition Plan in accordance with this direction; and

WHEREAS, On February 24, 2010, MTC adopted Resolution 3866, a Transit Coordination Implementation Plan pursuant to the requirements of State law, which includes, among other things, specific ClipperSM implementation requirements for transit operators; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to implement the Fare Media Transition Plan, which gradually transitions various forms of Muni paper fare media to the regional ClipperSM system; and, be it further

RESOLVED, That the San Francisco Municipal Transportation Agency shall submit a request to the Metropolitan Transportation Commission to amend Resolution 3866 to remove any provisions related to SFMTA intra-agency bus-to-bus or bus-to-rail transfers.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. :

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: ADMINISTRATION, TAXIS and ACCESSIBLE SERVICES

BRIEF DESCRIPTION:

Requesting the San Francisco Municipal Transportation Agency Board of Directors to adopt a Substance Abuse Policy and Procedures which has been updated to reflect changes to federal regulations, which became effective August 1, 2009, as well as additional changes to federal regulations which will be effective October 1, 2010.

SUMMARY:

- On February 15, 1994, the U.S. Department of Transportation issued regulations requiring recipients of federal assistance to have a drug and alcohol testing and employee training program in place for employees performing safety-sensitive functions.
- The Federal regulations require the governing body of a direct recipient of federal financial assistance from the Federal Transit Administration (FTA) to adopt a policy statement on alcohol misuse and prohibited drug use in the workplace by employees performing safety-sensitive functions.
- The SFMTA Substance Abuse Policy and Procedures has been updated to reflect changes to federal regulations (49 CFR Part 40). The changes currently in effect require direct observation of urine collection under certain circumstances. Effective October 1, 2010, new regulations require testing for additional drugs and lower the threshold levels for certain prohibited drugs in determining a positive test.

ENCLOSURES:

1. SFMTAB Resolution
2. Substance Abuse Policy and Procedures

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO Reggie Smith

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The purpose of this calendar item is for the SFMTA Board to adopt updates to the Substance Abuse Policy and Procedures, as required under federal regulations.

GOAL

The SFMTA will further the following goals of the Strategic Plan through revision of the Substance Abuse Policy:

- Goal 1- Customer Focus: SFMTA promotes the Transit First Policy by providing safe, accessible, reliable, clean and environmentally sustainable service... to encourage a modal shift away from automobile use.
 - 1.1-Improve safety and security across all modes of transportation.
- Goal 3-External Affairs-Community: Improve customers attitude and image of SFMTA services and perceptions of our value to the community.
 - 3.3-Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life.
- Goal 5- SFMTA Workforce: MTA's workforce is capable of leading the agency into the ever-evolving, technology driven future; and MTA's workforce takes pride in ownership of the agency's mission and vision.
 - 5.5-Improve SFMTA's ability to grow and retain strong leadership.
 - 5.8-Improve work/life balance of employees.

DESCRIPTION

On December 13, 1994, in accordance with the Federal regulations, the Public Transportation Commission (PTC) approved and adopted a Substance Abuse Policy and Procedures dated December 6, 1994, including the Procedures for testing safety-sensitive employees for alcohol and drugs. Previous updates to the Substance Abuse Policy and Procedures were approved on:

- March 24, 1998, when the PTC adopted Resolution No. 98-025
- August 20, 2002, when the MTA Board adopted Resolution No. 02-092.

Substance Abuse Policy and Procedures updates were necessitated by changes in the federal regulations, which are contained in 49 CFR Parts 40 and 655.

The U.S. Department of Transportation promulgated procedures for direct observations of urine collection for federally required return-to-duty and follow-up urine tests, which regulations were to be effective November 25, 2008. The United States Court of Appeals for the District of Columbia stayed implementation of such mandatory observed collections, but lifted the stay on July 1, 2009 when the court upheld such testing procedures. The procedures became effective on August 1, 2009. In addition, the Federal regulations expanded the circumstances that would be considered a "refusal to test."

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On October 1, 2010, changes to the the federal regulations will become effective that expand the list of prohibited drugs to be subject to mandatory drug testing, adding methylenedioxyamphetamine (MDMA) (also known as "ecstasy"), methylenedioxyamphetamine (MDA) and methylenedioxyethamphetamine (MDEA). The new regulations will also lower the threshold levels to determine a positive test for cocaine, amphetamines and methamphetamines. The purpose of the new regulations is to also create consistency with new requirements established by the U.S. Department of Health and Human Services Mandatory Guidelines.

Following is a summary of the changes to the Substance Abuse Policy and Procedures reflecting the changes to the federal regulations:

- Additional prohibited drugs have been added to the testing panel.
- Lowered cut-off levels for cocaine, amphetamines and methamphetamines.
- Each covered employee shall be in a pool from which a minimum of 25% random selection is made for drug testing and 10% for alcohol testing annually.
- The return-to-duty and follow-up drug tests will be performed under direct observation as described in 49 CFR Section 40.67.
- The procedures for direct observation urine collection are included in the Procedures.
- Refusal to test criteria have been expanded to include:
 - Failure to report as directed for a 90-day pre-employment test.
 - Leaving the scene of an accident without just cause prior to submitting to a test.
 - Admitting to the collector that an employee has adulterated or substituted a urine specimen.
 - For a collection under direct observation, failure to follow the observer's instructions to raise and lower clothing, and to turn around to permit the observer to determine if the employee has a prosthetic or other device that could be used to interfere with the collection process.
 - Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process.

The City Attorney's Office has reviewed this report.

ALTERNATIVES CONSIDERED

Since the SFMTA, as a recipient of federal funds, is required to follow the legal mandates of 49 CFR Part 40 and 655, no other alternatives can be considered.

FUNDING IMPACT

Operating funds required to provide the services and equipment required to meet the requirements of 49 CFR Part 40 and 655 are budgeted in the SFMTA's current year budget.

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OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

The recommendation is that the SFMTA Board of Directors adopt the updated Substance Abuse Policy and Procedures.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Since February 15, 1994, the U.S. Department of Transportation (DOT) has required recipients of federal assistance to have an alcohol and drug testing program and an employee training program in place for employees performing safety-sensitive functions, which requirements are embodied in 49 CFR Parts 40 and 655 (the "federal regulations"); and

WHEREAS, The federal regulations require the governing body of a direct recipient of Federal financial assistance from the Federal Transit Administration to adopt a policy statement on alcohol misuse and prohibited drug use in the workplace by employees performing safety-sensitive functions; and

WHEREAS, On December 13, 1994, in accordance with the federal regulations, the Public Transportation Commission (PTC), predecessor to the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors, adopted a Substance Abuse Policy; including procedures for testing safety-sensitive employees for prohibited drugs and alcohol; and

WHEREAS, On March 24, 1998, the PTC adopted Resolution No. 98-025, which approved the updated Substance Abuse Policy and Procedures to reflect changes in the federal regulations; and

WHEREAS, On August 20, 2002, the MTA Board of Directors adopted Resolution No. 02-092, which approved an updated Substance Abuse Policy and Procedures to reflect changes in the federal regulations; and

WHEREAS, DOT amended the federal regulations regarding observed collections, which regulations have been effective since August 1, 2009; and

WHEREAS, The DOT also amended the federal regulations to include additional prohibited drugs in the testing panel and lower threshold levels for determining a positive test as to certain prohibited drugs, which regulations will become effective October 1, 2010; and

WHEREAS, The Substance Abuse Program has updated the Substance Abuse Policy and Procedures to comply with the revisions to the federal regulations; now, therefore be it

RESOLVED, That the SFMTA Board of Directors adopts the updated Substance Abuse Policy and Procedures to comply with the most recent amendments to the federal regulations including observed collections, additional prohibited drugs in the testing panel and lower threshold levels for determining a positive test as to certain prohibited drugs.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SUBSTANCE ABUSE PROGRAM**

SUBSTANCE ABUSE POLICY

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DRUG AND ALCOHOL TESTING POLICY

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SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

1.0 POLICY

The San Francisco Municipal Transportation Agency ("Agency" or "SFMTA") operates the San Francisco Municipal Railway. SFMTA is dedicated to providing public transit service within the City and to other parts of the region that is convenient, effective, safe, and efficient. SFMTA employees are our most valuable resource. It is our policy (1) to take appropriate action to assure that employees are not impaired in their ability to perform assigned duties in a safe, productive, and healthy manner; (2) to foster and maintain a drug and alcohol-free environment for all employees and patrons; (3) to prohibit the unlawful manufacture, distribution, dispensing, possession, or use of controlled substances; and (4) to encourage employees to voluntarily seek professional assistance whenever personal problems, including alcohol or drug use, may adversely affect their ability to perform their assigned duties.

To achieve the goal of a substance-free workplace, this policy incorporates three integrated components:

A. Prevention through education and training: -- *Education and training will consistently communicate and clarify this policy to all employees, assist employees in recognizing substance abuse problems and in finding solutions to those problems.*

B. Detection, deterrence and enforcement: Under Federal law, all safety-sensitive employees are subject to pre-employment, reasonable suspicion, post-accident, random, return-to-duty, and follow-up drug and alcohol testing. Applicants for Safety-Sensitive positions will not be hired nor will current employees be assigned to Safety-Sensitive Functions unless they pass a drug test.

C. Treatment and opportunities for rehabilitation: *Alcohol and drug abuse are recognized as diseases that can be treated. The Agency promotes a voluntary rehabilitation program to encourage employees to seek professional assistance through SFMTA's Peer Assistance Program or the City's Employee Assistance Program (EAP) prior to testing positive for drugs or alcohol, without fear of discipline.*

Portions of this Policy marked with a single asterisk () are not strictly FTA-mandated, but reflect current Agency employment policy.

2.0 PURPOSE

The purpose of this Policy is to assure worker fitness for duty and to protect our employees, passengers, and the public from the risks posed by the use of alcohol and prohibited drugs (as defined below). This policy complies with all applicable Federal regulations governing workplace anti-drug programs in the transit industry. The Federal Transit Administration (FTA)

of the U.S. Department of Transportation has adopted 49 CFR Part 655, which mandates urine drug and breath alcohol testing for employees performing Safety-Sensitive Functions. These regulations also prevent Performance of Safety-Sensitive Functions when there is a positive, adulterated, or substituted test result, or other rule violation (e.g., refusal to test). The U.S. Department of Transportation (DOT) has also adopted 49 CFR Part 40, which sets standards for collecting and testing urine and breath specimens. This Policy incorporates these federal requirements for employees performing safety-sensitive functions, as well as other provisions as noted.

In addition, DOT has published 49 CFR Part 29, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA. The City adopted a Drug-Free Workplace policy for all of its employees in 1989. California passed a similar version of the federal law, the Drug-Free Workplace Act of 1990 (Gov't Code §§ 8350 et seq.). This Policy reiterates the requirements of the federal regulations; these requirements will be enclosed by double asterisks (**).

If any provision of an existing Agency policy, rule or resolution is inconsistent or in conflict with any provision of this Policy or the DOT/FTA Rules, this Policy and the FTA Rules shall take precedence; if any provision of this Policy is inconsistent or in conflict with the FTA Rules, the FTA Rules shall take precedence.

3.0 CONSEQUENCES OF MISUSE/ABUSE:

The cost of substance misuse/abuse is devastating to society, the workplace, the family and individuals. Two thirds of all homicides are committed by people who use drugs or alcohol prior to the crime. Two-thirds of all Americans will be involved in an alcohol-related accident during their lifetimes.

The medical costs of illnesses related to substance misuse/abuse are staggering. Each year 30,000 people will die due to alcohol-caused liver disease. Another 10,000 will die due to alcohol-induced brain disease or suicide.

Besides the very real human costs just described, substance-abusing employees create very real business costs and legal liabilities for their employers:

- Direct and measurable costs, such as the additional health care benefits claimed by substance abusers.
- Less tangible and difficult-to-measure costs, such as the negative impact on employee morale or the diminished creativity of substance-abusing employees.
- Potential costs or “liabilities,” such as the potential costs of a lawsuit filed by an injured party after an accident caused by an impaired employee.

*SFMTA’s Substance Abuse Program has several components to promote a drug-free workplace

and comply with FTA regulations:

- An expanded Substance Abuse Policy;
- An employee education program to alert employees to the dangers of alcohol and other drugs;
- An education program for management, required for all supervisors, to assist them in understanding SFMTA policy, knowing available resources, and carrying out their responsibilities as they relate to employee substance abuse;
- A voluntary Peer Assistance Program to encourage early intervention;
- A contract for EAP services;
- A Substance Abuse Professional to work with employees who test positive.

4.0 DEFINITIONS

4.1 Accident. An occurrence associated with the operation of a vehicle, if as a result:

- (a) An individual dies; or
- (b) An individual suffers bodily injury and immediately receives medical treatment away from the scene of the Accident; or
- (c) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van, or automobile, one or more vehicles (including non-FTA funded vehicles) incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or
- (d) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.

4.2 Adulterated Specimen. A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

4.3 Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol. (The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.)

4.4 Cancelled Test. A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which 49 CFR Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

4.5 Contractor. A person or organization that provides a safety-sensitive service for a recipient, subrecipient, employer, or operator consistent with a specific understanding or arrangement. The understanding can be a written contract or an informal arrangement that reflects an ongoing relationship between the parties.

4.6 Covered Employee. A person, including an applicant or transferee, who performs or will perform a safety-sensitive function for SFMTA. This includes certain volunteers, as defined in Section 5.1.

4.7 Dilute Specimen. A specimen with creatinine and specific gravity values that are lower than expected for human urine.

4.8 Direct Observation. Collection of a urine specimen performed while under the observation of a Collector of the same gender as the employee providing the specimen, under the circumstances and according to the provisions set forth in 49 CFR Section 40.67

4.9 DOT. The United States Department of Transportation.

4.10 Employer. A recipient or other entity that provides mass transportation service or which performs a safety-sensitive function for such recipient or other entity. This term includes subrecipients, operators, and contractors.

4.11 FTA. The Federal Transit Administration, an agency of DOT.

4.12 Invalid Drug Test. The result of a drug test for a urine specimen that contains an unidentified adulterant or an unidentified substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

4.13 Legally Prescribed Drug. A controlled substance (on Schedules II through IV of the Controlled Substance list) that is authorized for patient usage by a physician or medical practitioner.

4.14 Medical Review Officer (MRO). A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

4.15 Negative Dilute. A test result that is negative but meets the dilute criteria.

4.16 Non-negative Drug Test. A test result found to be Adulterated, Substituted, Invalid, or positive for drug/drug metabolites.

4.17 Performing a Safety-Sensitive Function. A covered employee is considered to be performing a safety-sensitive function at any time he or she is actually performing, ready to perform, or immediately available to perform such functions.

4.18 Primary Specimen. In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing.

4.19 Refusal to Submit. A refusal to take a drug test as set out in 49 CFR Section 40.191 or an alcohol test as set out in 49 CFR Section 40.261.

4.20 Safety-Sensitive Function. Any of the following duties, when performed by employees of recipients, subrecipients, operators or contractors:

- (a) Operating a revenue service vehicle, whether or not in revenue service;
- (b) Operating a non-revenue service vehicle, when required to be operated by a holder of a Commercial Driver's License;
- (c) Controlling dispatch or movement of a revenue service vehicle;
- (d) Maintaining (including repairs, overhaul, and rebuilding) a revenue service vehicle or equipment used in revenue service; or
- (e) Carrying a firearm for security purposes.

4.21 Service Agents. Any person or entity, other than an employee of the employer, who provides services specified in 49 CFR Part 40 to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not

limited to, collectors, BATs, laboratories, MROs, and SAPs. See Exhibit D for a list of Service Agents hired or under contract to SFMTA.

4.22 Split Specimen. In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

4.23 Substance Abuse Professional (SAP). A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

4.24 Substituted Specimen. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

5.0 APPLICABILITY

5.1 Covered Employees. This Policy applies to all Covered Employees, including paid part-time employees, who perform or could be called upon to perform any Safety-Sensitive Function. The Policy also applies to volunteers who: (a) are required to hold a commercial driver's license to operate a vehicle, or (b) Perform a Safety-Sensitive Function for SFMTA and receive remuneration in excess of his or her actual expenses incurred while engaged in the volunteer activity. Additionally, this policy applies to contractors who perform Safety-Sensitive Functions. For both drug and alcohol testing, this Policy applies during off-site lunch periods or breaks when an employee is scheduled to return to work.

A list of Safety-Sensitive positions is attached as Exhibit B. Participation in the prohibited substance testing program as described below is a requirement of each covered employee and therefore a condition of employment.

5.2 Other SFMTA Employees. ****All SFMTA employees are subject to the provisions of the Drug-Free Workplace Act of 1988 (see Sections 6.1 of this Policy).****
Visitors, vendors, and contractor employees on transit premises will not be permitted to conduct transit business if found to be in violation of the provisions of Section 8.1 of this Policy.

5.3 Contractors. Employees of SFMTA contractors who perform Safety-Sensitive duties for SFMTA are subject to the same FTA and DOT regulations. However, these contractors are not required to implement the provisions of the Drug-Free Workplace Act of 1988.

6.0. OPPORTUNITIES FOR REHABILITATION

To promote a drug- and alcohol-free workplace, this Policy includes two types of rehabilitation programs, voluntary rehabilitation and rehabilitation after a positive test result or refusal to submit to a test.

***6.1. Voluntary Rehabilitation.** An employee who has a drug and/or alcohol abuse problem and has not been selected for reasonable suspicion, random or post-Accident testing or is not involved in a disciplinary proceeding, may voluntarily refer her or himself to the SFMTA's EAP or the Peer Assistance Program for evaluation and referral to a therapeutic program. The services of the EAP are also available to non-covered employees. Confidentiality, job security and promotional opportunities will be protected and no disciplinary action will be taken for such self-referral. The EAP will evaluate the employee and make a specific recommendation regarding the appropriate treatment. When an employee voluntarily refers her or himself for treatment, the employee may be eligible for sick leave and disability benefits. Employees are encouraged to voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance.*

6.2. Rehabilitation after a Positive Alcohol or Drug Test, or Refusal to Submit to a Test). If there is a verified positive drug test result, a confirmed positive alcohol test result, or a refusal to submit to a test, the substance abuse professional (SAP) will determine if an employee should be referred for substance abuse treatment or education services.

***6.3 Costs of Rehabilitation.** Rehabilitation costs are provided to the extent offered by the Health Service System as part of employee health plans. Employees will be allowed to take accumulated sick leave and vacation leave to participate in any prescribed rehabilitation program.*

7.0 PROHIBITED DRUG USE AND ALCOHOL USE

7.1 Prohibited Drugs. FTA regulations specifically prohibit the use of the following illegal drugs and drug metabolites at all times: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine ("Prohibited Drugs"). Effective October 1, 2010, the following drugs will be considered Prohibited Drugs: methylenedioxymethamphetamine (MDMA), methylenedioxyamphetamine (MDA) and methylenedioxyethamphetamine (MDEA).

7.2 Alcohol. No covered employee shall consume beverages containing alcohol, or substances, including any medication, such that alcohol is present in the body while performing transit business.

7.3 Legally Prescribed and Over the Counter Drugs. Prescription and over the

counter drugs can adversely affect an employee's job performance. However, the use of Legally Prescribed Drugs and over the counter drugs is permitted under the circumstances described below. Legally Prescribed Drugs include those drugs approved and authorized for the employee by a physician for use during the course of medical treatment. For prescription drugs, the physician must issue a written prescription that clearly indicates the employee's name, drug type, and proper dosage.

*If an employee is taking prescription and/or over the counter drugs, he/she must obtain a signed note from a physician that the use of this drug(s) at the prescribed or authorized dosage is consistent with the safe performance of the employee's Safety Sensitive duties. This note must be presented to the employee's supervisor before Performing Safety Sensitive duties.

Failure to provide this note may result in disciplinary action.*

8.0 PROHIBITED CONDUCT

8.1 Manufacture, Trafficking, Possession, and Use of Controlled Substances.

The manufacture, distribution, dispensing, possession, or use of controlled substances in the workplace is prohibited. A "controlled substance" is any illegal drug or any substance identified in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. § 812), and as further defined by 21 CFR 1300.11-1300.15. Any employee engaging in the manufacture, distribution, dispensing, possession or use of a controlled substance on SFMTA premises, in transit vehicles, in uniform, or while on SFMTA business will be subject to disciplinary action, up to and including termination and/or will be required to satisfactorily complete a drug abuse assistance or rehabilitation program as a condition of employment. *Law enforcement shall be notified, as appropriate, where criminal activity is suspected.*

8.2 Notifying SFMTA of Criminal Drug Conviction. **Every employee, including covered employees, must notify SFMTA of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to do so shall subject said employee to disciplinary action, up to and including termination..**

8.3 Alcohol Use/Hours of Compliance.

8.3.1 No Covered Employee shall use alcohol while performing Safety-Sensitive Functions.

8.3.2 No Covered Employee shall report for duty to perform a Safety-Sensitive Function or remain on duty while performing a Safety-Sensitive Function while having an alcohol concentration of 0.04 or greater.

8.3.3 No Covered Employee shall have used alcohol within four hours prior to Performing Safety-Sensitive Functions. Further, if SFMTA has actual knowledge

that a Covered Employee has used alcohol within four hours, the employee will not be permitted to perform or continue to perform Safety-Sensitive Functions.

8.3.4 No Covered Employee shall use alcohol during the hours that they are on call. A Covered Employee who admits to the use of alcohol while in an on call status will not be permitted to perform Safety-Sensitive Functions unless he or she takes and passes an alcohol test.

8.3.5 Covered Employees shall refrain from alcohol use for eight (8) hours following an Accident or until an alcohol test has been administered (see Section 9.3.3.4).

8.3.6 A Safety-Sensitive employee who has a confirmed alcohol concentration of greater than 0.02 but less than 0.04 will be removed from his or her duties for eight hours unless a re-test results in a concentration measure of less than 0.02.

8.4 Refusal to Submit to Testing

A Refusal To Submit to testing (a "Refusal") is treated the same as a positive test. The following conduct constitutes a Refusal.

- Failing to appear for any test within a reasonable time (except for pre-employment tests)
- Failure to remain at the testing site until the test has been completed
- Failure or refusal to take a second test that SFMTA or the collector has directed the employee to take
- Providing false information
- Failure to cooperate with any part of the testing process, including obstructive or abusive behavior (refusal to drink water is not a refusal to test)
- Failure to provide adequate urine or breath and subsequent failure to undergo a medical examination as required for inadequate breath or urine, or failure to provide adequate urine or breath and subsequent failure to obtain a valid medical explanation for the inadequate breath or urine condition
- Failure to sign Step 2 of the alcohol test form (ATF)
- Failure to permit Direct Observation of a urine specimen if the observation is required by 49 CFR Part 40
- Adulterating, Substituting or otherwise contaminating or tampering with a urine specimen as verified by the MRO
- Failure to report as directed for a 90-day pre-employment test
- Leaving the scene of an Accident without just cause prior to submitting to a test
- Admitting to the Collector or the MRO that an employee has adulterated or substituted a urine specimen
- For a collection under Direct Observation, failure to follow the observer's instructions to raise and lower clothing, and to turn around to permit the observer

- Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process

Violation of these provisions shall be in accordance with disciplinary guidelines contained in applicable employee memoranda of understanding.

9.0 TESTING FOR PROHIBITED SUBSTANCES

9.1 Compliance with Testing Requirements. Covered Employees are required to comply with all federal testing requirements, as contained in 49 CFR Parts 40 and 655.

9.2 Procedures for Testing.

9.2.1 General. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities that have been approved by the U.S. Department of Health and Human Services (DHHS) and the U.S. Department of Transportation (DOT). Testing for prohibited drugs and alcohol on covered employees shall be conducted in accordance with the procedures set forth in 49 CFR Part 40. The procedures that will be used to test for the presence of illegal drugs or alcohol misuse are designed to protect the employee and the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct employee.

9.2.2 Testing for Prohibited Drugs. Covered Employees may be tested for Prohibited Drugs at any time while on duty. The staff of the collection facility under contract to SFMTA (the "Collector") shall collect urine samples from Covered Employees to test for prohibited drugs. The Collector will split each urine sample collected into a primary and a Split sample (see Testing Procedures). The urine samples will be sent under seal, with required chain of custody forms, to the laboratory. At the laboratory, specimens are placed in secure storage. An initial drug screen will be conducted on each primary specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/ Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40, as set forth in the attached Exhibit B. The specimen may also be considered Adulterated or Substituted based on criteria established by DOT and DHHS (see Section 9.2.2.1). If the result of the test of the primary specimen is positive, Adulterated, Substituted or Invalid, the primary and Split Specimens will be retained in frozen storage for at least one year.

9.2.2.1 Specimen Validity Testing. Specimen validity testing is the evaluation of the specimen by the laboratory to determine if it is consistent

with normal human urine. Validity testing determines if the specimen contains Adulterants or foreign substances, if the urine was Diluted, or if the specimen was Substituted. Validity testing is conducted on all SFMTA specimens, in addition to the drug testing described in Section 9.2.2.

9.2.3 Alcohol Testing. Tests for alcohol concentration on Covered Employees will be conducted with a National Highway Traffic Safety Administration (NHTSA)-approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT). If the initial test on an employee indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. For a summary of applicable alcohol threshold levels, see Exhibits C-1 and C-2.

9.2.4 Medical Review Officer (MRO). All drug testing results shall be interpreted and evaluated by an MRO. The MRO shall comply with the drug testing procedures set forth in 49 CFR Part 40. The MRO does not review alcohol test results.

9.2.4.1 MRO Discussion with Employee. When the laboratory reports a confirmed positive, Adulterated, Substituted, or Invalid test, it is the responsibility of the MRO to: (a) within 24 hours after verifying the test, contact the employee and inform him or her of the positive, Adulterated, Substituted, or Invalid test result, (b) afford the employee an opportunity to discuss the test results with the MRO; (c) review the employee's medical history, including any medical records and biomedical information provided; and (d) determine whether there is a legitimate medical explanation for the result, including legally prescribed medication. If the employee indicates that he or she has a medical explanation for the positive, Adulterated, Substituted, or Invalid test, he or she has up to five days to provide this information to the MRO

9.2.4.2. Inability to Contact Employee. The MRO has the authority to verify a positive or Refusal To Test without interviewing the employee if (a) the employee refuses to discuss the test result with the MRO, (b) if SFMTA has successfully directed the employee to contact the MRO, and the employee has not made contact with the MRO within 72 hours, (c) if neither the MRO nor SFMTA has made contact with the employee within 10 days of the date that the MRO received the test result from the laboratory.

9.2.4.3 MRO Determination. The MRO shall not convey test results to SFMTA until the MRO has made a definite decision that the test result was positive, Adulterated, Substituted, Invalid, or negative. The MRO may request the laboratory to conduct additional analysis of the original

sample in order to verify the accuracy of the test result.

9.2.4.4. MRO Report. The MRO will report the test as either negative, positive, a Refusal due to Adulteration or Substitution, or Cancelled (Invalid). When the MRO reports the results of the verified positive test to SFMTA, the MRO will disclose the drug(s) for which there was a positive test. The MRO will also provide additional, clarifying information to SFMTA for tests that are confirmed as a refusal due to Adulteration or Substitution or Cancelled. The MRO may only reveal the quantitative amount of a positive drug test result to the employer, the employee, or the decisionmaker in a lawsuit, grievance or other proceeding initiated by the employee and arising from a verified positive drug test result.

9.2.4.5 Split Specimen. When the MRO has verified a test a positive or as a Refusal To Test due to Adulteration or Substitution, the MRO shall inform the employee that he or she has 72 hours to request a test of the Split Specimen.

9.3 Types of Testing. 49 CFR Part 655 requires the following types of testing for Covered Employees: pre-employment, pre-promotion or transfer, reasonable suspicion, post-Accident, random, return-to-duty, and follow-up testing.

9.3.1 Pre-employment, Transfer Testing.

9.3.1.1 Pre-employment Tests. All applicants for Safety-Sensitive positions shall undergo urine drug testing prior to employment and within 90 days prior to performing Safety-Sensitive duties for the first time. Receipt by SFMTA of a negative test result is required prior to the employee being placed on the payroll. *A positive, Adulterated, or Substituted test will result in a decision not to hire, and the applicant's name will be removed from the list of eligibles for Safety-Sensitive positions. SFMTA will not consider any future application from the applicant for at least two years unless the applicant agrees to submit to a hair test that yields a negative result.* If the MRO Cancels a pre-employment test, the applicant shall be subject to another drug test.

9.3.1.2 Transfer Testing. Employees who are being considered for transfer to Safety-Sensitive positions from non-Safety-Sensitive positions will be required to undergo a drug test. An employee with a confirmed positive drug test as certified by the MRO will be disqualified from immediate transfer. *An employee who tests positive may reapply after six (6) months if he/she has successfully completed the SAP recommendations and has a negative return-to-duty test.*

9.3.1.3 Employees on Leave. When an applicant or covered employee

(a) has not performed a Safety-Sensitive Function for 90 consecutive calendar days regardless of the reason, and (b) has not been in the random pool during that 90-day period, the individual must take another pre-employment test with a verified negative result.

9.3.1.4 Prior Positive Tests or Refusals to Submit. When an applicant or Covered Employee has previously failed any DOT-required test, the individual must provide proof to SFMTA that he or she has successfully completed the SAP referral, evaluation and treatment process. SFMTA will not consider hiring any person who tested positive or Refused to submit to testing for a minimum of two years following the positive test.

9.3.2 Reasonable Suspicion Testing.

9.3.2.1 Federally Mandated Testing All Covered Employees shall be subject to reasonable suspicion testing, to include urine and/or breath testing when there are reasons to believe that the Covered Employee has used a Prohibited Drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made on the basis of contemporaneous, articulable, and specific observations concerning the appearance, behavior, speech or body odors of the employee. Only supervisors who are trained to detect and document the signs and symptoms of drug and alcohol use will be authorized to make reasonable suspicion determinations.

Reasonable suspicion tests for the presence of alcohol shall only be made just prior, during, or immediately after performance of a Safety-Sensitive Function, based on observations made during, just preceding, or just after the period of the workday that the covered employee is required to be in compliance. Additionally, a reasonable suspicion alcohol test should be conducted within two hours of the determination to test. An alcohol test cannot be performed if it has not been completed within eight hours of the determination to test.

9.3.3 Post-Accident Testing.

9.3.3.1 Fatal Accidents. As soon as practicable following an Accident that involves the loss of human life, SFMTA will conduct drug and alcohol tests on each surviving Covered Employee operating the mass transit vehicle at the time of the Accident. SFMTA will also conduct drug and alcohol tests on any covered employees whose performance could have contributed to the Accident, as determined by the onsite SFMTA supervisor using the best information available at the time of the decision.

9.3.3.2 Non-Fatal Injury Accidents. As soon as practicable following a non-fatal Accident in which a mass transit vehicle is involved, SFMTA will conduct drug and alcohol tests on each Covered Employee operating the mass transit vehicle at the time of the Accident unless SFMTA determines, using the best information available at the time, that the covered employee's performance can be completely discounted as a contributing factor to the Accident. Additionally, SFMTA shall test any other Covered Employee whose performance SFMTA determines could have contributed to the Accident.

9.3.3.3 Vehicle Damage. With respect to Accidents involving vehicle damage, all Covered Employees shall be tested in the following circumstances:

- (a) In an Accident involving a **road surface vehicle** (e.g., bus, van, automobile), if any vehicle involved in the incident is disabled and must be towed from the scene, any Covered Employee operating the mass transit vehicle shall be tested. Additionally, SFMTA shall test any other Covered Employee whose performance SFMTA determines could have contributed to the Accident.
- (b) In an Accident involving **another type of mass transit vehicle** (e.g., rail car, trolley bus, streetcar, cable car), if the mass transit vehicle is removed from revenue service, any Covered Employee on duty in the vehicle shall be tested unless SFMTA determines that the employee's performance can be completely discounted as a contributing factor to the Accident. Additionally, SFMTA shall test any other covered employee whose performance SFMTA determines could have contributed to the Accident.

9.3.3.4 Procedure. Following an Accident, all Covered Employees subject to testing shall remain readily available for testing. An employee who fails to remain readily available, including notifying a supervisor of his or her location if he or she leaves the scene of the Accident prior to submitting for testing, may be deemed to have Refused to Submit to testing.

The drug test shall occur as soon as possible, but not later than 32 hours after the Accident. An alcohol test must be attempted within two hours after the Accident. If the employee is not tested within two hours, a report must be filed documenting why the test was not performed within two hours. If an alcohol test is not administered within eight hours of the Accident, SFMTA shall cease attempts to test and shall update the report to document the reasons why the test was not conducted. Nothing in this section shall delay medical attention for the injured following an Accident

or prohibit an employee from leaving the scene of an Accident for the period necessary to obtain assistance in responding to the Accident or to obtain necessary emergency medical care when appropriate approval is given.

9.3.4 Random Testing. Covered Employees will be subject to unannounced, random drug and alcohol testing in accordance with FTA regulations. Each Covered Employee shall be in a pool from which a minimum of 25% random selection is made for drug testing and a minimum of 10% for alcohol testing annually. Each such employee shall have an equal chance at selection and shall remain in the pool after being tested. The basis for random selection shall be by a scientifically valid random number generation method initiated by computer. A Covered Employee shall only be randomly tested for alcohol while the employee is performing Safety-Sensitive Functions, just before the employee is to perform Safety-Sensitive Functions, or just after the employee has ceased performing such functions.

9.3.5 Return-to-Duty Testing. Any Covered Employee who has failed a drug test, tested in at 0.04 or greater on an alcohol test, or who has Refused to Submit to a test, must pass the return-to-duty test ordered by the SAP. The return-to-duty drug test will be performed under Direct Observation as described in 49 CFR Section 40.67. He/she also must have successfully completed the SAP recommendations *and sign a return-to-work agreement.* A positive return-to-duty test counts as a second positive.

In order to be allowed to return to work in his or her Safety-Sensitive position, a Covered Employee must test negative on the SAP-ordered return-to-duty drug test and less than 0.02 on the return-to-duty alcohol test.

9.3.6 Follow-Up Testing. After returning to duty, the employee will be subject to unannounced drug and/or alcohol tests for up to 60 months as determined by the SAP, with a minimum of six tests during the first 12 months. The follow-up drug test will be performed under Direct Observation as described in 49 CFR Section 40.67.

9.4 Testing of Split Specimen. Any Covered Employee who questions a verified positive drug test or a Refusal to Submit to testing because of Adulteration or Substitution has 72 hours from the time of notification to ask the MRO for a test of the Split Specimen. Requests after 72 hours will only be accepted if the delay was due to documentable facts (e.g., serious injury, illness, inability to contact the MRO) that were beyond the control of the employee. This test will be conducted at a different DHHS-certified laboratory. The method of collecting, storing, and testing the Split Specimen will be consistent with the procedures set forth in 49 CFR Part 40. After a positive test, the employee will be immediately removed from his or her Safety-Sensitive Function even if analysis of the split is requested.

The employee will be responsible for the cost of having the Split Specimen tested at the second DHHS laboratory. If the employee does not pay such costs, SFMTA will seek reimbursement for the expense from the employee.

If the Split Specimen is unavailable or appears insufficient for testing, the MRO will Cancel the test and direct SFMTA to send the employee for another test that will be performed under Direct Observation. No advance notice will be given to the employee.

9.5 Consequences of Non-negative Test Result.

9.5.1 Positive Drug or Alcohol Test; Refusal to Submit. Any Covered Employee who has a positive drug test as verified by the MRO, a confirmed alcohol test of 0.04 or greater, or who Refuses to Submit to a test will be removed from Safety-Sensitive Functions immediately, evaluated by a SAP, and informed of educational and rehabilitation resources available.

An employee who tests positive will be offered a disciplinary hearing (Skelly Meeting). The employee has the option to voluntarily waive this hearing for the **first** positive drug or alcohol test if he/she agrees to accept a 30-day suspension in lieu of termination.*

9.5.2 Invalid Drug Test. If the MRO reports to SFMTA that an employee's drug test is Invalid, without a medical explanation that is acceptable to the MRO, the employee will be subject to an immediate re-test under Direct Observation, without advance notice. If the employee has a medical explanation for the Invalid Test that is acceptable to the MRO, the test will be Cancelled, with no further action required.

9.5.3 Dilute Specimen. A drug test result that is positive and Dilute will be treated as positive. All drug test results that are determined to be negative and Dilute will require that the employee take an immediate retest. If the retest yields a second negative Dilute result, the test will be treated as a normal negative test, except in the following situation.

Violation of these provisions shall be in accordance with disciplinary guidelines contained in applicable employee memoranda of understanding.

10. SUBSTANCE ABUSE PROFESSIONAL (SAP)

Any Covered Employee who tests positive or refuses to submit to testing will be evaluated by a SAP. A SAP must be a licensed physician, psychologist, social worker, certified employee assistance professional, or nationally certified addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

The SAP will evaluate each employee by conducting a face-to-face assessment to determine what assistance the employee needs in resolving problems associated with drug abuse or alcohol misuse. If an employee is allowed to return to duty, he or she must properly follow the rehabilitation program prescribed by the SAP.

11.0 RETURN-TO-WORK AGREEMENTS

The SAP will provide a written release to the appropriate division certifying the employee's eligibility to be considered for return to Safety-Sensitive duty only after the employee has signed a return-to-work agreement. The return-to-work agreement shall outline the terms and conditions of continuing care.

12.0 COMPLIANCE WITH BACKGROUND CHECK REQUIREMENTS

All applicants and employees (transfers) applying for Safety-Sensitive positions are required to sign a written consent to allow SFMTA to obtain the following information regarding the applicant/employee's DOT drug and alcohol testing history for the previous two years:

- Alcohol tests with a result of .04 or higher
- Verified positive drug tests
- Refusals to be tested, including verified Adulterations and Substitutions
- Other violations of DOT drug and alcohol testing regulations
- Documentation of the employee's successful completion of return-to-duty requirements and follow-up tests

Information will be obtained from all DOT-regulated employers who employed the applicant/employee transfer for a period of two years prior to the date of the application. Such employers will be asked to include any alcohol and test information obtained from previous employers or other applicable DOT agency regulations. For example, if a former employer has information from other employers (within the two-year period), that employer is obligated to provide that information to SFMTA.

Additionally, the applicant or covered employee must disclose if they have, within the prior two years, ever failed a pre-employment drug or alcohol test for an employer that did not hire them.

13.0 TRAINING AND EDUCATION

All Covered Employees shall participate in a minimum one-hour training session designed to meet FTA requirements by learning about the effects and consequences of drug use on personal health, safety and the work environment.

For those supervisors participating in reasonable suspicion testing, there will be at least two

hours of training to explain the criteria for reasonable suspicion determinations and testing, including at least an hour on the physical, behavioral and performance indicators of probable drug use and another hour on the physical, behavioral, speech and performance indicators of probable alcohol misuse.

Initial training sessions will be re-enforced with educational materials and meetings. Further, employees shall be provided with SFMTA's EAP telephone number.

14.0 RECORDS: CONFIDENTIALITY

14.1 Access to Records. A Covered Employee is entitled, upon written request, to review and obtain copies of any records relating to the employee's drug and alcohol testing (excluding follow-up testing plan) and to provide information to dispute the results. However, the results of individual drug or alcohol tests shall not be released by SFMTA to anyone other than the employee without express written authorization of the tested individual. The only exceptions are as follows:

- (a) Release to the collection facility, testing laboratory, MRO or SAP, or designee;
- (b) Pursuant to a lawful court order or other law requiring disclosure;
- (c) In connection with an SFMTA disciplinary, grievance, arbitration or other legal proceeding initiated by or on behalf of the individual and arising from a certified positive drug or alcohol test or from SFMTA's determination that the employee engaged in conduct prohibited under the FTA rules.
- (d) To the Secretary of Transportation, any DOT agency with regulatory authority over the employer or any of its covered employees, or to a State oversight agency authorized to oversee rail fixed guideway systems.
- (e) When requested by the National Transportation Safety Board as part of an Accident investigation, SFMTA shall disclose information related to its administration of a post-Accident drug or alcohol test administered following the Accident under investigation.
- (f) When requested by a State oversight agency required to certify to FTA compliance with drug and alcohol testing procedures of 49 CFR Parts 40 and 655.

Access to an employee's records retained by SFMTA shall not be contingent upon the receipt of payment for the production of those records. However, the MRO, laboratory, and other service agents may charge for producing records for the employee as long as those charges are consistent with 49 CFR Part 40.

14.2 Records Maintained. SFMTA shall maintain records of its substance abuse program in a secure location with controlled access. Records held by SFMTA or its

service agents shall be maintained as follows: (a) results of negative drug tests and alcohol tests less than .02 -- one year; (b) records of collection and training, records of inspection, calibration, and maintenance of EBTs -- two years; (c) records of background checks -- three years; (d) records of information obtained from previous employers concerning drug and alcohol test results, records of verified positive drug test results and alcohol tests .02 or greater, documentation of Refusals including Adulterations and Substitutions, referrals to the SAP and evaluations, all follow up tests and schedules of follow up tests, MIS reports to FTA -- five years.

Service agents maintain all records relating to urine specimen analysis in confidence for at least two years. Service agents may not disclose such records to anyone other than the employer, the employee, or the decision maker in a lawsuit, grievance or other proceeding initiated by the employee and arising from a verified positive drug test result.

15.0 SYSTEM CONTACT

Any questions regarding this policy or any other aspect of SFMTA's Substance Abuse Management Program should be directed to the office of the following transit system representative:

Name:	William "Reggie" Smith, CEAP,CSAP
Title:	Substance Abuse Program Manager
Address:	One South Van Ness Ave. 6 th floor San Francisco, CA 94103
Telephone:	(415) 701-5018

16.0 REVISIONS TO THE POLICY AND PROGRAM

This policy and program is subject to revision.

EXHIBIT A

DRUG AND ALCOHOL SERVICE AGENTS

ON-SITE COLLECTIONS

City Services Inc.
2425 Church Lane
San Pablo, CA 94806
(415) 410-9047

OFF-SITE COLLECTIONS

Accurate C&S DNA Testing Services
275 Fifth Street
San Francisco, CA 94103
(415) 536-3800

LABORATORY

Phamatech Laboratories & Diagnostics
10151 Barnes Canyon Road
San Diego, CA 92121
(888) 635-5840

MEDICAL REVIEW OFFICER

University Services, Inc.
10551 Decatur Road , Suite 200
Philadelphia, PA 19154
(800) 624-3784

SUBSTANCE ABUSE PROFESSIONAL (SAP)

William "Reggie" Smith
One South Van Ness, 6th Floor
San Francisco, CA 94103
(415) 701-5018

EXHIBIT B

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SAFETY-SENSITIVE CLASSIFICATIONS**

OPERATIONS DIVISION

BASIS FOR TESTING:

- A - Maintaining or repairing a revenue service vehicle or equipment used in revenue service.
- B - Operating a revenue service vehicle.
- C - Controlling dispatch or movement of a revenue service vehicle.
- D - Operating a non-revenue service vehicle when required to be operated by a holder of a Commercial Driver's license.
- E - Carrying a firearm for security purposes.

Class	Title	Basis for Testing	Union
7454	Traffic Signal Operator	C	1021
9139	Transit Supervisor	C	200
9140	Transit Manager I	C	200
9141	Transit Manager II	C	200
9142	Transit Manager III	C	MEA
9143 *	Transit Manager IV	C	MEA
9150	Train Controller	C	200
9163	Transit Operator	B	TWU-250A
9184 *	Deputy General Manager (Operations)	C	MEA
9916 *	Public Service Aide	C	Unrepresented

All above supervisors and managers may in the course of their duties control the movement of revenue service vehicles and so are included in the testing program.

* Some employees in these classifications are non-Safety Sensitive.

MAINTENANCE DIVISION

Class	Title	Basis for Testing	Union
7110	Mobile Equipment Assistant Supervisor	D	3
7126	Mechanical Shop Equipment Supervisor	C	1414
7130	General Superintendent Facilities Maintenance	C	MEA
7212	Automotive Transit Equipment Superintendent	C	MEA
7214	Electrical Transit Equipment Supervisor	C	6
7215	General Laborer Supervisor	C	261
7216	Electrical Transit Shop Supervisor I	C	6
7223	Cable Machinery Supervisor	C	39
7228	Automotive Transit Shop Supervisor I	C	1414
7235	Transit Power Line Supervisor I	C	6
7241	Senior Maintenance Controller	C	1414
7244	Power Plant Supervisor I	C	6
7249	Automotive Mechanic Supervisor	C	1414
7251	Track Maintenance Worker Supervisor I	C	853
7253	Electrical Transit Mechanic Supervisor I	C	6
7254	Automotive Machinist Supervisor I	A	1414
7255	Powerhouse Electrician Supervisor I	C	6
7264	Automotive Body & Fender Worker Supervisor I	C	1414
7279	Powerhouse Electrician Supervisor II	C	6
7286	Wire Rope Cable Maintenance Supervisor	E	39
7306	Automotive Body & Fender Worker	A	1414
7308	Cable Splicer	A	6
7313	Automotive Machinist	A	1414
7318	Electronic Maintenance Technician	A	6
7322	Automotive Body & Fender Worker Assistant Supervisor	C	1414
7325	General Utility Mechanic	A	1414
7326	Glazier	A	718
7328	Operating Engineer Universal	D	6
7329	Electronic Maintenance Technician Assistant Supervisor	A	6
7334	Stationary Engineer	A	39
7338	Electrical Line Worker	A	6
7340	Maintenance Controller	C	1414
7345	Electrician	A	6
7355	Truck Driver	D	853
7364	Powerhouse Operator	C	6
7365	Senior Powerhouse Operator	C	6
7366	Transit Power Line Worker	A	6
7371	Electrical Transit System Mechanic	A, B	6

Class	Title	Basis for Testing	Union
7380	Electrical Transit Mechanic Assistant Supervisor	C	1414
7381	Automotive Mechanic	A, B	1414
7382	Automotive Mechanic Assistant Supervisor	C	6
7390	Welder	A	6
7408	Assistant Powerhouse Operator	C	6
7409	Electrical Transit Service Worker	A, B	*
7410	Automotive Service Worker	A, B	TWU-250A
7412	Automotive Service Worker Assistant Supervisor	C, B	200
7430	Assistant Electronic Maintenance Technician	A	6
7432	Electrical Line Helper	A	6
7458	Switch Repairer	A	261
7472	Wire Rope Cable Maintenance Mechanic	A	39
7514	General Laborer	A	261
7540	Track Maintenance Worker	A	261
9102	Transit Car Cleaner	A	1021
9104	Transit Car Cleaner Assistant Supervisor	C, B	1021
9106	Transit Car Cleaner Supervisor	C, B	*

EXHIBIT C

(Effective October 1, 2010)

Pursuant to U.S. Department of Transportation regulations, following are the drugs to be tested for, and the threshold levels of each test which the SFMTA is required to accept.

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites	50 ng/mL	THCA ¹	15 ng/mL
Cocaine metabolites	150 ng/mL	Benzoyllecgonine	100 ng/mL
Opiate metabolites - Codeine	2000 ng/mL	Codeine	2000 ng/mL
Opiate metabolites - Morphine ²	2000 ng/mL	Morphine	2000 ng/mL
Opiate metabolites - 6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL
Amphetamines: ³ AMP	500 ng/mL	Amphetamine	250 ng/mL
Amphetamines: ³ MAMP ⁴	500 ng/mL	Methamphetamine ⁵	250 ng/mL
Amphetamines: ³ MDMA ⁶ MDMA	500 ng/mL	MDMA	250 ng/mL
Amphetamines: ³ MDMA ⁶ MDA ⁷	500 ng/mL	MDA ⁷	250 ng/mL
Amphetamines: ³ MDMA ⁶ MDEA ⁸	500 ng/mL	MDEA ⁸	250 ng/mL
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL

¹ Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

² Morphine is the target analyte for codeine/morphine testing.

³ Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff.

⁴ Methamphetamine is the target analyte for amphetamine/methamphetamine testing.

⁵ To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL.

⁶ Methylenedioxyamphetamine (MDMA).

⁷ Methylenedioxyamphetamine (MDA).

⁸ Methylenedioxyamphetamine (MDEA).

ALCOHOL

(Includes ethanol, methanol, isopropanol)

Breath Alcohol Concentration

(expressed in terms of grams of alcohol per 210 liters of breath)

Initial Screen	Confirmatory (given if 0.02 or greater of initial screen)
Under 0.02 Perform safety-sensitive function	0.02 to less than 0.04 Employee may not perform safety-sensitive function

EXHIBIT C

(Effective until September 30, 2010)

Pursuant to the Federal Department of Transportation regulations, following are the drugs to be tested for, and the threshold levels of each test which the Municipal Transportation Agency is required to accept:

<i>Drug or Metabolite</i>	<i>Urine Initial Test Cut off (ng/ml) *</i>	<i>Confirmatory (GC/MS) Test Cut off (ng/ml)*</i>
1. Cannabinoids (Marijuana)	50	15 <u>2/</u>
2. Cocaine	300 <u>1/</u>	150 <u>3/</u>
3. Opiates (narcotics such as heroin, morphine, codeine, and other medicinal narcotics)	300	300
4. Amphetamines (racemic amphetamine, dextroamphetamine, methamphetamine)	1,000	500 <u>4/</u>
5. Phencyclidine	25 ng	25 ng

Note: * nanograms/milliliter

1/ 25 ng/ml if immunoassay specific for free morphine

2/ Delta - 9 - tetrahydrocannabinol -9- carboxylic acid

3/ Benzoylcegonine

4/ Specimen containing methamphetamine must also contain amphetamine at a concentration greater than or equal to 200 ng/ml

ALCOHOL

(Includes ethanol, methanol, isopropanol)

Breath Alcohol Concentration

(expressed in terms of grams of alcohol per 210 liters of breath)

<u>Initial Screen</u>	<u>Confirmatory</u> <u>(given if 0.02 or greater or initial screen)</u>
Under 0.02 Perform safety-sensitive function	0.02 to less than 0.04--- employee may not

EXHIBIT D

CONSEQUENCES OF POSITIVE DRUG/ALCOHOL TESTS (9163's)

Testing Types	Substance	Assumption of Results	Employee Status Waiting for Results	1 st Positive	2 nd Positive Within 5 Years
Pre-Employment	Drug	N/A	N/A	Not hired, may not reapply for two years.	Not hired, may not reapply.
Random - Drug	Drug	Assumed Negative	On Duty	Removed from Duty ¹ No pay, ² Referred to SAP SAP Recommendation for Treatment, Return to Duty Test, ³ Follow-Up Testing, Subject to Disciplinary Action.	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.
Random - Alcohol	Alcohol > or = .04	Positive	Immediate Results	Removed from Duty ¹ No pay, ² Referred to SAP SAP Recommendation for Treatment, Return to Duty Test, ³ Follow-Up Testing, Subject to Disciplinary Action.	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.
Post Accident	Drug or Alcohol	Assumed Negative	On Duty	Removed from Duty ¹ No pay, Referred to SAP, SAP Recommendation for Treatment, Return to Duty Test, ³ Follow-Up Testing, Subject to Disciplinary Action. ⁴	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.

- 1 Any employee who is subsequently determined to be the subject of a false positive or under reasonable suspicion tests negative shall be made whole for any wages and benefits lost.
- 2 Employee may use accumulated sick/vacation pay for rehabilitation program.
- 3 Employee may not return to work until SAP certifies them capable of returning to their safety-sensitive job.
- 4 Disciplinary action to be a 30-day suspension except that a first positive relating to an incident resulting in death, serious bodily injury or substantial destruction of property warrants immediate discharge.

Testing Types	Substance	Assumption of Results	Employee Status Waiting for Results	1st Positive	2nd Positive Within 5 Years
Reasonable Suspicion	Drug or Alcohol	Assumed Positive	Off Duty Until Results Received	Removed from Duty ¹ No pay, Referred to SAP, Return to Duty Test, ³ Follow-Up Testing, Subject to Disciplinary Action. ⁴	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.
Return-to-Duty	Drug or Alcohol	Assumed Negative	Off Duty Until Results Received	N/A	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.
Follow-Up Testing Minimum 6 in 1 year up to 60 months, determined by SAP	Drug or Alcohol	Assumed Negative	On Duty	N/A	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.

Issues	Substance	1st Occurrence	2nd Occurrence Within 5 Years
Refusal to Test	Drug or Alcohol	Removed from Duty ¹ No pay. Referred to SAP For treatment recommendation. Return to duty and follow-up testing. Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant
Failure to Comply with Treatment Program or Return to Work Agreement	Drug or Alcohol	Off work ¹ No pay. Referred to SAP for treatment recommendation. Return to duty and follow-up testing. Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant
Alteration of Specimen	Drug or Alcohol	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant. ¹	Termination

EXHIBIT D

**CONSEQUENCES OF POSITIVE DRUG/ALCOHOL TESTS
(Classifications Other Than 9163)**

Testing Types	Substance	Assumption of Results	Employee Status Waiting for Results	1st Positive	2nd Positive Within 5 Years
Pre-Employment	Drug	N/A	N/A	Not hired, may not reapply for two years.	Not hired, may not reapply.
Random - Drug	Drug	Assumed Negative	On Duty	Removed from Duty ¹ No pay, ² Referred to SAP SAP Recommendation for Treatment, Return to Duty Test, ³ Follow-Up Testing, Subject to Disciplinary Action.	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.
Random - Alcohol	Alcohol > or = .04	Positive	Immediate Results	Removed from Duty ¹ No pay, ² Referred to SAP SAP Recommendation for Treatment, Return to Duty Test, ³ Follow-Up Testing, Subject to Disciplinary Action.	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.
Post Accident	Drug or Alcohol	Assumed Negative	On Duty	Removed from Duty ¹ No pay, Referred to SAP, SAP Recommendation for Treatment, Return to Duty Test, ³ Follow-Up Testing, Subject to Disciplinary Action. ⁴	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.

1 Any employee who is subsequently determined to be the subject of a false positive or under reasonable suspicion tests negative shall be made whole for any wages and benefits lost.

- 2 Employee may use accumulated sick/vacation pay for rehabilitation program.
- 3 Employee may not return to work until SAP certifies them capable of returning to their safety-sensitive job.
- 4 Disciplinary action to be a 30-day suspension except that a first positive relating to an incident resulting in death, serious bodily injury or substantial destruction of property warrants immediate discharge.

Testing Types	Substance	Assumption of Results	Employee Status Waiting for Results	1st Positive	2nd Positive Within 5 Years
Reasonable Suspicion	Drug or Alcohol	Assumed Positive	Off Duty Until Results Received	Removed from Duty ¹ No pay, Referred to SAP, Return to Duty Test, ³ Follow-Up Testing, Subject to Disciplinary Action. ⁴	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.
Return-to-Duty	Drug or Alcohol	Assumed Negative	Off Duty Until Results Received	N/A	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.
Follow-Up Testing Minimum 6 in 1 year up to 60 months, determined by SAP	Drug or Alcohol	Assumed Negative	On Duty	N/A	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.

Issues	Substance	1st Occurrence	2nd Occurrence within 5 years
Refusal to Test	Drug or Alcohol	Removed from Duty ¹ No pay. Referred to SAP For treatment recommendation. Return to duty and follow-up testing. Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant
Failure to Comply with Treatment Program or Return to Work Agreement	Drug or Alcohol	Off work ¹ No pay. Referred to SAP for treatment recommendation. Return to duty and follow-up testing. Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant.	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant
Alteration of Specimen	Drug or Alcohol	Will be Subject to Termination Except Where Substantial Mitigating Circumstances Warrant. ¹	Termination

**SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
SUBSTANCE ABUSE PROGRAM**

SUBSTANCE ABUSE PROCEDURES

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DRUG SPECIMEN COLLECTION PROCEDURES

THESE COLLECTION PROCEDURES SHALL APPLY TO ALL TYPES OF DRUG TESTING (E.G., RANDOM, REASONABLE SUSPICION, POST-ACCIDENT, ETC.)

1. Collection site(s)/agents shall have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine specimens to a DHHS-certified drug testing laboratory. Collection site(s)/agents shall be qualified/trained in accordance with Federal Regulations.
2. The collection agent will execute standardized chain-of-custody forms. Handling and transportation of urine specimens from one authorized individual or place to another shall always be accomplished through chain-of-custody procedures. Every effort will be made to minimize the number of persons handling specimens. All DOT (FTA) tests for covered employees shall be conducted using DOT chain-of-custody forms. Drug tests conducted under SFMTA's own authority may not use federal chain-of-custody forms.
3. Designated on-site collections areas have been established to protect the privacy of the employee being tested and to comply with federally mandated testing procedures. In emergency situations, such as post-accident testing, an employee restroom may be used. In such a case, a same gender collector may enter the restroom with the employee but will remain outside the stall until the specimen is collected. No unauthorized persons will be permitted in any part of the designated collection area where specimens are collected or stored.
4. The collection agent shall take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure and that information on the urine specimen bottle and on the chain-of-custody form can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:
 - a. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks so the reservoir of water in the toilet bowl remains blue. There shall be no source of water (e.g. no shower or sink) in the enclosure where urination occurs.
 - b. When an individual arrives at the collection site, the collection agent shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection agent shall contact the supervisor of the individual or other SFMTA supervisor who can positively identify the individual. If the individual's identity cannot be established, the collection agent shall not proceed with the collection.
 - c. If the individual fails to arrive at the designated collection site at the assigned time, the collection agent shall contact SFMTA's Designated Employer Representative ("DER") to advise her/him of the no-show status.

- d. The collection agent shall ask the individual to remove any unnecessary outer garments, such as a coat or jacket that might conceal items or substances that could be used to tamper or adulterate the individual's urine specimen. Additionally, the collection agent shall request that the individual empty his or her pockets and display any items in them that could be used to adulterate a specimen. If nothing is there that could be used to adulterate the specimen, the employee may return the items to his/her pockets. The collection agent shall ensure that all personal belongings, such as a purse or briefcase, remain with the employee's clothes, and that these items are secured. The individual may retain his or her wallet.
- e. The individual shall be instructed to wash and dry his/her hands prior to urination.
- f. After washing his/her hands, the individual shall remain in the presence of the collection agent and shall not have access to any water fountain, faucet, soap dispenser, cleansing agent or any other materials that could be used to adulterate the specimen.
- g. The collector shall ensure that the proper chain-of-custody forms are used, as described in Paragraph 2, above.
- h. The collection agent shall provide the individual with a collection container capable of holding at least 45 ml. of urine and direct the employee to go into the room used for urination, provide a specimen of at least 45 ml., not flush the toilet, and return to the collection agency at soon as the employee has completed the void.
- i. In the presence of the donor, the collector shall pour the urine into the two specimen bottles provided, with at least 30 ml. into one bottle for the primary specimen, and at least 15 ml. into the other bottle to be used as the split specimen.
- j. If the individual is unable to provide such a quantity of urine, the collector shall instruct the individual to drink not more than 40 ounces of fluids. Refusal to drink does not constitute a refusal to submit to testing. The individual has up to three hours to provide a complete sample using a fresh collection container. The employee may not leave the test area during the three-hour period and will be monitored during that period by testing personnel. If, after three hours, the employee is still unable to provide an adequate specimen, the insufficient specimen shall be discarded, testing discontinued, and the DER notified. The DER shall refer the employee for a medical evaluation by a physician to develop pertinent information concerning whether the employee's inability to provide a specimen constitutes a refusal to test. In the absence of medical justification, the inability to provide a sample will be treated as a refusal to submit to testing and have the same consequences as a positive test.
- k. The collector shall measure the temperature of the specimen. The measuring device must accurately reflect the temperature of the specimen and not

contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed four minutes. If the temperature of the specimen is outside the range of 32-38C/90-100F that constitutes a reason to believe that the individual may have altered or substituted the specimen. In that case, another specimen shall be collected under direct observation of a same gender collection agent unless the collector is a medical professional. Both specimens shall be forwarded to the laboratory for testing.

- l. Immediately after the specimen is collected, the collection agent shall also inspect the specimen to determine its color/smell and look for any signs of contaminants. Any unusual findings shall be noted on the chain-of-custody form.
- m. Whenever there is reason to believe that an individual has altered or substituted the specimen, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection agent, unless the collection agent is a medical professional. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
- n. Both the collection agent and the individual being tested shall keep the specimen in view at all times prior to its being sealed and labeled.
- o. The collection agent shall complete the chain-of-custody form, label and secure the specimen container, and prepare the specimen for shipment to the laboratory. Specifically, the collection agent shall place the tamper-evident seals on each bottle, then write the date on the seals. The employee must initial the seals after they have been affixed on the bottles.
- p. If the urine specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage. Every effort shall be made to minimize the number of persons handling specimens until the actual shipment is made.
- q. Both bottles shall be shipped to the laboratory in a single shipping container (e.g., plastic bag), together with Copy 1 of the chain-of-custody form.

**CIRCUMSTANCES FOR WHICH COLLECTION BY
DIRECT OBSERVATION MAY BE AUTHORIZED**

THE FOLLOWING CIRCUMSTANCES ARE THE EXCLUSIVE GROUNDS CONSTITUTING A REASON TO BELIEVE THAT THE INDIVIDUAL MAY HAVE ALTERED OR SUBSTITUTED THE SPECIMEN. IF ANY OF THESE CIRCUMSTANCES EXIST, IT WILL BE NECESSARY TO CONDUCT A MONITORED COLLECTION:

1. The employee has presented a urine specimen that falls outside the normal temperature range (32.5°-37.7° C / 90°-100° F) or the original specimen appeared to have been tampered with.
2. The Collecting Agent observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen (e.g. substitute urine in plain view, blue dye in the specimen presented, prosthetic or other device found in the donor's possession).
3. The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to the SFMTA that there was not an adequate medical explanation for the result.
4. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation.
5. The MRO reports that (1) the specimen is invalid and that there was not an adequate medical explanation for the result; or (2) the MRO reported that the original positive, adulterated, or substituted test result had to be cancelled because the split specimen analysis could not be performed.
6. As an employer, the SFMTA must direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.
7. The collector must ensure that the observer is the same gender as the employee. The collector must never permit an opposite gender person to act as the observer. The observer can be a different person from the collector and need not be a qualified collector.
8. If someone else is to observe the collection (e.g., in order to ensure a same gender observer), the collector must verbally instruct that person to follow procedures at paragraphs (9) and (10) below. If the collector is the observer, he or she too must follow these procedures.
9. The observer must request the employee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer, by turning around, that they do not have a prosthetic device. After the observer has determined that the employee does not have such a device, the observer may permit the employee to return clothing to its proper position for observed urination.

10. The observer must watch the employee urinate into the collection container. Specifically, the observer is to watch the urine go from the employee's body into the collection container

PRIOR TO CONDUCTING AN OBSERVED COLLECTION, THE COLLECTOR MUST INFORM EITHER THE SUPERVISOR ACCOMPANYING THE EMPLOYEE OR THE DER IN THE CASE OF A PRE-EMPLOYMENT APPLICANT OF THE REASON FOR THE OBSERVED COLLECTION. THE DER OR COLLECTOR WILL INFORM THE EMPLOYEE OF THE REASON FOR THE MONITORED COLLECTION.

BREATH ALCOHOL TESTING PROCEDURES

THESE COLLECTION PROCEDURES SHALL APPLY TO ALL TYPES OF ALCOHOL TESTING (E.G., RANDOM, REASONABLE SUSPICION, POST-ACCIDENT, ETC.)

Breath alcohol testing shall be conducted by a trained Breath Alcohol Technician (BAT). Testing will be conducted in a manner to ensure the greatest amount of employee aural and visual privacy (mobile or clinic facility). Unauthorized access to the testing area is prohibited. One test will be conducted at a time. The BAT will utilize an Evidential Breath Testing (EBT) device authorized by 49 CFR Part 40.

1. Upon arrival at the testing site (whether on or off MUNI premises) the following procedures will be followed. The employee will be asked to present picture identification for the BAT, or the supervisor accompanying the employee will be asked to verify the identity of the employee.
2. The procedure will be explained to the employee and he/she will be asked to sign Block 2 of the alcohol test form (ATF). A refusal to sign the ATF form will be treated as a refusal to submit to testing. The employee will be immediately removed from duty, instructed to report to his/her supervisor, and advised to contact the Substance Abuse Professional.
3. The BAT will open a sealed mouthpiece in view of the employee and attach it to the EBT.
4. The employee will be instructed to blow into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
5. The results will be shown to the employee and printed out of the EBT.
6. If the results are negative, less than 0.02, the BAT will sign in the appropriate space and release the employee to return to duty. Employees tested under the random testing program will be provided with a return-to-work release form to give to the supervisor.
7. If the screening test results are 0.02 or greater, a confirmation breath test will be performed.
8. The confirmation test must be conducted no less than 15 minutes, but not more than 30 minutes, following the screening test. Between tests, the employee will be instructed not to eat, drink, put anything into his or her mouth, or belch, and must remain with the BAT. The BAT will conduct air blanks until a 0.00 reading is obtained. A new mouthpiece will be provided for the employee. Beginning the confirmation test after 30 minutes has expired does not invalidate the confirmation test results; however, the BAT must document why the confirmation test began after the 30-minute point.
9. If the confirmation test is 0.02 or greater, the DER will be notified, and the employee's

10. If the employee refuses to sign the ATF, provide breath or provide an adequate amount of breath, the test will be terminated and SFMTA will be notified. This is a refusal to submit to testing and will have the same consequences as a positive test. The supervisor will be notified that the employee is not released to return to duty.
11. If a screening or confirmatory test cannot be completed because the individual cannot produce adequate breath (shy breath), additional attempts will be made. A new test is started with a new device test number. An employee who is unable to provide adequate breath for testing will be subject to a medical examination to determine whether a medical condition exists. If the examining physician determines the employee has a medical condition precluding him/her from providing an adequate amount of breath for testing, the physician shall document the finding for SFMTA's files. If the examining physician finds no medical reason for the inability to provide adequate breath for testing, the findings should be documented, and the employee removed from duty. In the absence of medical justification, the inability to provide adequate breath will be treated the same as a refusal to test.

RANDOM TESTING PROCEDURES

The FTA regulations require random testing for prohibited drugs and alcohol for all safety-sensitive employees. Random testing identifies employees who are using drugs or misusing alcohol but are able to use the predictability of other testing methods to escape detection. More importantly, it is widely believed that random testing serves as a strong deterrent against employees beginning or continuing prohibited drug use and misuse of alcohol at SFMTA. SFMTA has developed procedures for notification and collection to best implement the requirements of the federal rules.

These procedures answer common questions regarding random testing: Who is tested? Why are only some individuals tested? When and how do the tests occur?

1. Random drug and alcohol testing applies only to safety-sensitive employees. Identification numbers for all safety-sensitive employees are included in a selection pool.
2. Random drug and alcohol testing is accomplished by a scientifically valid, tamper-proof, computer-generated selection process. A random list of employee numbers will be generated every month by the Substance Abuse MIS staff. A surplus will be randomized to allow for selected employees who are not available. SFMTA determines that "not available" is limited to employees who are not at work due to vacation, sick leave, disability or scheduled time off. Employees who are unavailable will have their names held, and other attempts will be made to test them until the next random selection list is generated. The MIS Personnel triggers the selection list of the month's Operations and Maintenance employees to be scheduled for testing.
3. Once a list is generated, employee numbers are matched with names and the names are sorted by division. The work schedule for each employee is determined. Testing is then scheduled on an unannounced, weekly basis. Testing is conducted on-site by mobile van.

No employee will be removed from the random pool following selection, and every employee will continue to be subject to selection throughout the year. Every employee in the random pool has an equal chance of being selected every time. Employees are only removed from the random pool when they are in rehabilitation programs, permanently transferred to a non-safety-sensitive position, or on extended leave.
4. Random testing will be conducted on all shifts, all times of day, and all days of the week throughout the calendar year. No shift is exempt from testing.
5. The total number of drug tests completed annually must be a minimum of twenty-five percent (25%) of the eligible safety-sensitive employees in the random pool. The total number of alcohol tests completed each year must be a minimum of ten percent (10%) of the number of safety-sensitive employees.
6. Random drug testing may be conducted concurrently with random alcohol testing or at any time during while an employee is on duty. Random alcohol testing will be conducted just before the employee is scheduled to perform a safety-sensitive function, while the

employee is performing safety-sensitive duties or just after the employee performs a safety-sensitive function.

7. Maintenance and Operations supervisors will be notified which employees have been selected for testing. (See Procedures for Random Test Notification). Employees will be notified to stop work, where to report for testing, and who will relieve them, if necessary. Once an employee is notified of his/her selection, he/she must report immediately for the test. If an employee is not notified, a "Failure to Test as Scheduled" form must be completed and signed by the supervisor.
8. The employee must submit to a drug and/or alcohol test, and sign all necessary forms. Failure to cooperate with the collection procedure in any way constitutes a refusal to test, which is considered the same as a positive test result.
9. The employee will be in a paid status throughout random testing. The employee will be removed from duty if the result of the alcohol tests is positive, when a positive drug test result is received, or if the employee refuses to submit to testing.
10. If both alcohol and drug tests are given, the breath alcohol test should be performed first. Immediately thereafter, the urine sample will be collected for the drug test.
11. If there is a confirmed breath alcohol test of between .02 and .039, the employee *will be relieved from duty* immediately until the start of his/her next shift, but not less than eight (8) hours following administration of the test, or until the employee's alcohol concentration measures less than .02.
12. If there is a confirmed positive breath alcohol test (.04 or above), and/or a confirmed positive, refusal, adulterated, or substituted drug test, the employee will be removed from duty and directed to the Substance Abuse Professional (SAP) for an evaluation and referral for rehabilitation or education. The employee cannot return-to-work until he/she has been released by the SAP, completed the return-to-work agreement and successfully completed a return-to-duty test.
13. Employees who test positive for drugs or alcohol, refuse testing, or whose drug test has been adulterated or substituted, will be disciplined in accordance with applicable memoranda of understanding.

PROCEDURES FOR RANDOM TEST NOTIFICATION

1. The MIS staff person will trigger the selection list of the month's Operations and Maintenance employees to be scheduled for testing.
2. The Testing Coordinator will notify the collector of the time and location for testing.
3. Notification of Employees

The Substance Abuse Office will notify the employee's Supervisor/Manager, Division Dispatcher or Inspector.

a. Notification of Operators:

Notification will be by the Division Dispatcher if the operator pulls out of the Division at any time during the work day.

Notification will be by an Inspector, or Inspector Manager, if the operator does not pull out of the Division.

Time of notification must be documented.

b. Notification of Non-Platform Employees:

The Deputy Director of Operations' designee will inform the immediate supervisor of any non-platform employee who is selected for testing the day of the test. This supervisor will then make the notification to the employee.

Time of notification must be documented.

Non-Platform Notification Tree

<u>Notifier</u>	<u>Employee</u>
Director of Trans.	Deputy Director of Operations
Deputy Director of Ops.	Transit Manager 3
Transit Manager 3	Transit Manager 2
Transit Manager 2	Transit Manager 1
Transit Manager 1	9139 Supervisors

c. Notification of Maintenance Employees:

Notification will be by the supervisor/manager on site. Supervisors will be informed the day of the test. Notification will be at the latest possible time to minimize the possibility of employee's learning of testing prior to reporting to work or prior to the collection van arriving on site.

The time of notification must be documented.

- d. Reporting: The employee shall report to the test site immediately.
- 4. SFMTA requires that the "Random Testing Notification Form" (see attached) be completed by the supervisor and signed by the employee.
- 5. The employee cannot "go off sick" or on vacation or leave work after notification.
- 6. Collection personnel shall report "no shows" to the Testing Coordinator.
- 7. The Testing Coordinator shall confirm with the supervisor or Central Control that the employee was notified.
- 8. The Substance Abuse Manager shall notify Operations and Maintenance if an employee fails to report for testing after notification.
- 9. An employee who fails to report for testing shall be removed from duty immediately. This will be treated as a refusal to submit to testing and have the same consequences as a positive test. He/she cannot return to duty until cleared by the SAP.

RANDOM TESTING NOTIFICATION FORM

EMPLOYEE NAME: _____ ID# _____

TIME OF NOTIFICATION : _____ DATE OF TEST: _____

TYPE OF TEST: DRUG ___ ALCOHOL ___ BOTH ___ PHONE: _____

LOCATION OF TEST SITE: _____

_____, under federal regulations for
(Employee's Name)

random drug and alcohol testing of safety-sensitive employees, you have been randomly selected for testing for the presence of prohibited drugs and alcohol. You are hereby notified of that selection. Your signature indicates that you have read and understood the given instructions, agree to take the test and authorize the release of your test results to the SFMTA.

**SAFETY-SENSITIVE EMPLOYEES
STATEMENT TO EMPLOYEES REGARDING REFUSAL TO SUBMIT TO
RANDOM DRUG AND/OR ALCOHOL TESTING**

If you refuse to submit to a random drug and/or alcohol test, refuse to sign the necessary forms, or fail to follow instructions, it will be considered a violation of the random testing procedure and have the same consequence as a positive test. You will be removed from duty and referred to the Substance Abuse Professional for assessment. This information will be forwarded to the Deputy Director of your division.

Employee's Signature

Date

Notifier's Signature

Date

RETURN-TO-DUTY RELEASE

___ Employee has completed all testing requirements and is released to duty.

___ Employee has not completed all testing requirements, or has tested positive for alcohol and is **NOT** released to return to duty:

___ For eight (8) hours or until next shift (0.02-0.039)

___ Until released by Substance Abuse Professional (0.04↑)

Collector's Signature

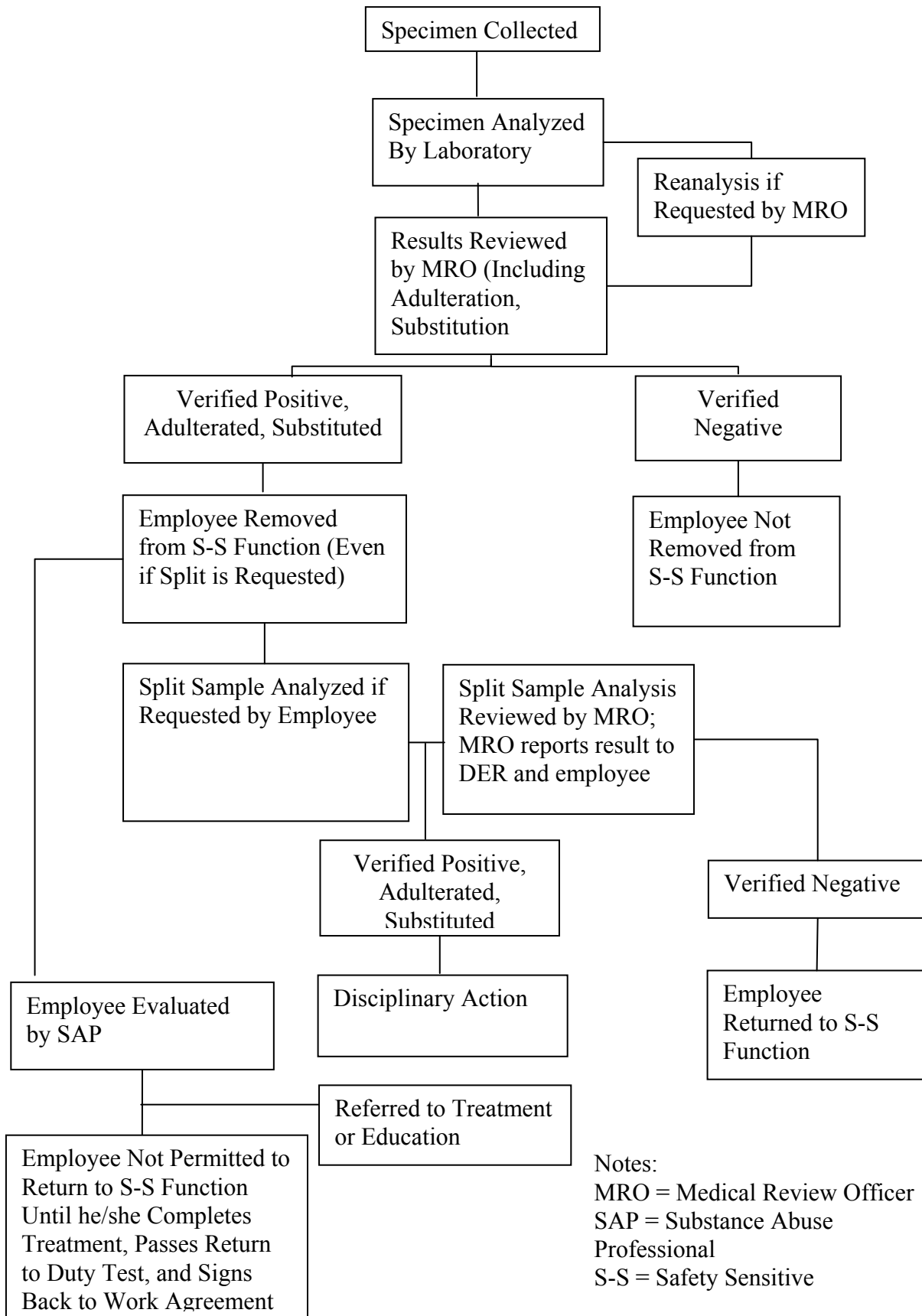
Date & Time Finished

1. White - SAP

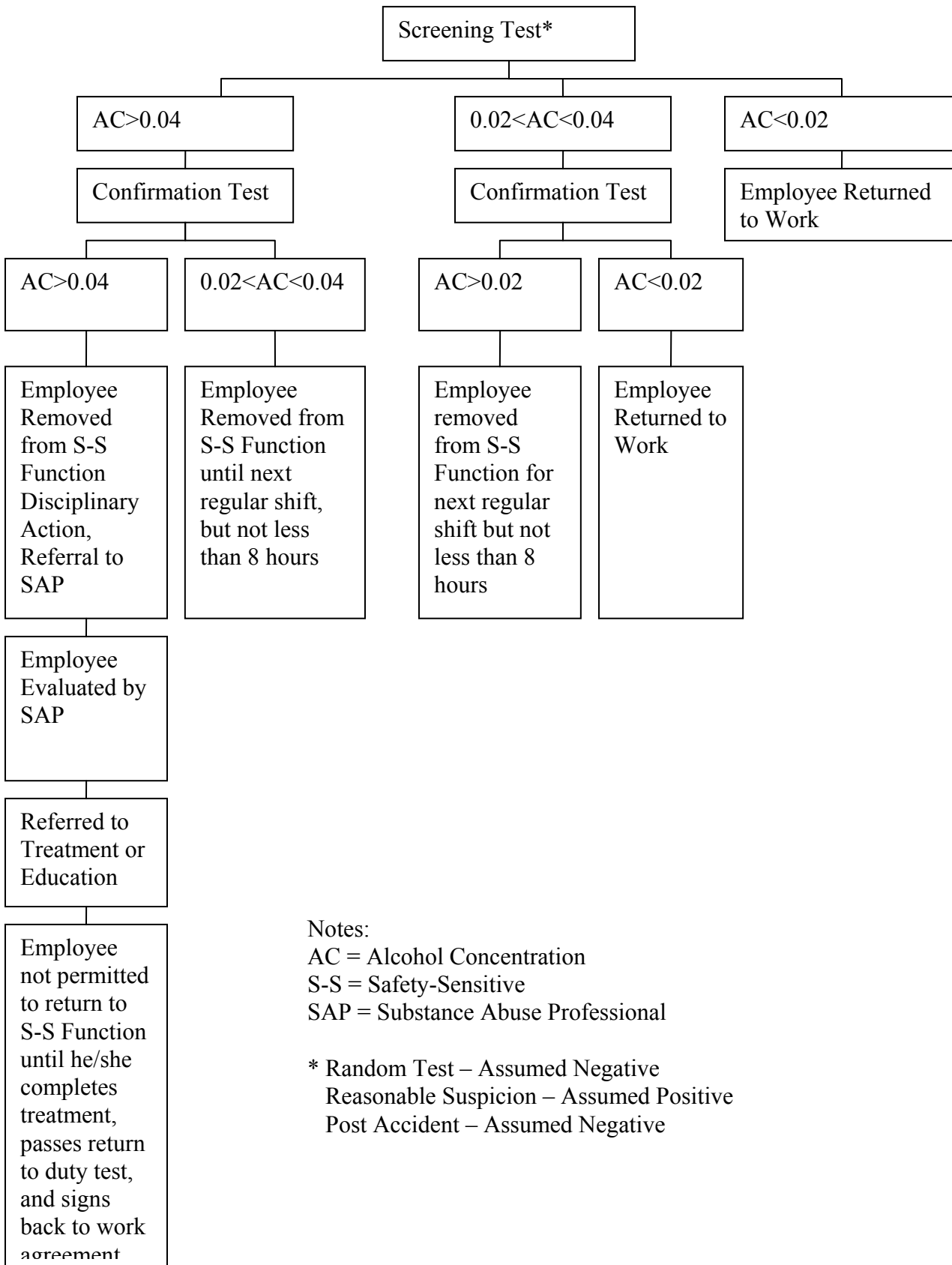
2. Yellow - Supervisor

3. Pink - Employee

Drug Testing Process for All Tests



**Alcohol Testing Process for
All Tests (see 49 CFR § 655.35a)**



Notes:
 AC = Alcohol Concentration
 S-S = Safety-Sensitive
 SAP = Substance Abuse Professional

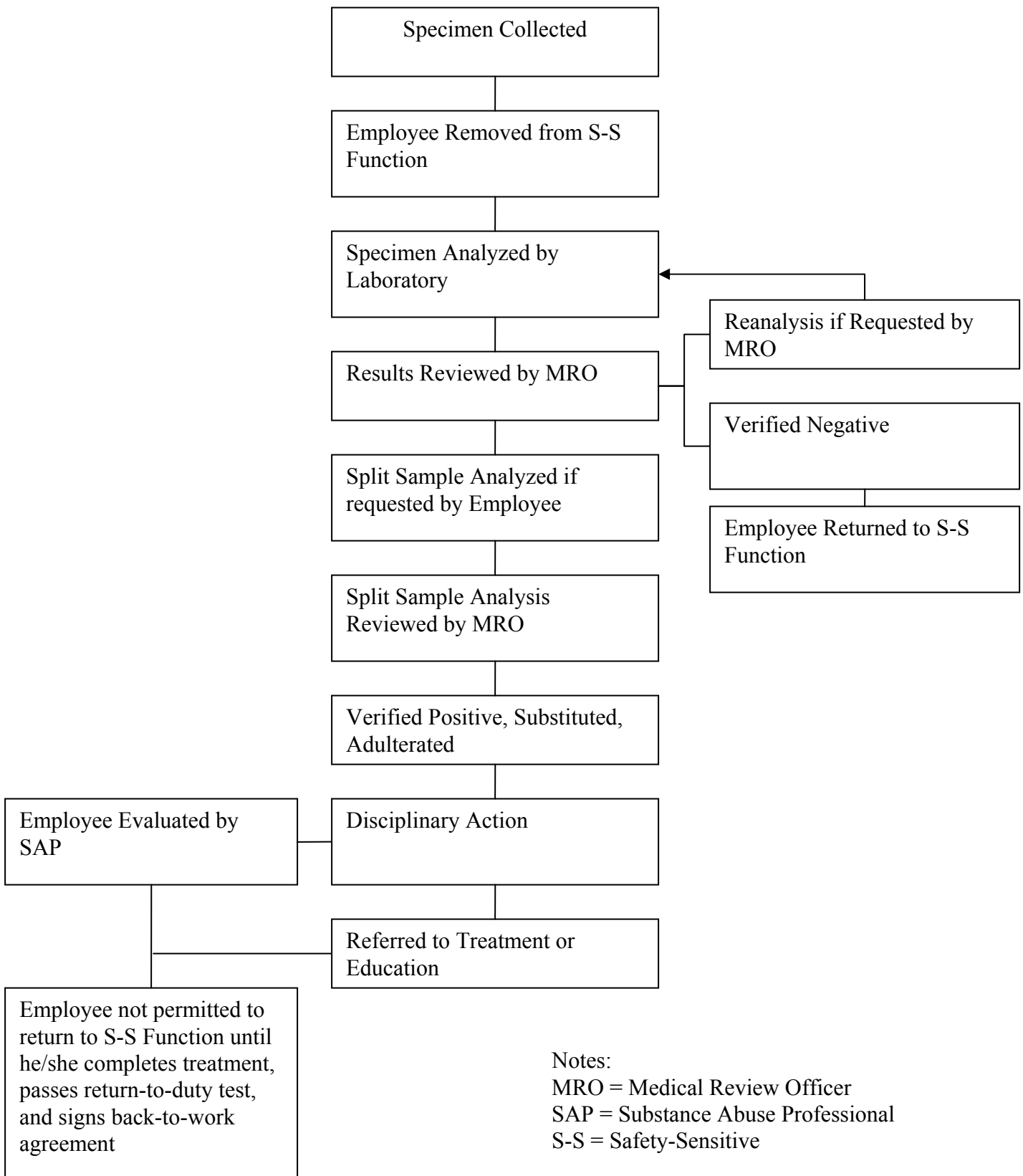
* Random Test – Assumed Negative
 Reasonable Suspicion – Assumed Positive
 Post Accident – Assumed Negative

REASONABLE SUSPICION TESTING PROCEDURES

The FTA regulations also require a safety-sensitive employee to submit to a test when the employer has a reasonable suspicion that the employee has used a prohibited drug or has misused alcohol. The request to undergo a reasonable suspicion test must be based on specific, articulable observations concerning appearance, behavior, speech, or body odor of the safety-sensitive employee. A trained supervisor must make these observations.

1. Supervisors and managers receive training in order to identify behaviors that might be indicators of drug use and/or alcohol misuse. Training includes the procedures for how to deal with employees suspected of drug use and/or alcohol misuse.
2. If one trained supervisor observes behavior that might be indicative of drug use and/or alcohol misuse, he/she directs the employee to stop work and escorts the employee to an area to be questioned and observed in private.
3. The supervisor completes the Supervisor's Alcohol and/or Substance Abuse Report. The supervisor must ensure that the employee does not continue to operate in a safety-sensitive job after having been identified for reasonable suspicion testing.
4. If there is a decision to test based on observable symptoms, the employee is ordered to submit to a drug and/or alcohol test and is taken to the collection site.
5. The employee is on paid status until the test collection is completed. SFMTA requires that the employee may not perform safety-sensitive work pending the outcome of the drug test. Since the employee is believed to be under the influence of drugs and/or alcohol, arrangements will be made to have him/her transported home.
6. If there is a confirmed breath alcohol test of between .02 and .039, the employee will be relieved from safety-sensitive duty immediately for a minimum of eight hours.
7. If there is a confirmed positive breath alcohol test (.04 or above), refusal submit to testing, or confirmed positive drug test, the employee will be directed to the Substance Abuse Professional (SAP) for an evaluation and referral for rehabilitation or education.
8. Employees who test positive for drugs or alcohol, refuse to submit to a test, or whose test result is adulterated or substituted will be disciplined in accordance with applicable memoranda of understanding.

Drug Testing Process for Reasonable Suspicion



POST-ACCIDENT TESTING PROCEDURES

The FTA regulations require testing for prohibited drugs and alcohol in the case of certain mass transit accidents. Post-accident testing is mandatory for accidents where there is a loss of life and for other non-fatal accidents.

1. The inspector ensures that all injured people receive proper medical care.
2. The supervisor determines whether the accident meets FTA criteria (see "Post-Accident Testing Chart").
3. The employee will be taken to the collection site and tested as soon as practicable following the accident. The tests should be performed within two hours of the accident. If tests are not performed within two hours, the inspector must document the reasons why the test was not performed. If an alcohol test cannot be administered within eight hours, the test must be cancelled and the inspector shall document the reasons why the test was not conducted. If a drug test cannot be performed within 32 hours after the accident, the inspector shall document the reasons why the test was not conducted.
4. The employee should remain readily available for alcohol testing up to eight hours post-accident and for drug testing, up to 32 hours after the accident, including notifying his/her supervisor of his/her location, or he/she may be deemed to have refused to submit to testing.
5. If the employee is injured and needs medical treatment, provisions will be made to perform an alcohol test within eight hours and a drug test within 32 hours of the accident.
6. The employee is prohibited from using alcohol for eight hours after the accident, prior to testing.
7. Pending the results of a drug test, the employee will be returned to his/her safety-sensitive position if medically cleared to be returned to work. In the interests of safety, SFMTA may transfer an employee to a non-safety-sensitive status pending the results of a drug test. These determinations will be made on a case-by-case basis.
8. If the alcohol test is positive (.04 or greater), the employee must be removed from duty and referred to the SAP. If the test is .02-.039, the employee will be removed from duty for at least eight hours.
9. If the employee refuses to submit to a test or if the test is confirmed positive, the employee will be removed from duty and referred to the SAP.
10. Discipline for positive, adulterated, or substituted drug and/or alcohol tests, and refusals to submit to testing will be imposed in accordance with applicable memoranda of understanding.

POST-ACCIDENT ALCOHOL AND DRUG TESTING CRITERIA

A post-accident test shall be conducted when the incident meets the criteria listed below. A post-accident test is NOT a probable cause or reasonable suspicion test.

DEFINITIONS

Accident means an occurrence associated with the operation of a vehicle, if as a result--

- (1) An individual dies;
- (2) An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident;
- (3) With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van or automobile, one or more vehicles incurs disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, "disabling damage" means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, tail-lights, turn signals, horn, or windshield wipers that makes them inoperative; or
- (4) With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from revenue service.

For accidents *not involving a fatality*, there are two categories:

Road Surface Vehicles

The first category is for "road surface" vehicles, including buses, vans, and automobiles.

An accident is an occurrence resulting in a vehicle--either a mass transit vehicle or another vehicle--suffering disabling damage and having to be towed away.

Rail Vehicles

The second category includes rail cars, trolley buses and trolley cars, and vessels. This category would include other kinds of transit conveyances operated by FTA recipients, such as people movers, inclines, and monorails. (Cable cars fit into this category.)

An accident is deemed to have occurred to such a vehicle when the occurrence results in the mass transit vehicle being removed from revenue service.

This includes an accident when the vehicle is in operation but occurring when the vehicle is not operating in revenue service (for example, in the yard), if it results in damage that would result in a comparable vehicle being withdrawn from revenue service or results in a delay in the vehicle placed into or returned to revenue service.

WHO IS TESTED?

Fatality

If an accident involving a fatality has occurred, a test must be given to those surviving covered employees operating the vehicle at the time of the accident. Tests should also be administered to any other covered employee who MUNI determines could have contributed to the accident.

Bodily Injury or Property Damage

Road Surface Vehicles

With respect to non-fatal accidents involving road surface vehicles, a covered employee operating the vehicle at the time of the accident would have to be tested unless the employer determines that an employee's performance can be completely discounted as a contributing factor to the accident.

Rail Vehicles

With respect to rail vehicles, the employer must test covered employees operating the vehicle at the time of the accident, unless the employer determines that an employee's performance can be completely discounted as a contributing factor to the accident.

Examples

- ◆ *The second car operator would not have to be tested for a vehicle accident caused exclusively by the operator of the lead car, who was operating the train.*
- ◆ *Both operators would have to be tested if a person in the second car was hit by the doors which are operated by the second car operator, and is then struck by the train operated by the lead car operator.*

Other Possible Tests

Other employees who may have contributed must also be tested; for example, a dispatcher who routes two trains onto the same track, which then collide. In that situation, three persons would be tested: the two train operators and the dispatcher who routed the trains.

POST-ACCIDENT TESTING CHART

Type of Accident Associated with the <u>Operation</u> of a Vehicle	Requirements for Coverage	Test Surviving Employee operating the Vehicle at time of Accident?	Test Other Safety-Sensitive Employee?
Fatal (all types of vehicles)	None beyond loss of human life in accident	In all cases	<p><u>If</u> employer determines that employee's performance could have contributed to accident</p> <p>(includes Maintenance personnel)</p>
Non-fatal (buses, vans, electric buses, or automobiles)	<p><u>Either</u> injury requiring immediate medical treatment away from accident scene</p> <p><u>or</u> disabling damage to transit vehicle or other vehicle</p>	<p><u>Unless</u> employer determines that employee's performance can be completely discounted as a contributing factor to the accident</p>	<p><u>If</u> employer determines that employee's performance could have contributed to accident</p> <p>(includes Maintenance personnel)</p>
Non-fatal (rail cars, trolley cars, trolley buses, or vessels)	<p><u>Either</u> injury requiring immediate medical treatment away from accident scene</p> <p><u>or</u> mass transit vehicle is removed from revenue service</p>	<p><u>Unless</u> employer determines that employee's performance can be completely discounted as a contributing factor to the accident</p>	<p><u>If</u> employer determines that employee's performance could have contributed to accident</p> <p>(includes Maintenance personnel)</p>

**POST-ACCIDENT TESTING
OF SAFETY-SENSITIVE EMPLOYEES**

DRUG AND ALCOHOL TESTING QUESTIONNAIRE

1. DID THIS ACCIDENT INVOLVE A FATALITY? YES NO

If “Yes,” drug and alcohol tests are required of driver* and anyone else who could have contributed to the accident.

2. WAS THERE AN INJURY FOR WHICH THE INDIVIDUAL RECEIVED IMMEDIATE MEDICAL TREATMENT AWAY FROM THE SCENE? YES NO

If “Yes,” drug and alcohol tests are required of driver* and anyone else who could have contributed to the accident.

3. IF ACCIDENT INVOLVED A ROAD SERVICE VEHICLE (DIESEL BUS, VAN, AUTOMOBILE), WAS THERE DISABLING DAMAGE TO ANY VEHICLE (i.e., WAS ANY VEHICLE TOWED AWAY, INCLUDING NON-SFMTA VEHICLE)? YES NO

“Disabling damage” means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated.

Disabling damage does not include:

- damage which can be remedied temporarily at the scene of the occurrence without special tools or parts;
- tire disablement without other damage even if no spare tire is available; or
- damage to headlights, tail-lights, turn signals, horn, or windshield wipers that makes them inoperative.

If “Yes,” drug and alcohol tests are required of driver and anyone else who could have contributed to the accident.

4. IF ACCIDENT INVOLVED A RAIL VEHICLE (LRV, TROLLEY BUS, CABLE CAR), DID THE RAIL VEHICLE HAVE TO BE REMOVED FROM SERVICE (EVEN IF IN THE YARD)? YES NO

If “Yes,” drug and alcohol tests are required of driver* and anyone else who could have contributed to the accident.

5. CAN THE DRIVER'S PERFORMANCE BE COMPLETELY DISCOUNTED AS A CONTRIBUTING FACTOR TO THE ACCIDENT? YES NO

If "Yes," explain why _____

If the answer to question 5 is "Yes," no test is required of a driver or operator, except in cases involving a fatality.

6. COULD ANY OTHER SAFETY-SENSITIVE EMPLOYEE HAVE CONTRIBUTED TO THE ACCIDENT (e.g. MECHANIC)? YES NO

If "Yes," explain why _____

7. WAS TESTING PERFORMED WITHIN TWO (2) HOURS AFTER THE ACCIDENT? YES NO

If "No," explain why _____

8. IF THE ANSWER TO NO.7 IS "NO", WAS TEST PERFORMED WITHIN EIGHT (8) HOURS AFTER THE ACCIDENT? YES NO

If "No," explain why _____

*** The term "driver" includes an operator of a non-revenue vehicle if that operator is required to hold a commercial driver's license to operate the vehicle involved.**

RETURN-TO-DUTY AND FOLLOW-UP TESTING

Before any employee can be allowed to return to duty to perform a safety-sensitive function following a verified positive drug test, a positive breath alcohol test, a refusal to submit to a test, or engaging in conduct prohibited by the regulations regarding alcohol misuse, the employee must first be evaluated by a Substance Abuse Professional and pass the return-to-duty test. The return-to-duty and follow-up drug testing will be performed under Direct Observation as described in 49 CFR Section 40.67.

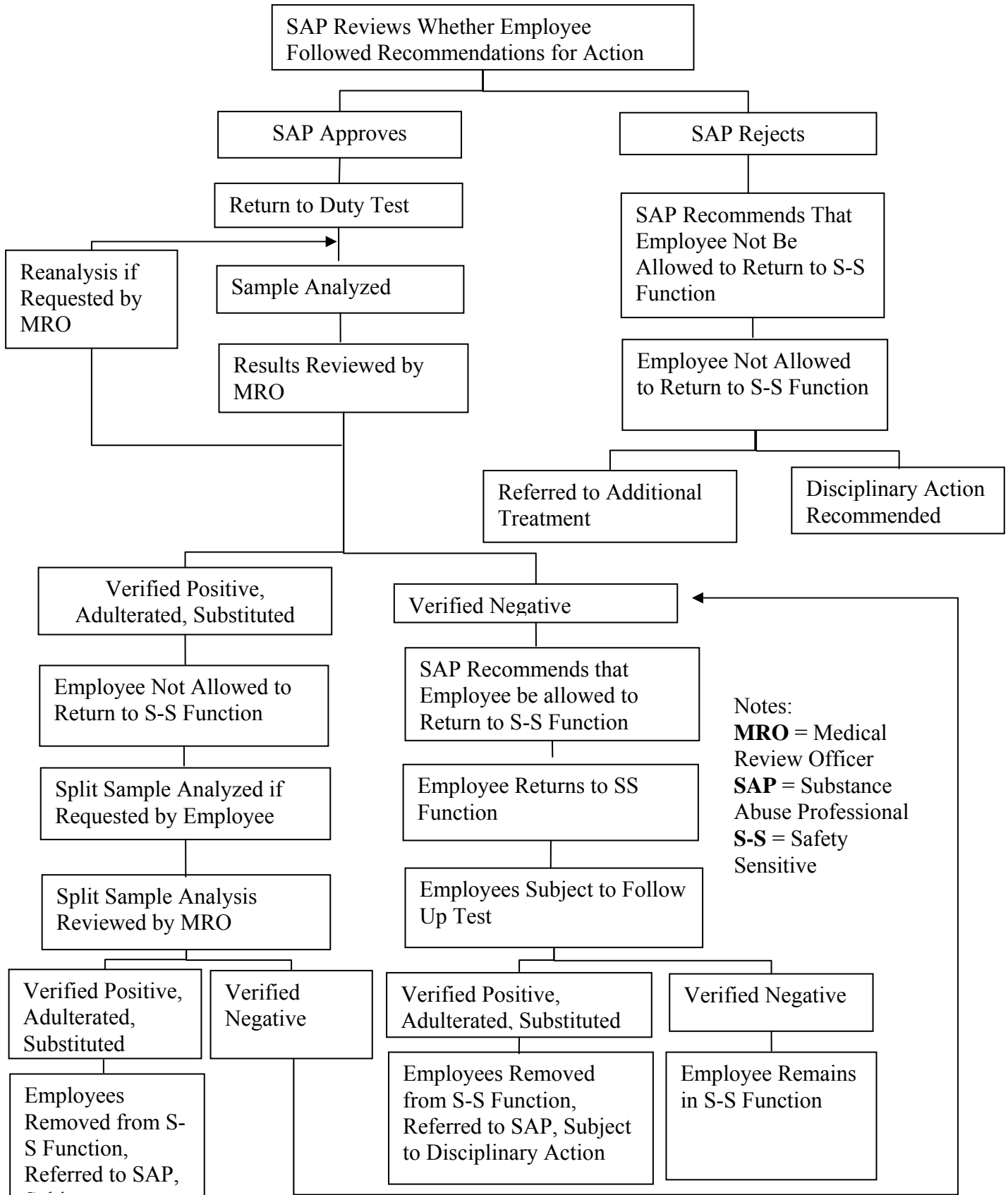
Return-to-Duty Testing .04> Alcohol Test and/or Positive Drug Test

1. When the SAP determines that an employee is ready to return to safety-sensitive duty after completing any recommended rehabilitation, the employee must take and pass a drug and alcohol return-to-duty test. If the return-to-duty test is positive or constitutes a refusal to submit to testing, it counts as a second positive. If the test result is cancelled or invalid, the employee will have to be retested.
2. SFMTA requests that the employee notify the SAP 14 days in advance of his/her expected return-to-duty date. The SAP will schedule the employee for the follow-up evaluation and the return-to-duty test.
3. Discipline will be imposed consistent with applicable memoranda of understanding.

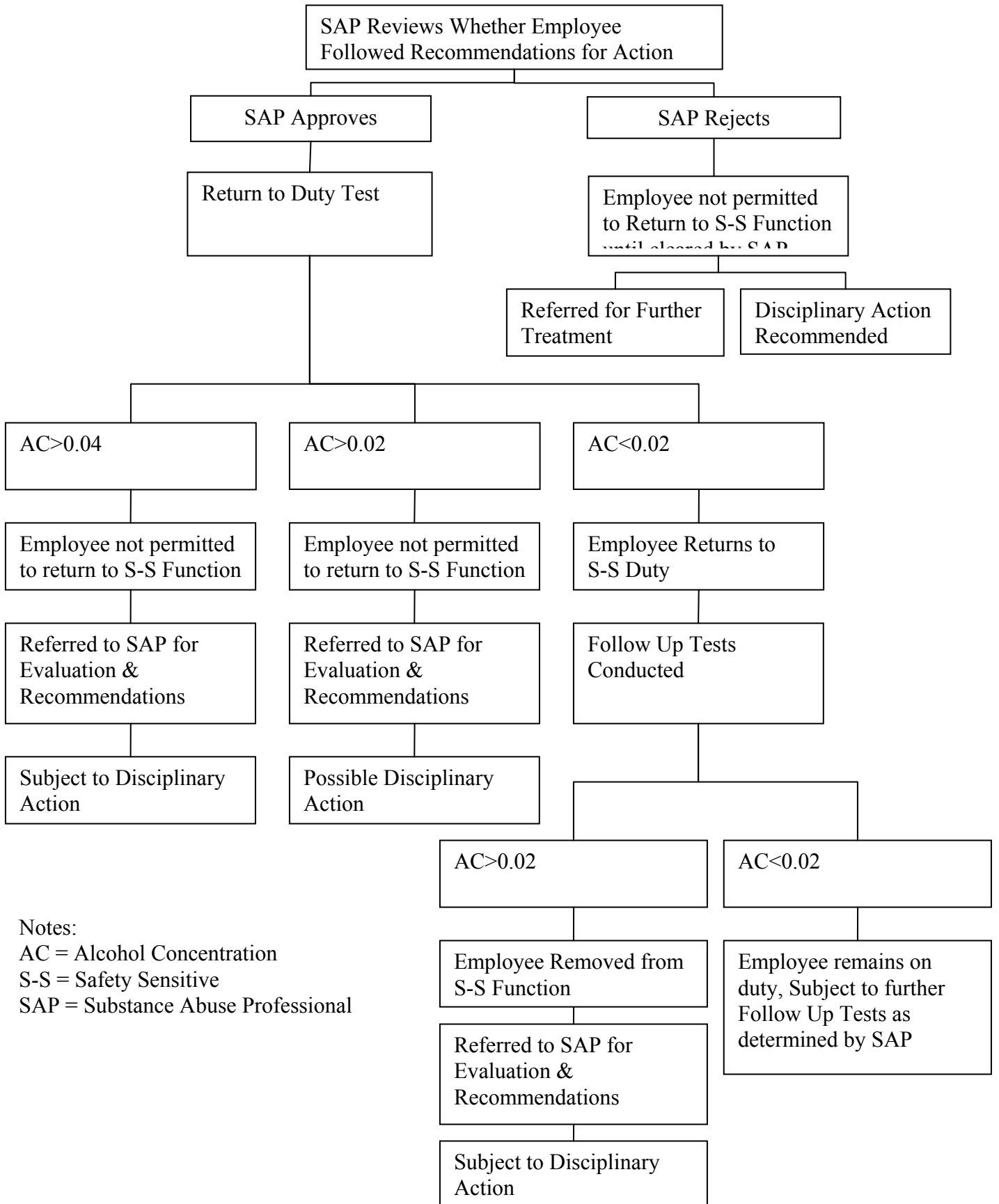
Follow-Up Testing

1. Once an employee returns to safety-sensitive duty, he/she shall be subject to unannounced follow-up testing for at least 12, but not more than 60, months. The type, frequency and duration of the follow-up testing shall be determined by the SAP; however, a minimum of six tests shall be performed during the first 12 months after the employee has returned to duty. Follow-up testing does not exclude an employee from the random testing program. This means that an employee is subject to random testing as well as follow-up testing.
2. Follow-up testing prescribed while an individual was working for another employer must be continued by SFMTA if SFMTA elects to hire the individual.
3. If an employee tests positive on a follow-up test or refuses to submit to such testing, discipline will be imposed in accordance with applicable memoranda of understanding.

**Process for Direct Observation
Return-to-Duty and Follow-Up Drug Testing**



Process for Return-to-Duty and Follow-Up Alcohol Testing



Notes:
 AC = Alcohol Concentration
 S-S = Safety Sensitive
 SAP = Substance Abuse Professional

PRE-EMPLOYMENT TESTING

1. The FTA regulations require that all applicants for employment in safety-sensitive positions, individuals being transferred to safety-sensitive positions from non-safety-sensitive positions, and employees returning from leaves over 90 days when out of the random pool must be given pre-employment drug tests prior to performing safety-sensitive functions.
2. Applicants may not be hired or assigned to safety-sensitive functions unless they pass the test (negative test result).
3. Applicants must be informed in writing of the testing requirements prior to conducting the test. SFMTA will require each applicant to sign a form acknowledging that they know that their urine will be tested for cocaine, PCP, amphetamines, marijuana, and opiates. Note: The form that they sign prominently displays the message "**YOUR APPLICATION WILL BE CONSIDERED INCOMPLETE IF THIS NOTICE IS NOT SIGNED AND DATED.**" A testing history must be requested from previous employers for the two years prior to application.
4. The Human Resources Division will notify the Substance Abuse Office of the number of applicants to be tested and their anticipated start date. A minimum of five working days are required to set up testing appointments. The Substance Abuse Office notifies Human Resources of the scheduled date, time, and location for testing.
5. It is the responsibility of the applicant to report to the collection site at the time and day scheduled.
6. Drug tests will be administered by the SFMTA's service agents. Tests may be conducted at an off-site facility when prearranged by Human Resources.
7. If an applicant's test is determined to be invalid or is cancelled, the applicant must be retested.
8. The Substance Abuse Office will be notified of all testing results and these results will be immediately transmitted to Human Resources.
9. SFMTA has determined that applicants who refuse to submit to testing, or who test positive for drugs, will not be considered for a SFMTA safety-sensitive job for five years.
10. An applicant whose pre-employment test results are negative will continue through the safety-sensitive hiring process.
11. An applicant must begin safety-sensitive work within 90 days of receipt of the test results by the employer. Delays beyond 90 days necessitate a new test. A verified negative pre-employment drug test must be received before the employee is placed on the payroll or permitted to perform safety-sensitive functions. This includes any orientation, training, etc.

TRANSFER TESTING

1. An employee who is being considered for transfer to a safety- sensitive position from a non-safety-sensitive position will be required to undergo a drug test.
2. An employee with a confirmed positive, adulterated, or substituted drug test, as certified by the MRO, will be disqualified from immediate transfer and referred to the SAP. No discipline will be initiated as a result of the positive test.
3. An employee who tests positive or whose test is adulterated or substituted may reapply after six months if he/she has successfully completed the SAP recommendations.
4. If a transferred employee has not performed safety-sensitive duties for 90 consecutive calendar days from the date of the pre-transfer drug test, and the employee has not been in the random selection pool during that period, the employee will be required to take another pre-duty drug test with a negative result.

POST-LEAVE TESTING

1. If an employee has been on leave status and has not performed safety-sensitive duties for 90 consecutive calendar days or been in the random selection pool during that period, the employee will be required to take another pre-employment drug test.

SPLIT SPECIMEN TESTING PROCEDURES

1. At the time of collection, the urine specimen will be split and poured into two specimen bottles. One specimen will contain at least 30 ml. of urine, and the other one, a minimum of 15 ml. of urine.
2. Both specimens are sent to the DHHS-certified laboratory under contract with SFMTA, but only the 30 ml. sample is analyzed. The 15 ml. sample is stored in case the employee requests that the 15 ml., or split sample, be analyzed.
3. The employee has the option of having an analysis of the split sample if his or her test result is positive, adulterated, or substituted. The split sample analysis is performed at a separate DHHS-certified laboratory.
4. The employee has 72 hours after being notified by the Medical Review Officer (MRO) of a verified positive to request a test of the split sample. Requests after 72 hours will only be accepted if the delay was due to documented facts that were beyond the control of the employee.
5. The employee must notify the MRO that he/she wants to have the split sample tested.
6. The employee may designate a DHHS-certified laboratory or request that the MRO identify a separate DHHS-certified laboratory.
7. Pursuant to past SFMTA practice, laboratory fees are the responsibility of the employee.
8. For a positive drug test - If the second DHHS-certified laboratory identifies the presence of the drug(s) (without regard to cutoff concentrations), the split specimen will be considered "Reconfirmed." If the test fails to reconfirm the presence of the drug(s), the second laboratory will then conduct validity testing. If the second laboratory fails to confirm the presence of the drug(s) and adulterants, the test will be cancelled. The MRO will report a reconfirmed test or a test that fails to reconfirm to the employee and SFMTA. A split test that fails to reconfirm will also be reported to DOT.

For an adulterated or substituted test – If the second lab reconfirms the adulteration or substitution, the original test result will remain the same. If the laboratory fails to reconfirm, the test will be cancelled.

9. If the split specimen is unavailable or appears insufficient for testing, the MRO will cancel the test. This applies to all test results that are being challenged -- drug positives, adulterations, and substitutions. If the test is cancelled for this reason, the MRO will direct the DER to send the employee for another test that will be performed under direct observation. No advance notice will be given to the employee.