

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Parking and Traffic

BRIEF DESCRIPTION:

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

SUMMARY:

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

ENCLOSURES:

1. SFMTAB Resolution

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO _____ Maxine Louie

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

To approve various routine traffic and parking modifications.

Benefit to the SFMTA 2008 – 2012 Strategic Plan:

GOAL

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

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

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

Objective 2.4 - Reduce congestion through major corridors

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

ITEMS:

- A. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME - Hyde Street, west side, from Lombard Street to 20 feet northerly; Jackson Street, north and south sides, from Jones Street to 20 feet easterly; Mason Street, west side, from Pacific Avenue to 15 feet northerly; and Mason Street, west side, from Green Street to 20 feet northerly. **PH 5/15/09 Requested by SFMTA**
- B. RESCIND - MULTIPLE RIGHT TURN LANES - Sutter Street, westbound, at Stockton Street. (This is being done in conjunction with DPW's request to modify Pedestrian Island.) **PH 5/15/09 Requested by DPW**
- C. INSTALL - SIDEWALK BULB-OUTS - Sutter Street, south side, from Jones Street to 22 feet easterly (6 feet wide sidewalk bulb-out, eliminating parking meter space # 745); Jones Street, east side, from Eddy Street to 20 feet southerly (6 feet wide sidewalk bulb-out, eliminating parking meter space # 230); and Eddy Street, north side, from Jones Street to 23 feet easterly (expands existing 3-feet wide bulb-out by an additional 3 feet for a total of 6 feet). **PH 5/15/09 Requested by SFMTA**
- D. ESTABLISH - TOW-AWAY NO STOPPING, THURSDAY 10 PM TO FRIDAY 3 AM, FRIDAY 10 PM TO SATURDAY 3 AM, SATURDAY 10 PM TO SUNDAY 3 AM - Stillman Street, both sides, between 3rd and 4th Streets (100 Block). **PH 5/15/09 Requested by Residents**
- E. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "I" (1-HOUR TIME LIMIT, 9 AM - 6 PM, MONDAY THROUGH SATURDAY) - 2749 Mission Street, between 23rd and 24th Streets (includes specific address only; signs will not be posted on the street, but residents will be eligible for a permits). **PH 5/15/09 Requested by Resident**

- F. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "V" (2-HOUR TIME LIMIT, 8 AM - 6 PM, MONDAY THROUGH FRIDAY) - Ocean Avenue, north side, between Granada and Plymouth Avenues (includes the 1300 block, even numbers only; signs will not be posted on the street, but businesses will be eligible for permits). **PH 5/15/09 Requested by San Francisco Meats and Supervisor Sean Elsbernd**
- G. EXTEND - RED ZONE - Broadway Service Road, north side, from 145 feet east of Mason Street to 25 feet westerly. **PH 5/15/09 Requested by Resident**

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

- A. ESTABLISH - TOW-AWAY NO STOPPING ANYTIME - Hyde Street, west side, from Lombard Street to 20 feet northerly; Jackson Street, north and south sides, from Jones Street to 20 feet easterly; Mason Street, west side, from Pacific Avenue to 15 feet northerly; and Mason Street, west side, from Green Street to 20 feet northerly.
- B. RESCIND - MULTIPLE RIGHT TURN LANES - Sutter Street, westbound, at Stockton Street. (This is being done in conjunction with DPW's request to modify Pedestrian Island.)
- C. INSTALL - SIDEWALK BULB-OUTS - Sutter Street, south side, from Jones Street to 22 feet easterly (6 feet wide sidewalk bulb-out, eliminating parking meter space # 745); Jones Street, east side, from Eddy Street to 20 feet southerly (6 feet wide sidewalk bulb-out, eliminating parking meter space # 230); and Eddy Street, north side, from Jones Street to 23 feet easterly (expands existing 3-feet wide bulb-out by an additional 3 feet for a total of 6 feet).
- D. ESTABLISH - TOW-AWAY NO STOPPING, THURSDAY 10 PM TO FRIDAY 3 AM, FRIDAY 10 PM TO SATURDAY 3 AM, SATURDAY 10 PM TO SUNDAY 3 AM - Stillman Street, both sides, between 3rd and 4th Streets (100 Block).
- E. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "I" (1-HOUR TIME LIMIT, 9 AM - 6 PM, MONDAY THROUGH SATURDAY) - 2749 Mission Street, between 23rd and 24th Streets (includes specific address only; signs will not be posted on the street, but residents will be eligible for a permits).
- F. ESTABLISH - RESIDENTIAL PERMIT PARKING AREA "V" (2-HOUR TIME LIMIT, 8 AM - 6 PM, MONDAY THROUGH FRIDAY) - Ocean Avenue, north side, between Granada and Plymouth Avenues (includes the 1300 block, even numbers only; signs will not be posted on the street, but businesses will be eligible for permits).
- G. EXTEND - RED ZONE - Broadway Service Road, north side, from 145 feet east of Mason Street to 25 feet westerly.

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

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

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

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

DIVISION: Transportation Planning & Development

BRIEF DESCRIPTION:

Authorizing the execution of a grant and cooperative agreement with the Metropolitan Transportation Commission to procure, through existing TransLink® contracts, new SFMTA TransLink®-only fare collection equipment and related support services, for an amount not to exceed \$29,150,000, to help complete the rollout of the regional TransLink® smartcard system.

SUMMARY:

- The SFMTA is embarking on a major effort to replace its existing technically obsolete Metro subway fare collection equipment with a modern TransLink®-only fare collection system.
- This program has \$11,000,000 in American Recovery and Reinvestment Act (ARRA) funding, which has stringent requirements to obligate the funding in a relatively short period of time.
- Staff recommends utilizing the Metropolitan Transportation Commission (MTC) TransLink® contract for procurement of SFMTA Automatic Fare Collection (AFC) equipment to accelerate project delivery in order to satisfy ARRA funding requirements.
- Staff is currently working with MTC to finalize the specifics of a grant and cooperative agreement to procure new fare collection equipment for the Muni Metro subway system, as well as support services, for an amount not to exceed \$29,150,000.
- Funding is provided from a combination of Federal, State and Local Funds

ENCLOSURES:

1. SFMTAB Resolution
2. Draft Grant and Cooperative Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Gigi Pabros

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The purpose of this item is to authorize the execution of a grant and cooperative agreement with MTC for an amount not to exceed \$29,150,000. This MOU will enable SFMTA to complete its rollout of the regional TransLink® smartcard system and provide SFMTA with TransLink®-only new fare collection equipment.

GOAL

This agreement 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 1.4 Improve accessibility across transit services

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

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

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

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

DESCRIPTION

Scope of Work

MTC entered into a contract with Motorola Inc. in 1999 to design, build, operate and maintain the TransLink® smart card system. MTC recently approved the assignment of this contract to Cubic Corporation. SFMTA became Revenue Ready with TransLink® equipment installed and operating in September of 2008 and intends to fully transition to the TransLink® system as its sole fare collection system for all pre-paid fares. As SFMTA progresses to comprehensive public launch and TransLink® patronage grows, the need for adequate throughput in all aspects of the Muni system becomes increasingly important. In order to complete the rollout of the system at the SFMTA, the agency has decided to replace its current fare gates and other fare collection equipment with new, TransLink®-only equipment.

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Under the TransLink® contract, the contractor supplies all equipment necessary for the TransLink® fare payment system. This includes all the devices, equipment, and other items necessary for a fare collection system. Among the devices which are a part of the fare payment system are Card Interface Devices (CIDs) that read and encode data on TransLink® cards. This would include Muni fare gates and other fare collection equipment.

MTC may also decide to order similar equipment for other agencies in the Bay Area when they convert to TransLink®.

This agreement with MTC will distribute SFMTA grant funds to MTC as a sub-recipient in order for MTC to procure AFC equipment and support services for SFMTA to integrate with the TransLink® fare collection system. This procurement consists of:

- 40 ticket vending machines to eliminate cash handling at our subway faregates
- 98 fare gates, including extra-width ADA compliant lanes
- 16 station agent control terminals (to control new fare gates)
- Financial and ridership reporting, utilizing the TransLink® system
- Also included as part of the agreement are provisions for procurement of support services (e.g. Consultant, BART and MTC coordination)

SFMTA staff will be participating in the procurement by providing grant administration services, and project and construction management services during site preparation.

Final costs and schedule will be finalized as a part of the MTC contract change order process, but key benefits include:

- A project delivery date in 2010, versus the 2012 originally planned
- Timely utilization of \$11,000,000 in American Recovery and Reinvestment Act (ARRA) funding

ALTERNATIVES CONSIDERED

SFMTA had considered pursuing a Request for Proposal or bid solicitation for this work, but decided to pursue a procurement through this agreement for the following reasons:

- An SFMTA RFP solicitation and award is vulnerable to delays that would jeopardize the conditions in the American Recovery and Reinvestment Act (ARRA) funds allocated to this project
- Equipment integration cost and delay risks are substantial. Potential vendor costs to integrate with the proprietary TransLink® equipment and SFMTA's new farebox collection system were expected to be high.

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FUNDING IMPACT

Funding for this Agreement will be from a combination of Federal, State and Local funds, including an ARRA grant of \$11,000,000.

APPROVALS RECEIVED OR STILL REQUIRED

Staff is planning to present this agreement to the Board of Supervisors and Civil Service Commission in July.

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

RECOMMENDATION

This calendar item seeks SFMTA Board authorization to execute the attached grant and cooperative agreement with the Metropolitan Transportation Commission (MTC) for an amount not to exceed \$29,150,000.

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

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is embarking on a major effort to replace its existing technically obsolete Metro subway fare collection equipment with TransLink®-only fare collection system; and,

WHEREAS, This program has \$11,000,000 in American Recovery and Reinvestment Act (ARRA) funding, which has stringent requirements to obligate the funding in a relatively short period of time; and,

WHEREAS, The Metropolitan Transportation Commission (MTC) and the SFMTA have been negotiating a Grant and Cooperative Agreement whereby the SFMTA will provide MTC, as a subrecipient, with grant funds from various sources, including ARRA, for the procurement of TransLink®-only fare collection equipment and support services, through existing MTC contracts; and,

WHEREAS, Completion of this project will assist SFMTA's in reaching Goals 1, 3, and 6 of the Strategic Plan to provide safe, accessible, reliable, clean and environmentally sustainable service, to improve the customer experience, community value, enhance the image of the SFMTA, and leverage technology to improve service and efficiency; and,

WHEREAS, This Agreement is fully funded by a combination of federal, state and local transportation funds, now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes execution of a grant and cooperative agreement with the Metropolitan Transportation Commission, in a form substantially as presented to this Board, to procure, through existing TransLink® contracts, new SFMTA TransLink®-only fare collection equipment and related support services, for an amount not to exceed \$29,150,000, to help complete the rollout of the regional TransLink® smartcard system; and be it further

RESOLVED, That approval of the grant and cooperative agreement is subject to approval of the Board of Supervisors and the Civil Service Commission.

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

_____.

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

**FTA Grant Nos.: CA-90-Y245, CA-03-0637-01, CA-90-Y348, CA-03-0708,
CA-05-0200, CA-90-264, FY 2009, 2010; ARRA grant**

GRANT AND COOPERATIVE AGREEMENT

Between the

**CITY AND COUNTY OF SAN FRANCISCO,
through its
MUNICIPAL TRANSPORTATION AGENCY**

and the

METROPOLITAN TRANSPORTATION COMMISSION

**REGARDING THE EXPENDITURE AND
ADMINISTRATION OF GRANT FUNDS FOR THE
IMPLEMENTATION OF THE WAYSIDE FARE COLLECTION
EQUIPMENT REPLACEMENT PROJECT**



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GRANT AND COOPERATIVE AGREEMENT

Between the

CITY AND COUNTY OF SAN FRANCISCO,
through its
MUNICIPAL TRANSPORTATION AGENCY

and

THE METROPOLITAN TRANSPORTATION COMMISSION

REGARDING THE EXPENDITURE AND ADMINISTRATION OF GRANT FUNDS FOR THE IMPLEMENTATION OF THE WAYSIDE FARE COLLECTION EQUIPMENT REPLACEMENT PROJECT (the "Project")

This Grant Agreement ("Agreement") is made this _____ day of _____, 2009, in the City and County of San Francisco, State of California, by and among: the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency ("City" or "SFMTA") and the Metropolitan Transportation Commission ("MTC").

RECITALS

- A.** In June 1999, MTC entered into a contract with Motorola Corporation ("TransLink® Contract") to design, build, operate and maintain a fare payment system ("Translink®") that can be used by the various transit operators in the Bay Area in a unified manner. When TransLink® is fully deployed, patrons of the various transit operators will be able to use a TransLink® smart card (and no other fare medium) to transfer to and use most Bay Area transit systems.
- B.** MTC recently has approved the assignment of the TransLink® Contract to Cubic Corporation.
- C.** SFMTA has been preparing to issue a procurement to replace its aging fare gates at all Muni Metro stations (the "Project"). SFMTA intends to replace existing entry and exit fare gates with fare gates that accept only TransLink® cards.
- D.** SFMTA has received various grants from the Federal Transit Administration ("FTA") of the U.S. Department of Transportation ("DOT") that contain funding for the Project ("Project Grants"). The Project Grants are expressly intended to implement the Project. The Project Grants include funds authorized under the American Recovery and Reinvestment Act ("ARRA"). A general listing of the Project Grants, along with the amounts of required matching funds, is attached as Exhibit A.

E. Under DOT regulations, SFMTA may provide FTA funds to a subgrantee under a written agreement passing through grant requirements to the subgrantee.

F. MTC has proposed to amend the Translink® Contract to implement the Project, and it has determined that such an amendment is justified under FTA regulations and in the public interest.

G. SFMTA and MTC are entering into this Agreement to ensure compliance with FTA requirements for the implementation of the Project and administration of the Project Grants. The parties intend to work cooperatively to provide information and supporting documents necessary to sustain the efficient flow of funds and to support the efficient implementation of the Project under ARRA and MTC guidelines.

H. The parties understand and agree that all encumbrances and disbursements from the Project Grants are subject to the approval of the Controller of the City.

In accordance with the above understandings, SFMTA and MTC agree as follows:

I. TERM; EFFECTIVE DATE

A. Term. This Agreement will commence on the Effective Date and will terminate when all of the funds from the Project Grants have been disbursed and all FTA reporting requirements have been complied with, but in no event later than _____ after the Effective Date.

B. Effective Date. This Agreement will become effective on _____, 2009.

II. PROJECT ELEMENTS. The elements of the Project ("Project Elements") include the following: procurement of an SFMTA automatic fare collection (AFC) system, including fare gates and associated materials and equipment; transit vending machines; construction (site preparation, installation); detailed design; construction management; engineering support; consultant support; Project management and administration; grants administration; coordination with BART; SFMTA operations support; and soft launch support.

III. PROJECT GRANTS The parties acknowledge and understand that the Project Elements will be funded from a portion, but not all, of the Project Grants listed in Exhibit A. The parties estimate that total grant funding for the Project Elements under this Agreement will not exceed \$29,150,000.

IV. SFMTA RESPONSIBILITIES

Disbursement of Project Grant Funds. Upon approval of the City's Controller, and provided that a proportionate amount of all matching funds required under the Project Grants for the first disbursement are in place, SFMTA, in consultation with MTC, will develop a Project budget. SFMTA will disburse funds to MTC's Project account as federally eligible costs are incurred, subject to (1) an invoice submitted by MTC, with adequate documentation of costs incurred, (2) compliance with the terms and conditions of the Project Grants, and (3) compliance with MTC's responsibilities, as set forth below. MTC will be entitled to 100 percent reimbursement of all eligible costs, and will not be required to have local matching funds deducted from such reimbursements. Such reimbursable costs will include reasonable costs incurred by MTC staff in the performance of its administrative duties under this Agreement.

A. Allowable Costs. The SFMTA will reimburse MTC for those services and expenses required to perform the work in accordance with the Project budget. Reimbursement will be in accordance with the cost principles set forth in Office of Management and Budget Circular A-87, Revised, "Cost Principles Applicable to Grants and Contracts with State and Local Governments," and consistent with the FTA's Master Agreement and annual Certifications and Assurances.

B. Procedures. SFMTA staff, after consultation with MTC, will be responsible for preparing any procedures necessary to implement the provisions of this Agreement. The procedures will include processes for billing, accounting, encumbrance and disbursement of funds, tracking of time, and other such functions. Unless otherwise agreed to by the parties, SFMTA will disburse funds to MTC based on a monthly invoice from MTC, which invoice will be subject to review and approval by the SFMTA Project Manager. SFMTA expects to make payments to MTC within one week from approval of each invoice.

C. Grants Administration. SFMTA will provide required administrative services in connection with the Project Grants. These services may include, but not be limited to, accounting services, financial services, grants administration, services of its Contract Compliance Office, including administration of DBE matters, legal services, and other administrative services.

D. Project Management and Administration.

1. Grants Administration. SFMTA will designate one individual to be a Project Manager for all MTC activities involving the Project Grants. The Project Manager's primary responsibility will be to ensure compliance with all requirements of the Project Grants, and will provide counsel and advice to MTC on grant issues, City policies, and federal regulations. The Project Manager may enlist and utilize other SFMTA resources or staff personnel as necessary to carry out such work and perform the administrative services described in Section C above.

2. Project Management/Construction Management. Except as provided below with respect to procuring construction management services associated with site preparation for installation of the AFC system in the Muni Metro subway stations owned by BART, SFMTA will designate individuals to perform Project Manager/Construction Manager duties for engineering and construction activities regarding site preparation for the Project. SFMTA will also obtain the services of a contractor or contractors to perform site preparation activities (including but not limited to power and telecommunications infrastructure, finishes, railings, swing gate/emergency exit replacement, equipment cabinetry, signage, and equipment surveillance systems). The Project Manager may enlist and utilize other SFMTA resources or staff personnel as necessary to carry out administrative work related to construction, including, but not limited to, field inspections, operations support, quality assurance/quality control, project controls, project integration, submittal reviews, and permitting.

3. SFMTA Staff. A list of proposed SFMTA staff that will be assigned to the Project, along with their responsibilities, is attached on Exhibit B. SFMTA will notify MTC in writing of any changes to assigned personnel.

V. MTC RESPONSIBILITIES

A. Subgrantee. MTC will be a subgrantee, responsible for compliance with all applicable provisions of the FTA Master Agreement (FTA MA(15)), Certifications and Assurances for FTA Assistance Programs, the grant application, and all applicable laws and regulations, using sound management practices. Every provision of FTA MA(15) and the

Certifications and Assurances, as they may be amended from year to year, are incorporated by reference and will govern MTC's expenditure of all funds under the Project Grants, as well as expenditure of local matching funds required to fulfill the obligations of the Project Grants.

B. Procurement of Goods and Services.

1. Goods and Services to be Procured. MTC will be responsible for procuring the following Project Elements through its existing TransLink® contract with Cubic Corporation: automatic fare collection equipment, including fare gates, vending machines, back end/network and data access terminals, agency training services, as-needed equipment maintenance support, handheld smart card readers, and required backend software. MTC will also be responsible for providing as-needed AFC consultant services and customer outreach/education services through its existing consulting contracts with Booz Allen Hamilton and Auriga Corporation, which firms already provide consulting services for the TransLink® project.

2. Compliance with FTA Procurement Requirements. MTC certifies that it will procure goods and services as necessary for the Project consistent with the requirements of 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," FTA Circular 4220.1F, the FTA Master Agreement, and applicable FTA Certifications and Assurances.

3. BART Activities. MTC will amend existing agreements with BART to provide construction management services and engineering for AFC site preparation in the Muni Metro subway stations that are owned by BART.

4. Contract Provisions. MTC will ensure that its contractors who procure materials and equipment or performing services under this Agreement comply, at a minimum, with the following contractual provisions:

a. Insurance. Contractors/consultants should have minimum insurance levels at the following amounts:

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

ii. 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

iii. 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.

iv. 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.

v. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as additional insured the City and County of San Francisco, its officers, agents, and employees.

b. Indemnification. Contractors and consultants shall indemnify, hold harmless and defend the City and County of San Francisco, including the SFMTA, for injury to or death of a person, including employees of contractor and consultants, or loss of or damage to property, arising directly or indirectly from Contractor's performance of work on the Project.

C. Reports. Annually, as required by SFMTA's Contract Compliance Office, MTC will provide a list of all procurements planned for the following federal fiscal year that will be funded in whole or in part by the Project Grants. Additionally, MTC will provide SFMTA with a monthly report on the status of such procurements. SFMTA reserves the right to review and advise on any such procurement, or portion of a procurement. MTC will provide SFMTA with all required quarterly Narrative and Financial Reports no later than 15 calendar days after each reporting period. The reporting periods will end December 31, March 31, June 30 and September 30. Narrative Reports will contain the following information: a description of the work completed during the period; tasks expected to be performed during the next period; major project milestones, changes to milestones, and reasons for the changes; and explanations of problems or delays encountered or anticipated. Financial reports will include a balance sheet and a project expenditure statement by line item code.

D. ARRA Reporting. As listed in Exhibit A, SFMTA expects to receive \$11,000,000 in funds through the American Recovery and Reinvestment Act (ARRA). In order to comply with ARRA, SFMTA must adhere to reporting requirements, some of which have been specified by the federal government and some of which are still under development. MTC agrees to support SFMTA and require its contractor and consultants to support SFMTA by complying with ARRA reporting requirements, including, but not limited to, reporting on the following:

1. Number of direct, on project jobs created or sustained by ARRA Funds
2. Total job hours created or sustained by ARRA Funds
3. Total payroll of job hours created or sustained by ARRA Funds

SFMTA will provide MTC with additional ARRA reporting requirements as they become available.

E. Recordkeeping. Unless otherwise directed by SFMTA, MTC will maintain the original records of all procurements, payments and contract expenses in the form required by federal regulations and FTA grant requirements during the term of this Agreement, and for a period of three years thereafter. MTC will allow SFMTA to review and inspect said records during business hours to ensure compliance with such requirements, and to audit the books, records, and accounts of MTC and its contractors, if necessary. Upon request, MTC will provide SFMTA with copies of any records in its files relating to procurements and other expenditures using funding from the Project Grants. MTC agrees to extend these rights of review, inspection and audit to the Secretary of Transportation and the Comptroller General of the United States, or their authorized representatives.

F. Audit. MTC will provide thorough and complete accounting for all funds expended in the performance of the Project to the extent that such funds are provided by SFMTA through the Grants or local matching funds, consistent with 49 C.F.R. Section 18.37(b). MTC will be responsible for meeting audit requirements of the "Single Audit Act of 1984" as implemented by OMB Circular A-128, as it may be revised from time to time.

G. Disallowance. MTC agrees that if it claims or receives payment of Grant funds or local matching funds from City for an expense, payment or reimbursement of which is later

disallowed by the federal government, MTC will promptly refund the disallowed amount to City upon City's request. At its option, City may offset all or any portion of the disallowed amount against any other payment due to MTC hereunder. Any such offset with respect to a portion of the disallowed amount will not release MTC from its obligation under this section to refund the remainder of the disallowed amount.

H. MTC Staff. A list of proposed MTC staff that will be assigned to the Project, along with their responsibilities, is attached on Exhibit B. MTC will notify SFMTA in writing of any changes to assigned personnel.

VI. CERTIFICATION; APPROPRIATION OF FUNDS

A. Risk of Non-Appropriation of Grant Funds. This Agreement is subject to the budget and fiscal provisions of the federal government and the City Charter. City will have no obligation to make appropriations for this Agreement should the federal government fail to appropriate the Grant funds. MTC also acknowledges that City budget decisions are subject to the discretion of its Mayor and Board of Supervisors. MTC assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement.

B. Certification of Controller; Guaranteed Maximum Costs. No funds will be available under this Agreement until prior written authorization certified by the Controller. In addition, as set forth in Section 21.10-1 of the San Francisco Administrative Code:

1. City's obligations hereunder will not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

2. Except as may be provided by City ordinances governing emergency conditions, City and its employees and officers are not authorized to request MTC to perform services or to provide materials, equipment and supplies that would result in MTC performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. City is not required to pay MTC for services, materials, equipment or supplies that are provided by MTC which are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by City.

3. City and its employees and officers are not authorized to offer or promise to MTC additional funding for this Agreement which would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein will require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

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

C. Automatic Termination for Non-appropriation of Funds. This Agreement will automatically terminate, without penalty, liability or expense of any kind to City, at the end of any federal fiscal year if funds are not appropriated for the next succeeding federal fiscal year. If funds are appropriated for a portion of any federal fiscal year, this Agreement will terminate,

without penalty, liability or expense of any kind to City, at the end of such portion of the federal fiscal year.

VII. INDEMNIFICATION

A. Mutual Indemnification. MTC shall defend, release, hold harmless and indemnify City, and their respective officers and employees from any and all claims for injury or damage to persons and/or property which arise out of the negligent acts or omissions of MTC, its officers and/or employees in the performance of its activities relating to the administration and use of the grant funds received under this Agreement. It is further agreed that City shall defend, release, hold harmless and indemnify MTC and its respective officers and employees from any and all claims for injuries and/or damage to persons and/or property which arise out of the negligent acts or omissions of City, its officers and employees in the performance of its activities under this Agreement. In the event of concurrent negligence of MTC, its officers and employees, and/or City, its officers and employees, the liability for any and all claims for injuries or damage to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

B. Limitation On Liability Of City and MTC. IN NO EVENT WILL CITY OR MTC BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE PROJECT GRANTS, OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

VIII. EVENTS OF DEFAULT

A. General. The occurrence of any one or more of the following events will constitute an "Event of Default" under this Agreement:

1. False Statement. Any statement, representation or warranty contained in this Agreement, or in any other document submitted to City under this Agreement is found by City to be false or misleading.

2. Failure to Comply with Applicable Laws. MTC fails to perform or breaches any federal, state or local law or regulation applicable to this Agreement.

3. Failure to Enforce Default Provisions of Contractors or Consultants. Contractor fails to take all reasonable steps to enforce any default of its contractors or consultants with respect to the work to be performed on the Project, according to the default provisions of MTC's respective contracts.

4. Failure to Perform Other Covenants. MTC fails to perform or breaches any other agreement or covenant of this Agreement to be performed or observed by MTC, as applicable, as and when performance or observance is due and such failure or breach continues for a period of thirty (30) days after the defaulting party's receipt of written notice of such failure or breach or, if the failure or breach cannot be cured within such thirty (30) day period, such longer period as is necessary to cure the failure or breach so long as the defaulting party commences the cure within such thirty (30) day period and diligently prosecutes such cure to completion.

5. Voluntary Insolvency. MTC, as applicable, (i) is generally not paying its debts as they become due, (ii) 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, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of MTC, as applicable, or of any substantial part of MTC's property or (v) takes action for the purpose of any of the foregoing.

6. Involuntary Insolvency. Without consent by MTC, as applicable, a court or government authority enters an order, and such order is not vacated within ten (10) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to MTC, as applicable, or with respect to any substantial part of MTC's property, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of MTC.

B. Remedies Upon Event of Default. Upon and during the continuance of an Event of Default, City may do any of the following, individually or in combination with any other remedy:

1. Termination. City may terminate this Agreement by giving a written termination notice to MTC, and, on the date specified in such notice, this Agreement will terminate and all rights of MTC hereunder will be extinguished. In the event of such termination, MTC will be paid for eligible expenses relating to the Project that were incurred by MTC prior to the date of termination specified in such notice.

2. Withholding of Project Grant Funds. City may withhold all or any portion of Project Grant funds not yet disbursed, regardless of whether MTC has previously submitted a request for such funds or whether City has approved the disbursement of the Grant funds under a prior request for such funds. Any Grant funds withheld pursuant to this Section and subsequently disbursed to MTC after cure of applicable Events of Default will be disbursed without interest.

3. Return of Project Grant Funds. City may demand the immediate return of any previously disbursed Project Grant funds that have been claimed or expended by MTC in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

4. Remedies Nonexclusive. Each of the 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 remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy will not preclude or in any way be deemed to waive any other remedy.

IX. 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 will be addressed as follows:

To City: San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th floor
San Francisco, CA 94103
Attn: Joel Goldberg

joel.goldberg@sfmta.com
fax: (415) 701-4336

with a copy to: San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94103
Attn: Henry.Kim
henry.kim@sfmta.com
fax: (415) 701-4300

To MTC:

With a copy to:

Any notice of default must be sent by registered mail.

X. OTHER CONDITIONS

A. No Assignment by MTC. MTC will not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of MTC hereunder without the prior written consent of City. This Agreement will not, nor will any interest herein, be assignable as to the interest of MTC involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of MTC or a sale or transfer of substantially all of the assets of MTC will be deemed an assignment for purposes of this Agreement. **Any agreement made in violation of this Section will confer no rights on any person or entity and will automatically be null and void.**

B. Sunshine Ordinance. MTC acknowledges and agrees that this Agreement is subject to Section 67.24(e) of the San Francisco Administrative Code, which provides that contracts, including this Agreement, grantee's bids, responses to Requests for Proposals and all other records of communications between City and persons or entities seeking contracts, will be open to inspection immediately after a contract has been awarded. Nothing in such Section 67.24(e) (as it exists on the date hereof) requires the disclosure of a private person's 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. All information provided by MTC that is covered by such Section 67.24(e) (as it may be amended from time to time) will be made available to the public upon request.

C. Modifications. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in as required under law.

D. Submitting False Claims; Monetary Penalties. MTC acknowledges and agrees that it is subject to San Francisco Administrative Code Section 21.35. Under such Section 21.35, any contractor, subgrantee or consultant who submits a false claim will be liable to City for three times the amount of damages which City sustains because of the false claim. A contractor, subgrantee or consultant who submits a false claim will also be liable to City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to City for a civil penalty of up to ten thousand dollars (\$10,000) for each false claim. A contractor, subgrantee or consultant will be deemed to have submitted a false claim to

City if the contractor, subgrantee or consultant: (a) knowingly presents or causes to be presented to an officer or employee of 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 City; (c) conspires to defraud City by getting a false claim allowed or paid by 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 City; or (e) is a beneficiary of an inadvertent submission of a false claim to City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to City within a reasonable time after discovery of the false claim.

E. Independent Contractor. MTC will be deemed at all times to be an independent contractor and is solely responsible for the manner in which MTC uses the Grant funds. MTC will at all times remain solely liable for the acts and omissions of MTC, its officers and directors, employees and agents. Nothing in this Agreement will be construed as creating a partnership, joint venture, employment or agency relationship among City and MTC.

F. Conflict of Interest. Through its execution of this Agreement, MTC acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the 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.

G. Eligibility to Receive Federal Funds. By executing this Agreement, MTC certifies that it is not suspended, debarred or otherwise excluded from participation in federal assistance programs. MTC acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

H. MacBride Principles--Northern Ireland. Pursuant to San Francisco Administrative Code Section 12F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City 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 MTC acknowledges and agrees that he or she has read and understood this section

I. Tropical Hardwood and Virgin Redwood Ban. Pursuant to Section 804(b) of the San Francisco Environment Code, City urges all grantees not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

J. Drug-Free Workplace Policy. MTC 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. MTC and its employees, agents or assigns will comply with all terms and provisions of such Act and the rules and regulations promulgated under such Act.

K. Resource Conservation; Liquidated Damages. Chapter 5 of the San Francisco Environment Code (Resource Conservation) is incorporated herein by reference. Failure by MTC to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract. The requirements of Chapter 5 applicable to this Agreement are the requirements under Section 506(h) that any bid, report, proposal, quotation or other document prepared in connection with this Agreement must be submitted on recycled paper and printed on double sided pages to the maximum extent possible.

L. Compliance with ADA. MTC acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. MTC will not discriminate against any person protected under the ADA in connection with all or any portion of the Project and will comply at all times with the applicable provisions of the ADA.

M. No Waiver. No waiver by the SFMTA or City of any default or breach of this Agreement will be implied from any failure by the SFMTA or City to take action on account of such default if such default persists or is repeated. No express waiver by the SFMTA or City will affect any default other than the default specified in the waiver and will be operative only for the time and to the extent therein stated. Waivers by City or the SFMTA of any covenant, term or condition contained herein will not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the SFMTA or City of any action requiring further consent or approval will not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

N. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning or intent of this Agreement, the question will, prior to any other action or resort to any other legal remedy, be referred to the Executive Director/CEO of the SFMTA, who, after consultation with FTA, if required, will decide the true meaning and intent of the Agreement.

O. Governing Law; Venue. The formation, interpretation and performance of this Agreement will be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement will be in San Francisco.

P. Headings. All article and section headings and captions contained in this Agreement are for reference only and will not be considered in construing this Agreement.

Q. Entire Agreement. This Agreement sets forth the entire Agreement between the parties, restates the Original Agreement in its entirety, and supersedes all other oral or written provisions.

R. 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 will not be affected or impaired thereby, and (b) such provision will be enforced to the maximum extent possible so as to effect the intent of the parties and will be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

S. Successors; No Third-Party Beneficiaries. The terms of this Agreement will be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, will be construed to give any person or entity (other than the parties hereto and their respective successors and assigns) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

T. Survival of Terms. The obligations of MTC and the terms of the following provisions of this Agreement will survive and continue following expiration or termination of this Agreement: Sections III.A, B, E, F, G; V; V.I.B, VII, VIII.E, N-R.

U. Further Assurances. From and after the date of this Agreement, MTC agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as

may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

This Amended and Restated Grant Agreement has been executed in San Francisco, California, as of the date first noted above.

CITY AND COUNTY OF SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY By: _____ Nathaniel P. Ford, Sr. Executive Director/CEO	METROPOLITAN TRANSPORTATION AGENCY By: _____ Steve Heminger Executive Director
APPROVED AS TO FORM: DENNIS J. HERRERA CITY ATTORNEY By: _____ Robin M. Reitzes Deputy City Attorney	APPROVED AS TO FORM: By: _____ Cynthia Segal

EXHIBIT A

WAYSIDE FARE COLLECTION EQUIPMENT PROJECT FUNDING PLAN

Funding Source	TOTAL
Federal Funding	
Sect 5307 CA-90-Y245	\$1,149,057
Sect 5309-FG CA-03-0673-01	\$1,745,386
Sect 5307 CA-90-Y348	\$2,044,907
Sect 5309-FG CA-03-0708	\$4,181,593
Sect 5309-FG CA-05-0200	\$2,882,375
Sect 5307 CA-90-Y264	\$700,000
Sect 5309-FG (2009)	\$7,500,000
Sect 5309-FG (2010)	\$7,500,000
ARRA Economic Stimulus Funding (2009)	\$11,000,000
Subtotal Federal Funds	\$38,703,318
Local Funding	
AB664 MTAB Res. 05-217	\$511,227
MTF Operating Funds	\$48,000
FY07/08 I-Bond (PTMISEA)	\$1,000,000
RM-2	\$2,351,818
Ticket Vending Machines - Phase 1 EP16 (2010)	\$3,060,000
Ticket Vending Machines - Phase 1 EP22 (2010)	\$62,048
Subtotal Local Funds	\$7,033,093
TOTAL	\$45,736,411

THIS PRINT COVERS CALENDAR ITEM NO. : 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute a Memorandum of Understanding (“MOU”) between the SFMTA and the Real Estate Division of the City and County of San Francisco (“RED”) that sets forth the obligations of each of the two agencies with respect to certain office buildings that are under the jurisdiction of RED and in which the SFMTA is a tenant and to provide for certain other work order arrangements between the SFMTA and RED for a total amount of \$6,381,486 for fiscal year 2009-2010.

SUMMARY:

- RED is responsible for the leasing of property required by various City departments, including the SFMTA, as well as providing property management services for City departments and managing City-owned buildings.
- SFMTA staff has negotiated a MOU with RED which describes the obligations of each of the two agencies with respect to certain office buildings, including 1 and 11 South Van Ness Avenue, 875 Stevenson Street, 25 Van Ness Avenue and 27 Van Ness Avenue, that are under the jurisdiction of RED and in which the SFMTA is a tenant and to provide for certain other work order arrangements between the SFMTA and RED.
- The accompanying Resolution authorizes the Executive Director/CEO to execute the MOU between the SFMTA and RED.

ENCLOSURES:

1. Resolution
2. Proposed Memorandum of Understanding between the SFMTA and RED

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION Gail Stein, SFMTA Real Estate
BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

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PURPOSE

This calendar item authorizes the Executive Director/CEO to execute a Memorandum of Understanding between the SFMTA and the Real Estate Division of the City and County of San Francisco (“RED”) that sets forth the obligations of each of the two agencies with respect to certain office buildings that are under the jurisdiction of RED and in which the SFMTA is a tenant and to provide for certain other work order arrangements between the SFMTA and RED for a total amount of \$6,381,486 for fiscal year 2009-2010.

GOAL

This item will meet the following goal and objectives of the SFMTA Strategic Plan:

- Goal 4, Financial Capacity: To ensure financial stability and effective resource utilization.
 - 4.2 Ensure efficient and effective use of resources.

DESCRIPTION

RED is responsible for the leasing of property required by various City departments, including the SFMTA, as well as providing property management services for City departments and managing City-owned buildings. The SFMTA is a tenant in certain buildings managed by RED, including 1 and 11 South Van Ness Avenue (which comprises the Customer Service Center at 11 South Van Ness Avenue), 875 Stevenson Street and 25 Van Ness Avenue. The SFMTA plans to lease space in 27 Van Ness Avenue beginning in fiscal year 2009-10. These office buildings house the majority of the SFMTA’s administrative staff.

SFMTA staff has negotiated the attached Memorandum of Understanding (“MOU”) with RED which describes the obligations of each of the two agencies relating to these office buildings, as well as certain other work order arrangements between the SFMTA and RED. In particular, Exhibit A to the MOU (Enclosure 2) sets forth the rental payments to be made by the SFMTA to RED for the SFMTA’s occupancy of these office buildings. A summary of these rental obligations per building is set forth below:

Location	Square footage	\$ per square foot per year	Annual Cost for fiscal year 2009-10
1 South Van Ness/ 11 South Van Ness	261,748	\$11.28 and \$22.56	\$5,531,634
875 Stevenson	19,085	\$32.64	\$571,023+
25 Van Ness	3,824	\$22.56	\$86,269
27 Van Ness	1,000	\$22.56	\$22,560

+for 11 months: the SFMTA will vacate 875 Stevenson on May 31, 2010

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The SFMTA's rental payments for these office buildings include maintenance, repair, utilities, janitorial, security and building management services. They do not include tenant improvements. The MOU provides a process for the SFMTA, RED and the Department of Public Works ("DPW") to follow to undertake tenant improvements in any of these office buildings.

SFMTA staff at 1 and 11 South Van Ness Avenue includes employees in the Executive and other administrative offices, the Revenue Center and the Customer Service Center. Staff for the Taxi Commission moved to 1 South Van Ness Avenue on June 1, 2009. The Security and Enforcement Division resides at 875 Stevenson Street; SFgo is located at 25 Van Ness Avenue; and the Paratransit discount pass office will move to 27 Van Ness Avenue in the upcoming fiscal year.

The MOU includes language specific to 1 and 11 South Van Ness Avenue. The SFMTA intends to occupy the 6th floor of 1 South Van Ness Avenue beginning in May 2009 and has been working with RED and DPW on tenant improvements. The MOU obliges RED to work diligently with the SFMTA, DPW and outside contractors to keep that project on time and on budget and, if delays occur, to obtain a Certificate of Occupancy. In addition, in response to the SFMTA's goal to consolidate its facilities into one administrative building, RED has agreed to provide six months notice to the SFMTA (or as early as possible) if other tenants will be vacating space and/or floors at 1 South Van Ness Avenue. The MOU also includes a statement that the SFMTA shall have access to sufficient emergency power through emergency generators for critical systems and rooms as outlined by SFMTA emergency planners to RED and as supply resources permit. Further, the MOU includes performance standards for RED.

The MOU also sets forth responsibilities for work orders between the SFMTA and RED, including total costs allowed per project and RED billing rates and procedures.

ALTERNATIVES CONSIDERED

The alternative to entering into the MOU would be to continue informal arrangements with RED that include paying rent for the SFMTA's occupancy of 1-11 South Van Ness Avenue and the other office buildings and other work order arrangements.

FUNDING IMPACT

The MOU requires the SFMTA to continue to pay rent for the space in the office buildings that it occupies as a tenant. These rental payments are set forth in full in Exhibit A to the MOU (Enclosure 2)

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

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RECOMMENDATION

Staff recommends that the SFMTA Board of Directors adopt the resolution authorizing the Executive Director/CEO to execute the proposed Memorandum of Understanding between the SFMTA and RED.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Real Estate Division of the City and County of San Francisco (“RED”) is responsible for the leasing of property required by various City departments, including the SFMTA, as well as providing property management services for City departments and managing City-owned buildings; and

WHEREAS, SFMTA staff has negotiated a MOU with RED regarding the obligations of each of the two agencies with respect to certain office buildings, including 1-11 South Van Ness Avenue, 875 Stevenson Street, 25 Van Ness Avenue and 27 Van Ness Avenue, that are under the jurisdiction of RED and in which the SFMTA is a tenant and to provide for certain other work order arrangements between the SFMTA and RED; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute the Memorandum of Understanding between the SFMTA and RED regarding the obligations of each of the two agencies with respect to certain office buildings that are under the jurisdiction of RED and in which the SFMTA is a tenant, and to provide for certain other work order arrangements between the SFMTA and RED for a total amount of \$6,381,486 for fiscal year 2009-2010.

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

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is by and between the REAL ESTATE DIVISION (“RED”) of the City and County of San Francisco (the “City”) and the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (“SFMTA” or “Tenant”).

RECITALS

A. The City, a municipal corporation, is the owner, beneficial owner, or lessee of the office buildings (each a “Building” and, collectively, the “Buildings”) located at 1 South Van Ness Avenue (“1 SVN”), 11 South Van Ness Avenue (“11 SVN”), 875 Stevenson Street (“875 Stevenson”), 25 Van Ness Avenue (“25 VN”) and 27 Van Ness Avenue (“27 VN”) in San Francisco, California. The Buildings are under the jurisdiction of RED. The SFMTA is a Tenant in each of the Buildings.

As the responsible party for the Buildings, RED requires that each tenant pay monthly rent as established annually by RED. Said rent is based upon the amounts necessary to:

- (i) Retire certificates of participation or other public financing or debt issued which use the Buildings as collateral (if applicable);
- (ii) Pay all operating and management expenses for the Buildings, including without limitation, maintenance, repair, utilities, management, and other services deemed necessary by the RED for the operation and occupancy of the Buildings;
- (iii) Adequately fund programmed, approved capital improvements to the Buildings which are not funded through other means or sources.

B. Tenant occupies that portion of the Buildings referred to below, and the parties hereto enter into this MOU to evidence their understanding of certain responsibilities with respect to the occupation, operation, and management of the Buildings.

C. Tenant and RED acknowledge that property management services shall be coordinated in the Buildings through RED.

D. In addition, RED, upon request of the SFMTA, shall perform real property transactions and assignments on behalf of SFMTA as described in Section 5 below.

THEREFORE, RED and Tenant hereby agree as follows:

Section 1. 1 and 11 SVN Occupied Premises

1. 1 and 11 SVN Occupied Premises. Tenant currently uses and occupies that portion of 1 SVN and 11 SVN known as Suites 110, 300, 700, B02, B03, B04, and a portion of Suite 800 (the “1 and 11 SVN Occupied Premises”) that is approximately 198,637 square feet. Tenant shall use the 1 and 11 SVN Occupied Premises primarily for SFMTA administrative offices,

SFMTA Revenue Center, SFMTA Customer Service Center, SFMTA Photo Lab, SFMTA Safe Repair, SFMTA Lost and Found, or storage and related purposes. Tenant shall not use the 1 and 11 SVN Occupied Premises, or any part thereof, for any purpose other than as set forth in this MOU. Tenant shall comply with all laws, regulations and requirements of federal, state, and local authorities together with all building rules, regulations and practices, now in force or which may hereafter be in force, including laws relating to Hazardous Materials handling or storage, Smoking, Emergency Ingress and Egress, or other matters which impose any duty upon Tenant with respect to Tenant's use of the 1 and 11 SVN Occupied Premises. As used in this MOU, "Hazardous Materials" shall mean any substance, water or material which has been determined by any federal, state, or local authority to be capable of posing a risk of damage or injury to health, safety or property.

2. Rent. For the fiscal year from July 1, 2008 through June 30, 2009, Tenant shall pay rent to RED in the amount of \$3,803,290 for the 1 and 11 SVN Occupied Premises. For the fiscal year from July 1, 2009 through June 30, 2010, Tenant shall pay rent to RED in the amount of \$4,107,850 for the 1 and 11 SVN Occupied Premises. Exhibit A itemizes the rent per floor for the 1 and 11 SVN Occupied Premises. Tenant shall budget sufficient amounts for each fiscal year to pay rent as determined by RED for the subsequent fiscal year. To ensure that Tenant has sufficient opportunity to obtain budgetary approval for these rent payments, RED shall provide Tenant with written notice of the rent for the next fiscal year by November of the prior fiscal year or as early as possible. RED shall determine the amount of rent based upon factors including but not limited to those items enumerated in Recital A, subsections (i), (ii) and (iii) hereto. The rental rates expressed herein include Tenant's pro rata share of operating, utility, maintenance and management expenses of 1 SVN and 11 SVN based upon the approximate ratio of the square footage of the 1 and 11 SVN Occupied Premises to the total square footage in 1 SVN and 11 SVN, and other factors, including consideration of common area and overall building vacancy. The operating, utility, maintenance and management expenses of the 1 and 11 SVN Occupied Premises shall include the cost of (a) base water, garbage, recycling, electricity, gas and other utilities for 1 SVN and 11 SVN, (b) any necessary debris removal, pest control, janitorial, elevator, security, and other services in connection with the operation and maintenance of 1 SVN and 11 SVN, (c) any repairs, maintenance, or replacement of any equipment, hardware, fixtures, building improvements, and/or Building Systems (as defined below) in 1 SVN and 11 SVN, and (d) overall management of 1 SVN and 11 SVN. Rates do not include special services such as tenant improvements, after-hours heating or cooling expenses, after-hours security, or special accommodations for common area conference facilities that are available on a per-use fee basis (if applicable). Such additional services shall be either paid for directly by Tenant with RED's written consent, or through a work order to RED. RED shall provide invoices to the SFMTA on a semi-annual basis, including additional services itemized for the SFMTA's approval. The Janitorial Services to be provided by RED for 1 SVN and 11 SVN are being negotiated by RED; RED will provide a copy of the contract setting forth these services to the SFMTA upon completion, and that contract will be incorporated by reference in this MOU. The Security Services to be provided by RED for 1 SVN and 11 SVN are set forth in Contract 86140 between Black Bear Security Services, Inc. and the City for One South Van Ness Avenue, which is incorporated by reference in this MOU. Additional services shall be approved by the SFMTA in advance, and either included in an Addendum to this MOU or itemized on the rent invoice supplied to the SFMTA by RED. The SFMTA's Customer Service Center, located

in 11 SVN, has special security and notification needs which are set forth in Exhibit B. The Building's Rules and Regulations for 1 SVN and 11 SVN are set forth in One South Van Ness Avenue Building Management Tenant Manual dated February 20, 2009, which is incorporated by reference in this MOU.

3. Tenant Improvements. Tenant shall not make or permit any alterations to 1 SVN and 11 SVN or to the Building Systems (defined, for each Building, as heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical, communications (data or voice) systems of each Building), and shall not make or permit any alterations, installations, additions or improvements, structural or otherwise (collectively, "Alterations"), in, to or about the 1 and 11 SVN Occupied Premises without RED's prior written consent for each Alteration.

In addition, Tenant shall submit any requests for a Tenant Improvement ("TI") to the 1 and 11 SVN Occupied Premises to RED at the address provided above. If approved, Tenant shall secure all appropriate permits and pay all costs for and/or associated with such TI, including, without limitation, any Americans with Disability Act ("ADA") upgrades to the 1 and 11 SVN Occupied Premises or elsewhere within 1 SVN and 11 SVN as required by law from installation to completion.

Prior to work starting on any TI in the 1 and 11 SVN Occupied Premises, the SFMTA, RED and, if assigned, the Department of Public Works ("DPW") will agree on the Scope, Schedule and Budget for the TI:

- **Scope:** description of RED (and, if appropriate, DPW) work assignment;
- **Schedule:** estimate of time, date work to begin, date work to end with delivery of product, and notification date if work will be delayed; and
- **Budget:** RED (and, if appropriate, DPW) staff to be assigned and approved by SFMTA, RED (and, if appropriate, DPW) estimate of staff and other costs for work, and notification date if budget will be exceeded or reduced.

Any request for a TI, if approved and completed, may affect Tenant's base rent upon completion due to impacts on the Building Systems or other matters, as determined solely by RED.

Any damage to 1 SVN and 11 SVN or the 1 and 11 SVN Occupied Premises caused by installation, maintenance, repair or any other activity of Tenant or Tenant's agents permitted hereunder shall be repaired and restored to its prior condition upon completion of the installation, maintenance, repair or other activities at no cost to RED.

4. RED Notice to SFMTA for Additional Space at 1 SVN. The SFMTA's goal has been to consolidate its facilities into one administrative building. The SFMTA has operations in other buildings which it desires to consolidate into 1 SVN to improve security, efficiency, and communications, and to reduce costs in the SFMTA's operating budget. RED shall notify the SFMTA, in writing, six months in advance, or as early as possible, if other tenants will be vacating space and/or floors at 1 SVN.

5. Emergency Generator. The SFMTA, along with specified other City tenant departments, shall have access to sufficient emergency power through emergency generators for critical systems and rooms as outlined by SFMTA emergency planners to RED and as supply resources permit.

6. Standards for Repairs. RED shall perform repairs within the 1 and 11 SVN Occupied Premises according to the standards set forth in Exhibit C.

Section 2. 1 SVN 6th Floor Premises

1. 1 SVN 6th Floor Premises. Tenant currently uses and occupies that portion of 1 SVN known as Suite 600 (the "1 SVN 6th Floor") that is approximately 63,111 square feet. Tenant shall use 1 SVN 6th Floor primarily for office, storage and related purposes. Tenant shall not use 1 SVN 6th Floor, or any part thereof, for any purpose other than as set forth in this MOU. Tenant shall comply with all laws, regulations and requirements of federal, state, local authorities together with all building rules, regulations and practices, now in force or which may hereafter be in force, including laws relating to Hazardous Materials handling or storage, Smoking, Emergency Ingress and Egress, or other matters which impose any duty upon Tenant with respect to Tenant's use of 1 SVN 6th Floor.

2. Rent. For the two fiscal years from July 1, 2008 through June 30, 2010, Tenant shall pay rent to RED in the amount of \$1,423,784 for each fiscal year for the 1 SVN 6th Floor. Exhibit A itemizes the rent per floor for the SFMTA for 1 SVN 6th Floor. Tenant shall budget sufficient amounts for each fiscal year to pay rent as determined by RED for the next fiscal year. To ensure that Tenant has sufficient opportunity to obtain budgetary approval for these rent payments, RED shall provide Tenant with written notice of the rent for the next fiscal year by November of the prior fiscal year or as early as possible. RED shall determine the amount of rent based upon factors including but not limited to those items enumerated in Recital A, subsections (i), (ii) and (iii) hereto. The rental rates expressed herein include Tenant's pro rata share of operating, utility, maintenance and management expenses of 1 SVN based upon the approximate ratio of the square footage of 1 SVN 6th Floor to the total square footage in 1 SVN, and other factors, including consideration of common area and overall building vacancy. The operating, utility, maintenance and management expenses of 1 SVN 6th Floor shall include the cost of (a) base water, garbage, recycling, electricity, gas and other utilities for 1 SVN, (b) any necessary debris removal, pest control, janitorial, elevator, security, and other services in connection with the operation and maintenance of 1 SVN, (c) any repairs, maintenance, or replacement of any equipment, hardware, fixtures, building improvements, and/or Building Systems in 1 SVN, and (d) overall management of 1 SVN. Rates do not include special services such as tenant improvements, after-hours heating or cooling expenses, after-hours security, or special accommodations for common area conference facilities that are available on a per-use fee basis (if applicable). Such additional services shall be either paid for directly by Tenant with RED's written consent, or through a work order to RED. RED shall provide invoices to the SFMTA on a semi-annual basis, including additional services itemized for the SFMTA's approval.

3. Tenant Improvements. The SFMTA shall have a TI allowance of \$45 per square foot for modifications to 1 SVN 6th Floor. RED shall provide the TIs on a timely basis through

DPW in accordance with the SFMTA-approved scope, schedule, and budget. If the SFMTA's requested changes for 1 SVN 6th Floor exceeds \$45/square foot, SFMTA shall agree to fund those improvements through the SFMTA's budget. RED will work diligently with the SFMTA, DPW and outside contractors to ensure that the scope, schedule and budget of the TIs for 1 SVN 6th Floor are delivered on time and on budget. If there are delays, RED will work diligently with the SFMTA, DPW and outside contractors until the Certificate of Occupancy is approved by the San Francisco Department of Building Inspection and 1 SVN 6th Floor can be safely occupied by the SFMTA. Tenant shall not make or permit any alterations to 1 SVN or to the Building Systems, and shall not make or permit any Alterations, in, to or about 1 SVN 6th Floor without RED's prior written consent for each Alteration.

In addition, Tenant shall submit any requests for a TI to 1 SVN 6th Floor to RED at the address provided above. If approved, Tenant shall secure all appropriate permits and pay all costs for and/or associated with such alterations, including, without limitation, any ADA upgrades to 1 SVN 6th Floor or elsewhere within 1 SVN as required by law, from installation to completion. Any request for improvements, if approved and completed, may affect Tenant's base rent upon completion due to impacts on the Building Systems or other matters, as determined solely by RED.

Prior to work starting on any TI in 1 SVN 6th Floor, the SFMTA, RED and, if appropriate, DPW will agree on the Scope, Schedule and Budget for the TI:

- **Scope:** description of RED (and, if appropriate, DPW) work assignment;
- **Schedule:** estimate of time, date work to begin, date work to end with delivery of product, and notification date if work will be delayed; and
- **Budget:** RED (and, if appropriate, DPW) staff to be assigned and approved by the SFMTA, RED (and, if appropriate, DPW) estimate of staff and other costs for work, and notification date if budget will be exceeded or reduced.

Any damage to 1 SVN or 1 SVN 6th Floor caused by installation, maintenance, repair or any other activity of Tenant or Tenant's agents permitted hereunder shall be repaired and restored to its prior condition upon completion of the installation, maintenance, repair, or other activities at no cost to RED.

4. Standards for Repairs. RED shall perform repairs within 1 SVN 6th Floor according to the standards set forth in Exhibit C.

Section 3. 875 Stevenson Premises

1. 875 Stevenson Premises. Tenant currently uses and occupies that portion of 875 Stevenson known as the 2nd floor ("875 Stevenson 2nd Floor") that is approximately 19,085 square feet. Tenant shall use 875 Stevenson 2nd Floor primarily for office or storage and related purposes. Tenant shall not use 875 Stevenson 2nd Floor, or any part thereof, for any purpose other than as set forth in this MOU. Tenant shall comply with all laws, regulations and requirements of federal, state, local authorities together with all building rules, regulations and practices, now in force or which may hereafter be in force, including laws relating to Hazardous

Materials handling or storage, Smoking, Emergency Ingress and Egress, or other matters which impose any duty upon Tenant with respect to Tenant's use of 875 Stevenson 2nd Floor.

2. Rent. For the fiscal year from July 1, 2008 through June 30, 2009, Tenant shall pay rent to RED in the amount of \$622,934 for 875 Stevenson 2nd Floor. For the period from July 1, 2009 through May 31, 2010, Tenant shall pay rent to RED in the amount of \$571,023 for 875 Stevenson 2nd Floor. RED intends to terminate the lease for 875 Stevenson 2nd Floor on May 31, 2010, at which time Tenant shall vacate 875 Stevenson 2nd Floor. Exhibit A itemizes the rent per floor for the SFMTA for 875 Stevenson 2nd Floor. Tenant shall budget sufficient amounts for each fiscal year to pay rent as determined by RED for the next fiscal year. To ensure that Tenant has sufficient opportunity to obtain budgetary approval for these rent payments, RED shall provide Tenant with written notice of the rent for the next fiscal year by November of the prior fiscal year or as early as possible. RED shall determine the amount of rent based upon factors including but not limited to those items enumerated in Recital A, subsections (i), (ii) and (iii) hereto. The rental rates expressed herein include Tenant's pro rata share of operating, utility, maintenance and management expenses of 875 Stevenson based upon the approximate ratio of the square footage of 875 Stevenson 2nd Floor to the total square footage in 875 Stevenson, and other factors, including consideration of common area and overall building vacancy. The operating, utility, maintenance and management expenses of 875 Stevenson shall include the cost of (a) base water, garbage, recycling, electricity, gas and other utilities for 875 Stevenson, (b) any necessary debris removal, pest control, janitorial, elevator, security, and other services in connection with the operation and maintenance of 875 Stevenson, (c) any repairs, maintenance, or replacement of any equipment, hardware, fixtures, building improvements, and/or the Building Systems in 875 Stevenson, and (d) overall management of 875 Stevenson. Rates do not include special services such as tenant improvements, after-hours heating or cooling expenses, after-hours security, or special accommodations for common area conference facilities that are available on a per-use fee basis (if applicable). Such additional services shall be either paid for directly by Tenant with RED's written consent, or through a work order to RED. RED shall provide invoices to the SFMTA on a semi-annual basis, including additional services itemized for the SFMTA's approval.

The Building's Rules and Regulations and standards for Janitorial Services, Security Services and Utilities to be provided by RED for 875 Stevenson 2nd Floor are set forth in the Office Lease dated as of June 16, 1994 between Western Mart Co, a California general partnership, d/b/a San Francisco Mart, as Landlord, and the City, as Tenant, for the lease of 875 Stevenson Street, San Francisco, California, as amended, which is incorporated by reference in this MOU, and in the Scope of Work provided in the FY 2009-2010 Work Order Agreement between DPW/BBR and RED. Additional services shall be approved by SFMTA in advance, approved in an Addendum to this MOU, or itemized on the SFMTA's Rent Invoice to RED.

3. Tenant Improvements. Tenant shall not make or permit any alterations to 875 Stevenson or to the Building Systems, and shall not make or permit any Alterations in, to or about 875 Stevenson 2nd Floor, without RED's prior written consent for each Alteration.

In addition, Tenant shall submit any requests for a TI to 875 Stevenson 2nd Floor to RED at the address provided above. If approved, Tenant shall secure all appropriate permits and pay all

costs for and/or associated with such alterations, including, without limitation, any ADA upgrades to 875 Stevenson 2nd Floor or elsewhere within 875 Stevenson as required by law, from installation to completion.

Prior to work starting on any TI, the SFMTA, RED (and, if assigned, DPW) will agree on the Scope, Schedule and Budget for the TI:

- **Scope:** description of RED (and DPW) work assignment;
- **Schedule:** estimate of time, date work to begin, date work to end with delivery of product, and notification date if work will be delayed; and
- **Budget:** RED (and DPW) staff to be assigned and approved by the SFMTA, RED (and, if appropriate, DPW) estimate of staff and other costs for work, and notification date if budget will be exceeded or reduced.

Any request for a TI, if approved and completed, may affect Tenant's base rent upon completion due to impacts on the Building Systems or other matters, as determined solely by RED.

Any damage to 875 Stevenson 2nd Floor caused by installation, maintenance, repair or any other activity of Tenant or Tenant's agents permitted hereunder shall be repaired and restored to its prior condition upon completion of the installation, maintenance, repair or other activities at no cost to RED.

Section 4. 25 and 27 Van Ness Premises

1. 25 Van Ness Premises. Tenant currently uses and occupies that portion of 25 V N known as Suite 210 ("25 VN Suite 210") that is approximately 3,824 square feet. Tenant shall use 25 VN Suite 210 primarily for SFMTA administrative offices, SFGO, other SFMTA uses or storage and related purposes. Tenant shall not use 25 VN Suite 210, or any part thereof, for any purpose other than as set forth in this MOU. Tenant shall comply with all laws, regulations and requirements of federal, state, and local authorities together with all building rules, regulations and practices, now in force or which may hereafter be in force, including laws relating to Hazardous Materials handling or storage, Smoking, Emergency Ingress and Egress, or other matters which impose any duty upon Tenant with respect to Tenant's use of 25 VN Suite 210.

2. Rent. For the two fiscal years from July 1, 2008 through June 30, 2010, Tenant shall pay rent to RED in the amount of \$86,269 for each fiscal year for 25 VN Suite 210. Exhibit A itemizes the rent per floor for the SFMTA for 25 VN. Tenant shall budget sufficient amounts for each fiscal year to pay rent as determined by RED for the next fiscal year. To ensure that Tenant has sufficient opportunity to obtain budgetary approval for these rent payments, RED shall provide Tenant with written notice of the rent for the next fiscal year by November of the prior fiscal year or as early as possible. RED shall determine the amount of rent based upon factors including but not limited to those items enumerated in Recital A, subsections (i), (ii) and (iii) hereto. The rental rates expressed herein include Tenant's pro rata share of operating, utility, maintenance and management expenses of 25 VN based upon the approximate ratio of the square footage of 25 VN Suite 210 to the total square footage in 25 VN, and other factors, including consideration of common area and overall building vacancy. The operating, utility, maintenance

and management expenses of 25 VN shall include the cost of (a) base water, garbage, recycling, electricity, gas and other utilities for 25 VN, (b) any necessary debris removal, pest control, janitorial, elevator, security, and other services in connection with the operation and maintenance of 25 VN, (c) any repairs, maintenance, or replacement of any equipment, hardware, fixtures, building improvements, and/or Building Systems in 25 VN, and (d) overall management of 25 VN. Rates do not include special services such as tenant improvements, after-hours heating or cooling expenses, after-hours security, or special accommodations for common area conference facilities that are available on a per-use fee basis (if applicable). Such additional services shall be either paid for directly by Tenant with RED's written consent, or through a work order to RED. RED shall provide invoices to the SFMTA on a semi-annual basis, including additional services itemized for the SFMTA's approval. The Janitorial Services to be provided by RED for 25 VN Suite 210 are set forth in Contract 83660 between Toolworks, Inc. and the City for 25 Van Ness Avenue, which is incorporated by reference in this MOU. The Security Services to be provided by RED for 25 VN Suite 210 are set forth in Contract 86070 between Hal Mar Jac Enterprises, Inc. d/b/a McCoy's Patrol Service and the City for 25 Van Ness Avenue, which is incorporated by reference in this MOU. Additional services shall be approved by the SFMTA in advance, approved in an Addendum to this MOU, or itemized on the SFMTA's Rent Invoice to RED. The Building's Rules and Regulations will be set forth in the tenant manual currently being developed for 25 Van Ness Avenue; RED will provide a copy of the tenant manual to the SFMTA upon completion, and that tenant manual will be incorporated by reference in this MOU.

3. Tenant Improvements. Tenant shall not make or permit any alterations to 25 VN or to the Building Systems, and shall not make or permit any Alterations in, to or about 25 VN Suite 210, without RED's prior written consent for each Alteration.

In addition, Tenant shall submit any requests for a TI to 25 VN Suite 210 to RED at the address provided above. If approved, Tenant shall secure all appropriate permits and pay all costs for and/or associated with such TI, including, without limitation, any ADA upgrades to 25 VN Suite 210 or elsewhere within 25 VN Suite 210 as required by law, from installation to completion.

Prior to work starting on any TI, the SFMTA, RED and, if appropriate, DPW will agree on the Scope, Schedule and Budget for the TI:

- **Scope:** description of RED (and, if appropriate, DPW) work assignment;
- **Schedule:** estimate of time, date work to begin, date work to end with delivery of product, and notification date if work will be delayed; and
- **Budget:** RED (and, if appropriate, DPW) staff to be assigned and approved by the SFMTA, RED (and, if appropriate, DPW) estimate of staff and other costs for work, and notification date if budget will be exceeded or reduced.

Any damage to 25 VN Suite 210 caused by installation, maintenance, repair or any other activity of Tenant or Tenant's agents permitted hereunder shall be repaired and restored to its prior condition upon completion of the installation, maintenance, repair or other activities at no cost to RED.

4. **Taxi Commission.** Tenant shall pay rent to RED for the premises at 25 VN occupied by the Taxi Commission until the Taxi Commission vacates such premises.

5. **27 Van Ness Premises.** RED and the SFMTA have been in discussions to enable the SFMTA to occupy a portion of the available space on the ground floor of 27 VN. RED will work with the SFMTA to expedite the process to provide this space to SFMTA, including completing all necessary TIs. Exhibit A itemizes the rent per floor expected for the SFMTA for 27 VN. The SFMTA and RED will agree on any cost-sharing arrangements for the TIs prior to the commencement of work on the TIs. RED and the SFMTA shall execute an amendment to this MOU when this space is ready for occupancy.

6. **Standards for Repairs.** RED shall perform repairs within 25 VN Suite 210 according to the standards set forth in Exhibit C.

Section 5. Work Orders Between RED and the SFMTA

SFMTA agrees to fund up to the amounts set forth below for work orders for RED for fiscal year 2008-09. RED Labor (“Labor”), Overhead (“OH”), and total Labor and OH rates for fiscal year 2008-09 are set forth in Exhibit D. RED will provide reports to the SFMTA on a semi-annual basis.

Project	Amount
Off Street Parking	\$125,000
SFMTA Capital Projects—Central Subway	\$10,000
SFMTA Capital Projects—Islais Creek	\$10,000
SFMTA Other Real Estate	\$25,000
Total	\$170,000

Prior to work starting on an assignment, SFMTA and RED will agree on the Scope, Schedule and Budget for each assignment:

- **Scope:** description of RED work assignment;
- **Schedule:** estimate of time, date work to begin, date work to end with delivery of product, and notification date if work will be delayed; and
- **Budget:** RED staff to be assigned and approved by SFMTA, RED estimate of staff and other costs for work, and notification date if budget will be exceeded or reduced.

Section 6. General Terms

1. **Maintenance.** All requests for maintenance and repairs shall be directed to PropertyManagement.RED@sfgov.org, managed by:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400

San Francisco, California 94102
Phone: (415) 554-9850

RED or its affiliates shall repair and maintain the structural portions of each Building, including the Building Systems; the roof, elevators, escalators, and the common areas; the floors, ceilings, walls, men's and women's restrooms, interior plumbing, walls and electrical wiring; provided, however, Tenant shall reimburse RED for any damage, excluding normal wear and tear, caused by any act or omission of Tenant, its Agents or Invitees. Repairs to a Building or the Building Systems critical to the functioning of office equipment, computer and communications systems, safety systems (not including minor repairs which shall be the responsibility of Tenant), or to the health and comfort of Tenant staff shall be made promptly by RED; in such cases, RED shall notify Tenant in writing within two business days after the date on which RED learned of the needed repairs or maintenance regarding the date when RED will complete such repairs or maintenance. For the purpose of making any such repairs, RED may use structures in the 1 and 11 SVN Occupied Premises, 1 SVN 6th and 8th Floor Premises, 875 Stevenson 2nd Floor, and 25 VN Suite 210 (collectively, the "SFMTA Premises") where reasonably required by the character of the work to be performed, provided that such work shall not block the main entrance to the SFMTA Premises nor unreasonably interfere with Tenant's occupancy. Tenant waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the SFMTA Premises or any other loss occasioned thereby. Tenant shall maintain, at no expense to RED, the fixtures and equipment located within the SFMTA Premises in a safe, clean and sanitary condition, ordinary wear and tear excepted.

Should Tenant desire to effect minor repairs and replacements within the SFMTA Premises related to movement of fixtures, equipment or partition or office walls, doors or interior windows, said work shall be: (a) at no cost to RED, (b) by licensed contractors or qualified mechanics approved by RED, including any qualified SFMTA personnel, (c) at least equal in quality, value and utility to the original work or installation, (d) in a manner and using equipment and materials that will not interfere with or impair the operations, use or occupation of any of the Buildings or the Building Systems, and (e) in accordance with any applicable Building Rules and Regulations and all applicable laws, rules and regulations. If the cost of any such repairs or replacements is in excess of Five Thousand Dollars (\$5,000) and is due to acts or omissions of Tenant, its Agents or Invitees, then Tenant shall pay to RED an administrative fee equal to ten percent (10%) of the total "hard" costs of the work. Tenant hereby waives all rights to make repairs at RED's expense under Sections 1941 and 1942 of the California Civil Code or under any similar law, statute or ordinance now or hereafter in effect.

2. Notices to Vacate Premises. Tenant and RED shall provide the other no less than twelve (12) months prior written notice to vacate any of the SFMTA Premises. Should Tenant provide such notice to RED, Tenant shall remain financially responsible for rental payments for that portion of the SFMTA Premises until the earlier of either (i) the end of the Fiscal Year for the effective date of vacation, or (ii) occupation of that portion of the SFMTA Premises by a replacement tenant under an executed MOU. If the replacement tenant does not provide RED with an equivalent amount of rent as Tenant, Tenant shall be responsible for paying RED any lost rent. Should RED tender to Tenant a notice to vacate any portion of the SFMTA Premises,

RED shall provide Tenant with advisory assistance in securing a new location, as resources allow.

3. Non-disturbance. If neither a default by Tenant exists beyond the applicable grace or cure period, nor any event has continued to exist that would entitle RED to terminate this MOU or would cause, without further action by RED, the termination of this MOU or would entitle RED to dispossess Tenant thereunder, this MOU shall not be terminated. In addition, the Tenant's use, possession, or enjoyment of the SFMTA Premises shall be free from interference.

4. Insurance. RED shall require any subtenant licensee or any agent, contractor or subcontractor it hires in connection with its use, occupation, construction or alteration of the SFMTA Premises or with a right to enter or occupy the SFMTA Premises, to secure such insurance as is recommended by RED. The SFMTA, as a City department, is self-insured. RED shall purchase fire, earthquake, liability, and other insurance or self-insure for the SFMTA Premises as mandated by the terms of the debt instruments for any of the Buildings.

5. Damages. Tenant agrees to be responsible for all costs associated with all claims, damages, liabilities or losses which arise only (i) as a result of the handling of Hazardous Materials on or about the SFMTA Premises by Tenant, its licensees, invitees, its contractor's assignees or sublessees, or (ii) out of any injury or death of any person or damage of any property occurring in, on or about the SFMTA Premises or which arise as a result of Tenant's, or its agents', contractor's, assignees', or sublessees', acts or omissions, from any cause. The foregoing obligation of Tenant shall survive the termination of this agreement with respect to Claims that arise during Tenant's possession of the SFMTA Premises. Notwithstanding the foregoing, Tenant shall have no obligation or liability with respect to any pre-existing Hazardous Materials or Free Product on or around the SFMTA Premises except for the handling and disposal of such Hazardous Materials or Free Product that is required by any Regulatory Agency having jurisdiction over the SFMTA Premises as a result of the construction, maintenance or use of the substation located on the SFMTA Premises.

6. Indemnification. Tenant shall include RED as an indemnified party in any indemnification provision between Tenant and any agent, contractor or subcontractor it hires in connection with its use of the SFMTA Premises.

7. Subleases and Assignments. Tenant shall not enter into any sublease agreements or assignments of space without the prior written consent of RED.

8. Amendment. The terms of this MOU may be amended by written agreement of the parties hereto. The parties hereto agree to execute annual amendments, if necessary, to reflect changes in rent and any other financial terms set forth in this MOU.

9. Termination of MOU. This MOU may be terminated by either party upon 90 days written notice to the other party.

10. Notices. Notices and other communications to the SFMTA shall be addressed as follows:

San Francisco Municipal Transportation Agency
Real Estate Section
One South Van Ness Avenue, 7th floor
San Francisco, California 94103
Attn: Senior Manager

Notices and other communications to RED shall be addressed as follows:

Real Estate Division
City and County of San Francisco
25 Van Ness Avenue, Suite 400
San Francisco, California 94102
Attn: Director of Property

IN WITNESS WHEREOF the Parties have caused this MOU to be executed by their duly appointed representatives this ____ day of _____, 2009.

REAL ESTATE DIVISION

MUNICIPAL TRANSPORTATION AGENCY

By: Amy L. Brown
Director of Property

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

SFMTA Board of Directors
Resolution No. _____
Dated: _____

Secretary

EXHIBIT A

RENT

1 SVN

Location	Square Footage (s.f.)	\$/s.f./yr.	Annual Cost (FY 08-09)	Annual Cost (FY 09-10)
1 SVN, Basement (Revenue Center)	11,459	\$11.28	\$129,258	\$129,258
1 SVN, Basement (Common Area)	5,375	\$11.28	\$60,630	\$60,630
1 SVN, Basement (Storage)	16,269	\$11.28	\$183,514	\$183,514
11 SVN, 1 st Floor (Customer Service Center)	5,866	\$22.56	\$132,337	\$132,337
1 SVN, 3 rd Floor	66,351	\$22.56	\$1,496,879	\$1,496,879
1 SVN, 6 th Floor	63,111	\$22.56	\$1,423,784	\$1,423,784
1 SVN, 7 th Floor	66,317	\$22.56	\$1,496,112	\$1,496,112
1 SVN, 8 th Floor	27,000	\$22.56	\$304,560 (six months only)	\$609,120
1 SVN Total:	261,748		\$5,227,074	\$5,531,634

875 Stevenson

Location	Square Footage (s.f.)	\$/s.f./yr.	Annual Cost (FY08-09)	Annual Cost (FY 09-10)+
875 Stevenson, N.E. side, 2 nd Floor	14,695	\$32.64	\$479,645	\$439,674
875 Stevenson, N.W. side, 2 nd Floor	4,390	\$32.64	\$143,290	\$131,349
875 Stevenson Total:	19,085		\$622,934	\$571,023

+11 months

25 VN

Location	Square Footage (s.f.)	\$/s.f./yr.	Annual Cost (FY08-09)	Annual Cost (FY 09-10)
25 VN, Suite 210	3,824	\$22.56	\$86,269	\$86,269
25 VN Total:	3,824		\$86,269	\$86,269

27 VN

Location	Square Footage (s.f.)	\$/s.f./yr.	Annual Cost (FY08-09)	Annual Cost (FY 09-10)
27 VN, 1 st Floor	1,000	\$22.56	--	\$22,560
27 VN 1 st Floor Total:	1,000		--	\$22,560

EXHIBIT B

SFMTA CUSTOMER SERVICE CENTER: 11 SVN SPECIAL PROCEDURES

The Customer Service Center (“CSC”) contracts with Cypress Security Company through SFMTA Safety, Security & Enforcement located at 875 Stevenson.

- Entry to the CSC is closely monitored. Admittance to the back office of CSC is restricted to staff. All visitors are escorted through the restricted areas.
- Keys and/or Card keys are only issued to CSC staff.
- Two security guards are present at the CSC located at 11 SVN to insure public and employee safety during business hours.
- Security guards are responsible for directing customers to the window designated as the ticket and information window.
- After customers and janitorial staff have left the lobby, doors are locked and the monitored security alarm is set by CSC staff.
- The alarm system remains activated until CSC is open for business the next day.
- All security codes for the internal alarm system in the CSC are issued by the CSC Manager; codes are then entered, maintained and monitored by SFMTA Security at 875 Stevenson.
- A report of all activity for the security system is available by staff code.

SFMTA Security at 875 Stevenson is responsible for:

- Issuing key cards approved by Manager;
- Changing access for Employees;
- Maintaining and monitoring security equipment located in the lobby i.e., panic buttons, window speakers, and door locks; and
- Monitoring security cameras and audio equipment located in the CSC lobby and notifying 911 if necessary.

Notification for security breaches after office hours are reported to Cypress Security. Paul Silk, Field Manager, is the SFMTA CSC contact:

Cell: 415.336.0851

Office: 866.345.1277

Cypress verifies with the following CSC Management staff regarding possible false alarms:

Victor Dunn

Lorena Kehoe

Victoria Einhaus

EXHIBIT C

STANDARDS FOR REPAIRS

In the event that a repair cannot be made within the timeline provided below, RED shall provide a written explanation to the SFMTA setting forth the reasons for the delay and the expected date of completion for that repair.

Service	Standard
Window washing	Once per year; SFMTA may also hire window washers and pay for it directly
Key requests	Within five working days after being reported
Door repairs	Secure door same day as reported; RED will endeavor to repair within one week but it may take up to two weeks
Light bulb replacement	Within three working days after being reported
Room temperature adjustment	Within four working hours after being reported, unless the request requires adjustment to the building-wide system, which will require five working days
Plumbing malfunctions	Safety and water waste problems within four working hours after being reported, others prioritized among all properties and addressed as soon as possible
Leaky faucets or drinking fountains	Safety and water waste problems within four working hours after being reported, others prioritized among all properties and addressed as soon as possible
Elevators/ escalators	Problems communicated to elevator company by RED on the same day as reported, estimated timeline for repair communicated on same day as received by RED from elevator company

EXHIBIT D

WORK ORDERS

RED Labor and Overhead Rates for FY 2008-09

Names of RED Staff Approved by SFMTA	Project/Assignment	Total FY 2008-09
RED Staff: to be approved by SFMTA	Off-Street Parking	Up to \$125,000
RED Staff: to be approved by SFMTA	Central Subway	Up to \$10,000
Claudine Venegas	Islais Creek	Up to \$10,000
RED Staff: to be approved by SFMTA	SFMTA General	Up to \$25,000
Total		Up to \$170,000

The FY09 Billing Rate is calculated as direct cost + 70.2% overhead.

RED Staff	FY09 Billing Rate
Bayol, Greg	N/A
Bayol, Marta	\$150.72
Constantinos, Rick	N/A
Dunn, Charlie	\$179.52
Hinson, Jason	\$132.49
Limpin, Paul	\$129.17
Lucas, Allan	\$158.55*
Medlar, Jean	\$138.71*
Myres, Jess	\$175.40*
Parker, Shirley	\$132.49
Ritter, Larry	\$158.45
Romani, Jerry	\$179.52
Sutherland, Julian	\$154.18
Updike, John	\$198.93
Venegas, Claudine	\$157.80

* These staff members are part of the building management team; their costs are not billed on an hourly rate but, rather, included in the full service lease rate for building occupants of various RED jurisdiction assets. Also not listed are the engineering team members who also are not billed on an hourly rate but, rather, are included in the full service lease rate for building occupants of various RED jurisdiction assets.

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 an Inter-departmental Work Order Memorandum of Understanding (“MOU”) between the SFMTA and the ReproMail Division of the General Services Agency of the City and County of San Francisco (“ReproMail”) that sets forth the obligations of each of the two agencies with respect to inter-office and United States Postal Service (USPS) mail pickups and deliveries by ReproMail.

SUMMARY:

- ReproMail as the service provider is responsible for picking up and delivering inter-office and USPS mail at and to all SFMTA facilities.
- SFMTA as the client is responsible for providing funding for ReproMail to cover operating expenses in providing these services.
- This MOU will establish the funding mechanism for these services.
- The accompanying Resolution authorizes the Executive Director/CEO to execute the MOU between the SFMTA and ReproMail.

ENCLOSURES:

1. SFMTAB Resolution
2. Proposed Memorandum of Understanding between the SFMTA and ReproMail

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION Ken Yee, SFMTA Real Estate
BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

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PURPOSE

This calendar item authorizes the Executive Director/CEO to execute a Memorandum of Understanding between the SFMTA and the ReproMail Division of the General Services Agency of the City and County of San Francisco that sets forth the obligations of each of the two agencies with respect to inter-office and United States Postal Service (USPS) mail pickups and deliveries by ReproMail.

GOAL

This item will meet the following goal and objectives of the SFMTA Strategic Plan:

- Goal 4, Financial Capacity: To ensure financial stability and effective resource utilization.
 - 4.2 Ensure efficient and effective use of resources.

DESCRIPTION

The ReproMail Division of the General Services Agency of the City and County of San Francisco (“ReproMail”) is responsible for picking up and delivering inter-office and United States Postal Service (USPS) mail to various City departments, including the SFMTA. The SFMTA plans to continue this service by ReproMail in Fiscal Year 2009-10.

SFMTA staff has negotiated the attached Memorandum of Understanding (“MOU”) with ReproMail, which describes the obligations of each of the two agencies relating to these mail delivering services. A summary of these work order obligations is set forth below:

Fiscal Year	Labor	Fringe	Unit (labor)	Subtotal	Maintenance	Fuel	Unit (vehicle)	Subtotal	Total
2009	\$46,687	\$20,789	2	\$134,952	\$ 11,758	\$5,262	1	\$17,020	\$ 151,972
2010	\$47,840	\$24,333	2	\$144,346	\$ 11,758	\$5,262	1	\$17,020	\$ 161,366

The SFMTA’s inter-departmental work order payments for these services include funding the personnel expenditures of two 1404 Clerk positions and equipment expenditures for two delivery vans. Personnel expenditures include salaries, fringe benefits and ReproMail overhead charges. Equipment expenditures include vehicle maintenance and fuel costs.

This MOU also sets forth responsibilities for work orders between the SFMTA and ReproMail, including total costs allowed per fiscal year and ReproMail service locations.

ALTERNATIVES CONSIDERED

The alternative to entering into the MOU would be to contracting out the services via a Request for Proposal (RFP) process. The SFMTA does not have staff to provide these services internally.

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FUNDING IMPACT

The MOU requires the SFMTA to continue to pay ReproMail operating expenditures on the services provided to SFMTA. The work order amount is listed under SFMTA Commitments Section.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors adopt the resolution authorizing the Executive Director/CEO to execute the proposed Memorandum of Understanding between the SFMTA and ReproMail.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The ReproMail Division of the General Services Agency of the City and County of San Francisco (“ReproMail”) is responsible for picking up and delivering inter-office and United States Postal Service (USPS) mail to various City departments, including the SFMTA; and

WHEREAS, SFMTA staff has negotiated the attached Memorandum of Understanding (“MOU”) with ReproMail which describes the obligations of each of the two agencies relating to these mail delivering services. The MOU specifies the inter-departmental work order arrangements between the SFMTA and ReproMail; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute a Memorandum of Understanding between the SFMTA and ReproMail regarding the obligations of each of the two agencies with respect to inter-office and United States Postal Services mail pickups, deliveries and inter-departmental work order arrangements.

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

**Memorandum of Understanding for
Mail Pickup and Delivery Services
Between
Reproduction and Mail Services
And
the Municipal Transportation Agency**

This MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into on this 18th day of May, 2009 (the “Effective Date”) by and between Reproduction and Mail Services (“ReproMail”) a division of General Services Agency (“GSA”), and the Municipal Transportation Agency (“MTA”), both agencies of the City and County of San Francisco.

RECITALS

- A. MTA and ReproMail agree to take the following actions in order to provide comprehensive interoffice mail delivery services and pickup of outgoing U.S. mail at the designated locations.
- B. The purpose of this MOU is to set forth the terms of services to be provided by ReproMail and establish the funding mechanism for these services.
- C. This MOU will last one fiscal year and expires on June 30, 2010.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. Recitals.

The foregoing recitals are true and correct and are incorporated herein by reference.

2. MTA Commitments.

MTA shall work order a maximum of \$161,366 to ReproMail during the term of the agreement, which represents the salary and benefits for two full time 1404 Clerks.

MTA shall provide a maximum of \$17,020 to cover the maintenance and fuel costs for two delivery vans for use by ReproMail in carrying out ReproMail's obligations under this MOU.

3. ReproMail Commitments.

- A. ReproMail shall provide daily pickup and delivery of interdepartmental mail and

pickup only of outgoing U.S. mail at the following locations, which list may be adjusted by mutual agreement of the parties:

949 Presidio
151 Beach Street, Kirkland division and shop
1201 Mason, Cable Car division and shop
875 Stevenson St. (2nd floor)
1 South Van Ness
City Hall
Post Office at Geary near Fillmore
Peer Assistance, 1508 Fillmore
Central Control at 151 Lennox
425 Geneva
1399 Marin shop
501 Cesar Chavez
Woods (1095 Indiana)
Woods (1001 22nd St.)
700 Pennsylvania St.
2500 Mariposa
1401 Bryant
1940 Harrison
1849 Harrison
25 Van Ness, Ste 210
505 7th Street
571 10th Street
1380 Howard
80 Charter Oak
1975-99 Bryant
901 Rankin
821 Howard
Muni Metro East at Illinois and 25th Streets

B. ReproMail shall provide SFMTA with documentations on service rendered upon request. Such documentations shall include, but not limited to, work schedules, work assignment logs, and other operation records such as financial records related to the service provided.

5. Personnel Issues

- A. The assigned clerks shall report to the Assistant Manager of ReproMail.
- B. From time to time the assigned clerks may be assigned other duties as needed by management of ReproMail.
- C. ReproMail will supervise personnel delivering mail at MTA facilities. These personnel will be subject to ReproMail rules for scheduling, vacation and sick pay

requests. ReproMail will staff the interoffice mail center at One South Van Ness during absences or vacations by other ReproMail personnel. ReproMail shall perform timekeeping, attendance and performance evaluations for the assigned staff.

6. Term. The term of this MOU shall commence on the Effective Date and shall end on June 30, 2010, unless extended by written consent of both parties.

7. Termination. MTA reserves the right to terminate this agreement and cancel the work-order if Repro is unable to meet the commitments set forth above.

8. Amendments or Modifications. Except as otherwise provided in Section 6 above, neither this MOU nor any of its terms or provisions shall be changed, waived or modified unless by a written instrument signed by both parties.

9. Entire Agreement. This agreement sets forth the entire MOU between MTA and ReproMail and supercedes all other prior written or oral provisions.

10. Governing Law. All transactions described herein are subject to and must be conducted in accordance with the applicable requirements of the City's Charter and codes and applicable state and/or federal laws.

11. Severability. The invalidity or unenforceability of a particular provision of this MOU shall not affect the other provisions hereof.

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

AGREED TO AS WRITTEN ABOVE:
SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

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

AGREED TO AS WRITTEN ABOVE:
REPRODUCTION AND MAIL SERVICES

By: _____
CHRIS VEIN
Chief Information Officer
Department of Technology

THIS PRINT COVERS CALENDAR ITEM NO. : 10.6

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

DIVISION: Muni Operations

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to award San Francisco Municipal Transportation Agency Contract No. 583-03, Complete Rehabilitation of 16 PCC Historic Streetcars, to Brookville Equipment Corporation, as the lowest responsive and responsible bidder, to rehabilitate 16 SFMTA PCC historic streetcars, for an amount not to exceed \$18,712,576, for a total contract term not to exceed five years.

SUMMARY:

- On June 17, 2008, the SFMTA Board adopted Resolution No. 08-094, which authorized the Executive Director/CEO to issue a Request for Proposals for Contract No. 583-03, Complete Rehabilitation of 16 PCC Historic Streetcars. The RFP was issued on July 8, 2008.
- On February 04, 2009, the SFMTA received two proposals, from Brookville Equipment Corporation (BEC) and ALSTOM Transportation, Inc. After evaluating the proposals and conducting oral interviews, the selection committee ranked BEC as the highest qualified proposer.
- The project funds are provided by federal and local sources.
- The Civil Service Commission approved this contract on August 18, 2008 under Resolution No. 4011-08/09
- The Contract Compliance Office has confirmed the consultant's commitment to meeting the 3% SBE participation goal for this contract.
- Staff requests that the SFMTA Board authorize the Executive Director/CEO to award the Contract No 583-03 to BEC for a total amount not to exceed \$18,712,576, and a term of five years.

ENCLOSURES:

1. SFMTA Board Resolution
2. Project Budget and Financial Plan
3. Contract No. 583-03

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO Trinh Nguyen

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

Requesting authorization for the Executive Director/CEO to award the San Francisco Municipal Transportation Agency Contract No. 583-03, Complete Rehabilitation of 16 PCC Historic Streetcars, to Brookville Equipment Corporation, as the lowest responsive and responsible bidder, to rehabilitate 16 SFMTA PCC historic streetcars, for an amount not to exceed \$18,712,576, and for a contract term not to exceed five years.

Strategic Plan Goals:

This project will meet the following goals of 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

- 1.1 Improve safety and security across all modes of transportation
- 1.2 Improve cleanliness of SFMTA stations and vehicles by providing a clean, comfortable experience
- 1.3 Reduce emissions as required by the SFMTA Clean Air Plan
- 1.4 Improve accessibility across transit services
- 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, and rideshare)

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

- 2.1 Transit reliability: Improve on-time performance to 85%
- 2.2 Ensure efficient transit connectivity and span of service
- 2.4 Reduce congestion through major corridors

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

- 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups
- 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits

EXPLANATION

The active historic streetcar fleet is a collection of electric rail vehicles that provide service on the F-Market & Wharves line. These include 15 Presidents' Conference Committee Cars (PCCs), nine cars designed by Peter Witt that were bought from Milan, Italy, and other historic streetcars from the U.S. and around the world. SFMTA currently runs 24 historic streetcars in regular revenue service.

The F-Line ridership has grown from 10,000 to 20,000 per weekday since 2000. To accomplish this growth in ridership and planned future expansion service, SFMTA must add vehicles to the

PAGE 3.

historic fleet. There are several procurements and rehabilitation projects moving forward to expand the size of the fleet. Listed below are the on-going or planned projects:

1. Safety enhancement for nine Milan cars: this project is to complete the safety enhancement for the Milan cars in the active fleet. This project is in the planning phase. The project is fully funded.
2. Complete Rehabilitation of Historic Streetcar No. 1 (Car No. 1): Car No. 1 is Muni's first streetcar, which began service in 1912. It needs a complete rehabilitation before it can be returned to revenue service. A Request for Proposal (RFP) was issued in July 2008 and the contract was awarded to Brookville Equipment Corporation with Notice to Proceed issued in May 2009. The project is fully funded.
3. Major overhaul of 16 former SEPTA PCC: this project is to provide major overhaul of 16 PCC that are in revenue service for 18 years since their last major overhaul. The design phase will begin in late 2010. This project is partially funded.
4. Complete Rehabilitation of 16 PCC: this project is to partially rehabilitate 11 former New Jersey Transit PCCs that Muni purchased in 2004; complete rehabilitation of four Muni double-ended PCCs and one single-ended PCC. The project is fully funded and is being recommended for award as described below.

On June 17, 2008, the SFMTA Board adopted Resolution No. 08-094, which authorized the Executive Director/CEO to issue a Request for Proposal (RFP) for Contract No. 583-03, Complete Rehabilitation of 16 PCC Historic Streetcars. On February 4, 2009, the SFMTA received two proposals, from Brookville Equipment Corporation (BEC) and ALSTOM Transportation, Inc. A selection committee reviewed and evaluated both proposals and ranked BEC as the highest qualified proposer. SFMTA staff has negotiated a contract with BEC.

The work to be performed on the streetcars consists of the following:

1. Partial Rehabilitation of 11 Former New Jersey Transit (NJT) PCCs (Nos. 1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080).

The work to be done on these vehicles includes re-engineering the electrical and propulsion systems; producing a set of schematics and drawings and rebuilding and rewiring the vehicles' systems to those schematics and drawings. The existing propulsion system will be replaced with rebuilt Westinghouse PCC propulsion and braking equipment. The contractor will be required to inspect the wiring to the power circuits of the radio, Translink, NextBus and Vetag (vehicle tagging) systems and doors and will install exterior cameras that will provide the operator with a view along the left side of the PCC. All lighting systems will be rewired and the underfloor and exposed car frames will be cleaned and painted. The structural work and accessibility improvements were done in 2006.

2. Major Rehabilitation of four double-ended PCCs (Nos. 1006, 1008, 1009, 1011) and one single-ended PCC – (Car No. 1040).

PAGE 4.

The major rehabilitation includes body and frame work; lead paint removal; repainting of the interior and exterior; mechanical and electrical work; safety features; accessibility improvements; and other work to prepare these streetcars for revenue service. The contractor will replace the existing propulsion system with a rebuilt system of the same vintage and will install a radio and public announcement system. The vehicles will be wired to allow for the installation of Translink and NextBus equipment. A radio and public announcement system will be installed. Vetag components will be added for the remote operation of track switches. In addition to remanufacturing the PCCs, the contractor will be required to submit a series of documents including schematics and drawings, manufacture and repair procedures, and detailed maintenance and operation instructions. The passenger seating area shall be equipped for wheelchair accessibility.

ALTERNATIVES CONSIDERED

SFMTA does not have the staff to perform the work itself. The other alternative is not to rehabilitate the 16 cars, which would impact SFMTA's F-Line service and E-Line service.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Civil Service Commission approved this contract on August 18, 2008, under Resolution No. 4011-08/09.

The Contract Compliance Office has confirmed the contractor's commitment to meeting the 3% SBE participation goal.

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

FUNDING

This project will be funded through local and federal sources as outlined in enclosure 2.

The total project budget is approximately \$24.8 million, which includes all project support costs, parts, contingency and the negotiated contract cost to BEC.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO to execute Contract No. 583-03, Complete Rehabilitation of 16 PCC Historic Streetcars, to Brookville Equipment Corporation for an amount not to exceed \$18,712,576, for a term not to exceed five years.

PROJECT BUDGET AND FINANCIAL PLAN:

PROGRAM BUDGET

No.	Project List	Budget	Status
1	Safety Enhancement for 9 Milan Cars	\$1,183,431	In Planning
2	Car # 1: Rehabilitation	\$2,486,505	Contract awarded May 2009
3	Rehabilitation and Overhaul Program for PCC Fleet (With Contracting cost to BEC of \$18,712,576)	\$24,771,112	Request for Award
4	Major Overhaul of 16 former SEPTA PCC (MK PCC)	\$3,016,898	In Planning Partially Funded
TOTAL	PROGRAM COST ESTIMATE	\$31,457,946	

PROGRAM FUNDING PLAN

Fund	Amount
CA-03-0708	\$5,407,608
CA-90-Y533-00 (Section 5307)	\$5,499,496
CA-05-0215	\$2,294,104
CA 90-X957	\$1,668,473
CA 90-X957	\$1,378,051
CA 90-0040	\$2,068,000
CA 90-0124	\$1,106,000
CA 03-0673	\$4,791,550
CA 03-0708	\$893,423
CA 90-0424	\$276,000
Regional Measure 2	\$1,090,000
SFMRIC #58	\$849,189
Prop B Res. 02-74	\$605,499
Prop B Res. 03-51	\$4,499
Prop K	\$3,526,054
TOTAL FUNDING PLAN	\$31,457,946

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

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) operates the Municipal Railway, which has 24 historic streetcars in revenue service; and,

WHEREAS, The popularity of the F-line and planned future expansion service require Muni to add vehicles to its historic streetcar fleet; and,

WHEREAS, On June 17, 2008, the SFMTA Board adopted Resolution No. 08-094, which authorized the Executive Director/CEO to issue a Request for Proposals for Contract No. 583-03, Complete Rehabilitation of 16 PCC Historic Streetcars, and,

WHEREAS, The SFMTA issued a Request for Proposals (“RFP”) on July 8, 2008, and received two proposals in response to the RFP; and,

WHEREAS, After reviewing the proposals and conducting oral interviews, the selection committee ranked Brookville Equipment Corporation as the highest qualified proposer; and

WHEREAS, SFMTA has negotiated a contract with Brookville Equipment Corporation for an amount not to exceed \$18,712,576, and for a term not to exceed five years; and

WHEREAS, The contract provides for the partial rehabilitation of 11 former New Jersey Transit (NJT) PCCs, the major rehabilitation of four double-ended PCCs and one single-ended PCC; and

WHEREAS, SFMTA has received capital funding for this project from federal and local sources; and,

WHEREAS, The Contract Compliance Office has confirmed the consultant’s commitment to meeting the 3% SBE participation goal for this contract; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute Contract No. 583-03, Complete Rehabilitation of 16 SFMTA Historic Streetcars, with Brookville Equipment Corporation, for an amount not to exceed \$18,712,576, 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

CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

AGREEMENT

BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO

AND

BROOKVILLE EQUIPMENT CORPORATION

FOR THE

COMPLETE REHABILITATION OF 16 PCC HISTORIC STREETCARS

SFMTA CONTRACT NO. 583-03
(CCO No. 08-1025)

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Exhibits

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

**Agreement between the City and County of San Francisco and
Brookville Equipment Corporation**

This Agreement is made this _____ day of _____, 2009, in the City and County of San Francisco, State of California, by and between: Brookville Equipment Corporation (“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. SFMTA wishes to obtain the services of a qualified firm to rehabilitate SFMTA’s 16 PCC Historic Streetcars ("16 PCCs").

B. A Request for Proposals (“RFP”) was issued on July 8, 2008 and City selected Contractor as the highest-ranked proposer pursuant to the RFP.

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

D. Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number 4011 – 08/09 on August 18, 2008;

Now, THEREFORE, the parties agree as follows:

Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of the contract documents, it shall have the meaning set forth herein.

Acceptance: The formal written acceptance by the City and County of San Francisco that all work, or a specific portion thereof, under the contract has been satisfactorily completed.

Award: Notification from the City to Contractor of acceptance of Contractor’s proposal, subject to the execution and approval of a satisfactory Contract therefore and bond to secure the performance thereof, and to such other conditions as may be specified or otherwise required by law.

Certification: Certification by the Controller that funds necessary to make payments as required under the contract are available in accordance with the City's Charter.

City: City and County of San Francisco, a municipal corporation.

Conformed Contract Documents: The contract documents revised to incorporate information included in the Contractor's Proposal and accepted by the City.

Contract (Agreement): The written Contract executed by the City and Contractor, covering the performance of the work and furnishing of labor, materials, equipment, tools, and services, including work incidental to the procurement, to include the RFP, Technical Specifications, all Conformed Contract Documents, Contractor's Proposal, the Contract bonds or other security, and all supplemental agreements entered into.

Contract Modification: A written order, issued by the City to Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.

Contractor: The Proposer to whom award is made.

Controller: Controller of the City.

Days: Unless otherwise designated, the word "days" refers to working days of the City.

Engineer: The SFMTA Engineer assigned to the Contract or designated agent.

SFMTA: The San Francisco Municipal Transportation Agency, an agency of the City with responsibility for the Municipal Railway Department and the Department of Parking and Traffic.

Muni: The San Francisco Municipal Railway, the public transit system of the City under the supervision and control of the San Francisco Municipal Transportation Agency.

Notice To Proceed: A written notice to the Contractor of the date on which it shall begin prosecution of the work to be done under the contract.

PCCs: Presidential Conference Committee historic streetcars.

Project Manager: The Project Manager assigned to the Contract for the SFMTA of the City, or designated agent.

Proposal: The technical and management information and prices submitted in response to the Request for Proposals.

Request for Proposals; RFP: The Request for Proposals issued by the SFMTA on July 8, 2008 for rehabilitation of 16 PCC Historic Streetcars.

Subcontractor: Any individual, partnership, firm, or corporation, which undertakes integrally on the Project the partial or total design, manufacture, or performance of one or more items of work under the terms of the contract. As used herein, the terms subcontractor and supplier are synonymous.

Technical Specifications: The specifications, provisions, and requirements that detail the work and the materials, products (including the methods of manufacture, construction, assembly, and testing), and other requirements relative thereto.

Work: The furnishing of all labor, supervision, services, products, materials, machinery, equipment, tools, supplies, and facilities and the performance of all requirements called for by the Contract and necessary to the completion thereof.

I. 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.

II. Term of the Agreement

Subject to Section 1, this Agreement shall run from the Effective Date for a term not to exceed five years from the Effective Date.

III. 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.

IV. Services Contractor Agrees to Perform

The Contractor agrees to perform the services provided for in the RFP, including Volumes 2A, 2B and 2C of the Technical Specifications, and in the Contractor's Proposal, according to the Project Delivery Schedule set forth in Exhibit B, with respect to the following

PCCs.

- A. Electrical and Mechanical Rehabilitation of 11 Former New Jersey Transit (NJT) PCCs (1070, 1071, 1072, 1073, 1074, 1075, 1076, 1077, 1078, 1079, 1080)
- B. Major Rehabilitation of 4 Double Ended PCCs (1006, 1008, 1009, 1011)
- C. Major Rehabilitation of 1 Single Ended PCC – Car No. 1040- Muni last built PCC

V. Compensation

In no event shall the amount of this Agreement exceed Eighteen Million, Seven Hundred Twelve Thousand, Five Hundred Seventy-Six Dollars (\$18,712,576). The breakdown of costs associated with this Agreement appears in the Price Schedule (Exhibit C) and Payment Schedule (Exhibit D), incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by 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. City will not make price adjustments to this Contract to protect Contractor from economic inflation.

VI. Guaranteed Maximum Costs

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

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

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

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

VII. 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.

Progress payments shall be made by the City to Contractor at the address specified in the section entitled "Notices to the Parties." Progress payments shall be made as set forth in the Payment Schedule (Exhibit D).

VIII. 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.

IX. Disallowance

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

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

X. 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.

XI. Payment Does Not Imply Acceptance of Work

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

XII. Qualified Personnel

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

XIII. Responsibility for Equipment

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

XIV. 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.

XV. Insurance; Bonds

A. Insurance

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

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

b. 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

c. 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.

d. Garage keepers' legal liability insurance, comprehensive form, with limits not less than \$5,000,000 each occurrence.

e. The shipping contractor shall carry, at a minimum, physical damage insurance (including destruction, damage, fire and theft) in the amount of not less than \$2,000,000 and commercial liability insurance in the amount of not less than \$1,000,000.

2. Commercial General Liability, Business Automobile Liability Insurance, Garagekeepers' Legal Liability and Shippers Coverage policies must be endorsed to provide the following:

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

b. That such policies are primary insurance to any other insurance available to the Additional Insured, 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.

3. 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.

4. All policies shall provide 30 days' advance written notice to the City of reduction or non-renewal or cancellation of coverages for any reasons. Notices shall be to the City at the address in the "Notices to the Parties" section.

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

5. 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.

6. 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.

7. Before commencing any operations under this Agreement, Contractor shall do the following: (a) furnish to City certificates of insurance, and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverage's set forth above, and (b) furnish complete copies of policies promptly upon City request.

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

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

B. Bonds

1. Within 20 days following the receipt of a notice of recommended award of contract and until completion of all Contract obligations and acceptance by City of the final remanufactured PCC, the Contractor shall furnish to City a performance bond and a labor and materials bond, each in the amount not less than 50% of the total Contract amount as modified by all Contract Modifications, to guarantee Contractor's faithful performance of all obligations of the Contract and to guarantee Contractor's payment to all suppliers of labor and materials under this Contract, excluding the period covered by the warranty bond described in Subsection (b) below.

2. From acceptance by City of the 16 PCC Historic Streetcars, and throughout the warranty period of the vehicle (including paint/corrosion) of these 16 PCCs, Contractor shall supply a maintenance or warranty bond or irrevocable letter of credit in the amount of \$250,000 to guarantee Contractor's warranty of performance of all these cars and all spare parts.

3. Bonding entities on the performance bond must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities or letter of credit must be satisfactory to SFMTA and to the Controller and Risk Manager of the City and County of San Francisco.

4. During the period covered by the Agreement, if any of the sureties upon the bond shall become insolvent or, in the opinion of SFMTA, unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within thirty (30) days after notice given by SFMTA to Contractor, shall by supplemental bond or otherwise, substitute another and sufficient surety approved by SFMTA in place of the surety becoming insolvent or unable to pay. If Contractor fails within such thirty (30) day period to substitute another and sufficient surety, Contractor, if SFMTA so elects, shall be deemed to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due Contractor under the Agreement. The amount for which the surety shall have justified on the bond and the moneys so deducted shall be held by City as collateral for the performance of the conditions of the bond.

XVI. Indemnification

A. General. To the fullest extent permitted by law, Contractor shall assume the defense of (with legal counsel subject to approval of the City), indemnify and save harmless the City, its boards, commissions, officers, and employees (collectively "Indemnitees"), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subconsultants), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, the negligence, recklessness, or wilful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

B. Limitations. No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

C. Intellectual Property Infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles or services to be supplied in the performance of Contractor's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

XVII. 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.

XVIII. 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.

XIX. Liquidated Damages

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

Failure to deliver the PCCs by the times stated in Exhibit B \$300 per vehicle per day

Failure to deliver all other Project deliverables (spare parts, training) \$300 per day
per deliverable

XX. Default; Remedies

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

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

- | | |
|---|---------------------------------------|
| 8. Submitting false claims | 37. Drug-free workplace policy, |
| 10. Taxes | 53. Compliance with laws |
| 15. Insurance | 55. Supervision of minors |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment | 58. Graffiti removal. |

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

3. Contractor (i) is generally not paying its debts as they become due, (ii) 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, (iii) makes an assignment for the benefit of its creditors, (iv) 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 (v) takes action for the purpose of any of the foregoing.

4. A court or government authority enters an order (i) 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, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Contractor.

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

XXI. Termination for Convenience

A. Exercise of Option. 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. Contractor Actions. 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. Contractor Invoice. 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 (a), 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. Non-Recoverable Costs. 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 21.3. 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 21.3.

E. Deductions. In arriving at the amount due to Contractor under this Section, City may deduct: (a) all payments previously made by City for work or other services covered by Contractor's final invoice; (b) any claim which City may have against Contractor in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (21.4); and (d) 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. Survival. City's payment obligation under this Section shall survive termination of this Agreement.

XXII. Rights and Duties Upon Termination or Expiration

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

- | | |
|---|---|
| 8. Submitting false claims | 26. Ownership of Results |
| 9. Disallowance | 27. Works for Hire |
| 10. Taxes | 28. Audit and Inspection of Records |
| 11. Payment does not imply acceptance of work | 48. Modification of Agreement. |
| 13. Responsibility for equipment | 49. Administrative Remedy for Agreement Interpretation. |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 50. Agreement Made in California; Venue |
| 15. Insurance | 51. Construction |
| 16. Indemnification | 52. Entire Agreement |
| 17. Incidental and Consequential Damages | 56. Severability |
| 18. Liability of City | 57. Protection of private information. |
| 24. Proprietary or confidential information of City | |

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.

XXIII. Conflict of Interest

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

XXIV. 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.

XXV. 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: Municipal Transportation Agency
One South Van Ness Ave. 7th floor
San Francisco, CA 94103
Attn: Trinh Nguyen
Phone: (415) 701-4602
Fax: (415) 701-5328
trinh.nguyen@sfmta.com

To Contractor: Brookville Equipment Corporation
175 Evans Street
Brookville, PA 15825
Attn: Mr. Andrew Cable
Phone: (814) 849-6046
Fax: (814) 849-5229

Any notice of default must be sent by registered mail.

XXVI. 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.

XXVII. 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.

XXVIII. Audits 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.

XXIX. 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.

XXX. Assignment

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

XXXI. 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.

XXXII. Earned Income Credit (EIC) Forms

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

A. Provision of Forms to Employees. 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. 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. Flowdown to Subcontractors. 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. Terms. 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.

XXXIII. Claims

Contractor shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the Engineer, including failure or refusal to issue a Contract Modification or for the happening of any event, thing, occurrence, or other cause, unless Contractor shall have given the Engineer due written notice of potential claim.

The written notice of potential claim shall set forth the reasons for which Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the Engineer prior to the time that Contractor shall have performed the work giving rise to the potential claim for additional compensation, or in all other cases, within 15 days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

It is the intention of this Section that differences between the parties arising under and by virtue of the Contract be brought to the attention of the Engineer at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor hereby agrees that it shall have no right to additional compensation for any claim that

may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

XXXIV. 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 SFMTA) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

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

E. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) 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.

XXXV. 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.

XXXVI. Tropical Hardwoods 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.

XXXVII. 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.

XXXVIII. 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.

XXXIX. 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.

XL. 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.

XLI. 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.

XLII. Notification of 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.

XLIII. 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 reputably 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.

XLIV. Requiring Health Benefits for Covered Employees

A. 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.

B. 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.

C. 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.

D. 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.

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

F. 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.

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

H. Contractor shall 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.

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

J. 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.

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

L. 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.

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

N. 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.

XLV. 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. 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. 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;
 - c. 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

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.

XLVI. 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.

XLVII. Preservative-treated Wood Containing Arsenic

As of July 1, 2003, 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, chromate copper arsenate preservative, ammonia cal copper zinc arsenate preservative, or ammonia cal 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.

XLVIII. Modification of Agreement

A. Modification in Writing. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law. 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 by more than 20%.

B. Extra Work. The City may order changes in the work under this Agreement and may order extra materials and extra work in connection with the performance of the Agreement, and the Contractor shall promptly comply with such orders, except that:

1. If changes ordered in design, workmanship, services, or materials are of such a nature as to increase or decrease the cost, or the time required to execute the change in scope of work, the City shall make a reasonable and proper adjustment in the contract price, delivery schedule, or both as agreed upon by the Contractor and the City as the reasonable and proper allowance for the increase or decrease required.

2. No order for any alteration, modification, or extra that will increase or decrease the cost of the work shall be valid unless the resulting increase or decrease in price shall have been agreed upon in writing and approved by the Project Manager. No oral statement of any person whatsoever shall in any manner or degree modify or otherwise affect the terms of this contract, which include the requirements of the Technical Specifications.

XLIX. Authority of Engineer

The Engineer shall decide all questions, which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the work; all questions, which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the Engineer shall at all times act fairly and reasonably. Any appeal of the Engineer's decisions shall be in accordance with the provisions of Section 56 of this Agreement. As with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions of this Contract when the dispute is finally resolved.

Should any questions arise as to the meaning and intent of the Contract, the matter shall be referred to the Engineer, who, with input from SFMTA staff and from the Contractor, shall decide the true meaning and intent of the Contract. The Engineer's decision in this regard shall be administratively final and conclusive.

L. 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.

LI. Construction

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

LII. Entire Agreement

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

LIII. 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.

LIV. 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.

LV. Disputes

A. Notice of Dispute. 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 with fourteen (14) days of delivery of the notice. The notice and response shall contain the following: (ai) a statement of the party's position and a summary of the arguments supporting that position, and (bii) any evidence supporting the party's position.

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

C. No Cessation of Work. Pending final resolution of a dispute hereunder, the Consultant shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the Engineer.

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

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

F. Disputes among Consultant Partners. The resolution of any contractual disputes related to Consultant's Joint Venture or Association partners (if any) shall be the sole responsibility of the Consultant. Each party of the Joint Venture or Association shall resolve all such disputes within thirty (30) calendar days of when the dispute first surfaced so as not to impact the performance of the contract with the City. Any such disputes which impact the Project and which are left unresolved for more than one month shall be cause for the City to withhold and/or reduce invoice payments to the Consultant's Joint Venture or Association firms until the dispute is resolved.

LVI. 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.

LVII. 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.

LVIII. 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.

LIX. Food Service Waste Reduction Requirements

Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages

that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

LX. Time of Essence

Time is of the essence in this Agreement.

LXI. Technical Specifications

A. Fabrication. The 16 PCCs shall be rehabilitated and guaranteed in accordance with the "Technical Specifications," Volumes 2A, 2B, and 2C of the RFP:

B. Omission. Notwithstanding the Technical Specifications or other data provided by the Engineer, the Contractor shall have the responsibility of supplying all parts and details required to make these cars complete and ready for service even though such details may not be specifically mentioned in the specifications. Items that are installed by SFMTA shall not be the responsibility of the Contractor unless they are included in this contract or should have been installed by the Contractor. If additional repairs are needed to make Car No. 1 complete and ready for service beyond what is in the specifications, these repairs will be handled by change orders through a Contract Modification, as approved by SFMTA and the SFMTA Board.

C. Priority. In the event of any deviation between the description of the work to be performed on the 16 PCC Historic Streetcars in the Technical Specifications and in this document or in the Contractor's Proposal, the Technical Specifications shall govern, followed by this document and then the Contractor's Proposal.

D. Design Review. Prior to completion of cars rehabilitation, the Contractor and the Engineer shall agree to the specific details of the rehabilitation. These details may include, but not be limited to, items such as: engineering and design details, test plans and procedures, appropriate training, sub-suppliers equipment, colors, wording, and placement of numbers and signs. In cases where consensus cannot be reached, the opinion of the Engineer as to design details shall be administratively final unless clearly arbitrary or capricious. Disputes regarding cost and other matters shall be subject to the provisions of Sections 33 and 55. When plans, drawings, requests for information, procedures or other contract deliverables are submitted to SFMTA for approval and/or comments, the Contractor shall delineate any deviations from the Contract specifications in such deliverables. SFMTA shall approve, disapprove and/or comment on such deliverables within 30 days after receipt. However, no extension of time will be allowed for review of submittals that have been disapproved. Such disapproved submittals shall be resubmitted and will be reviewed and returned within 30 days after subsequent receipt. Neither review nor approval of any plans, drawings, procedures, other contract deliverables or the materials supplied under this contract shall in any way relieve the Contractor of its obligations to perform work under the provision of this Contract.

E. Preliminary Drawings. Preliminary drawings shall provide enough detail to conduct preliminary engineering evaluations of structural, electrical, mechanical, and other subsystems. Drawings shall show the general arrangement of equipment layout and subsystems and such detail as is necessary to give a comprehensive idea of the product contemplated.

F. Materials/Accessories Responsibility. The Contractor shall be responsible for all materials and workmanship in the construction of the coach and all accessories used, whether the same are manufactured by the Contractor or purchased from a subcontractor. This provision excludes equipment leased or supplied by SFMTA, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the manufacture of the vehicle.

LXII. Project Planning, Scheduling and Control

A. Introduction. This Section specifies the requirements for project planning, scheduling and progress reporting to be performed by the Contractor in conjunction with the Contract work. Critical Path Method scheduling (CPM) shall be employed by the Contractor for planning, scheduling and reporting all work required by the Contract Documents.

B. Scheduling Terms. Baseline Schedule: The detailed CPM schedule, prepared by the Contractor, indicating the Contractor's plan for executing the Contract work. This schedule shall include the Contractor's logic network drawings, all schedule network reports and all schedule resource reports. The Baseline Schedule shall conform to all requirements of the Contract Documents. The Baseline Schedule shall be revised as necessary to incorporate approved Contract modifications. The Contractor's performance or other avoidable delays shall not be considered justification for Baseline Schedule revision.

1. Current Schedule: The updated logic network and supporting reports indicating actual progress to date and forecasted logic and progress for the remaining work. The update will be, at a minimum, to the same level of detail as the Baseline Schedule.

2. Supplemental Schedule(s): Detailed schedules prepared by the Contractor, at the request of the Engineer, to substantiate proposed Contractor changes that may have a schedule impact.

3. Summary Level Bar Chart: A summary level bar chart schedule encompassing the entire Contract and indicating all Contract required milestones or Contractor identified milestone events.

4. Monthly Plan and Reports: A detailed plan of the work, in bar-chart format, to be accomplished in the coming weeks. Relationships between the Monthly Plan and Current Schedule activities shall be identified. Contractor shall provide SFMTA with daily project and production status and schedule reports by E-mail. Contractor shall also provide monthly and quarterly schedule reports in Microsoft Project and Power Point, or SFMTA-approved equivalents, and per SFMTA Engineer requirements for reporting to funding agencies.

5. As-Built Schedule: The resulting schedule incorporating all actual activity durations, milestone completions and Contract extensions as accomplished or incurred during the Contract duration. The Contractor shall submit this As-Built Schedule to the City at the completion of the Contract work.

6. Work Day: Any day except Saturdays, Sundays, City and U.S. legal holidays. If multiple shifts per day or extended hours (more than eight hours per shift) are scheduled, this is to be noted with the particular scheduled activities to which this applies.

7. Use of Float: Float identified in the baseline, or Current Schedule is jointly owned by the City and the Contractor. Its use must be approved in the scheduling update process.

C. Descriptions of Submittals

1. Baseline Schedule: The Contractor shall submit a Baseline Schedule and shall include the following aspects:

a. The program logic, to be initially reviewed and approved by SFMTA prior to Initial Design Review.

b. The costs and resources, as required, attributable to each activity of the accepted Baseline Schedule. Costs shall be allocated by bid item and shall match bid amounts.

c. All activities related to major subsystems for all 16 SFMTA PCCs historic streetcars

The schedule documents, reports, lists, computer software with documentation and computer diskettes and E-mail files are required with each submittal. The Baseline Schedule shall be developed using Microsoft Project Software or approved equal. The Baseline Schedule shall be submitted within 30 days from NTP or by the first design review meeting, whichever comes first.

2. Management Work Plan: Contractor shall submit a Management Work Plan within thirty (30) days after NTP. The Management Work Plan shall include protocols, procedures, and assignments of responsibility for key personnel and correspondence forms for all phases of the contract and all project activities for the duration of the contract. Once the Management Work Plan is approved, key personnel shall not be substituted without approval from the SFMTA. If the Contractor plans to substitute key personnel, a 30-day advance notice, and qualification of new personnel shall be required. At the request of the SFMTA, or when approved changes are made, the Contractor's Management Work Plan shall be updated to include the latest revision to the project scope or other changes in project circumstances.

D. Early Completion Schedule. The Contractor may submit a schedule, which contains completion dates in advance of the dates specified in this Contract. The City may reject the schedule and require the Contractor to furnish a schedule indicating completion by the end of the originally scheduled Contract period. The City shall not be liable for damages, loss of profit, or any additional compensation as a result of such rejection.

E. Process Review Meetings.

1. On dates mutually agreed upon by the City and the Contractor, Schedule and Progress Review meetings will be held. The City, the Contractor, and if necessary, the appropriate subcontractors, shall attend the meetings. During the Schedule and Progress Review meetings, the Contractor's schedule submission will be discussed and revised by the Contractor as necessary. The City may require the Contractor to modify any portions of the schedule because of "behind schedule" activities. The marked-up schedule documents from this meeting will serve as the Current Schedule until the Contractor incorporates the change in the computer program and produces the updated Current Schedule. City participation in the schedule review process shall not relieve the Contractor from the required milestone completion dates of the Baseline Schedule in effect.

2. Schedule Monitoring and Progress Reporting: At monthly intervals, and at other times at the request of the City, the Contractor shall update the prior month's Current Schedule indicating progress during the reporting period, the latest schedule status, any approved

Contract modifications and any proposed logic changes. The schedule update shall be prepared concurrently with, and be an integral part of, progress evaluation and reporting.

F. Modifications to the Schedule. When requested by the Engineer, the Contractor shall submit supplemental schedules to the Engineer to substantiate proposed Contract changes that may have an impact on the schedule. Contractor shall submit such schedules to the Engineer for review and approval within three (3) working days from the request; otherwise, any proposed Contract change will not be considered by the City. On approval of a Contract modification by the City, the approved change will be incorporated in the Baseline Schedule during the monthly update process.

LXIII. Assumption of Risk of Loss

Prior to acceptance of the rehabilitated streetcars, the Contractor shall bear risk of loss of the car, including any damage sustained during transportation to the delivery site or during acceptance testing. The City shall assume risk of loss of these cars only after acceptance.

LXIV. FTA Requirements

The provisions contained in “FTA Requirements for Personal Services and Procurement Contracts,” attached as Exhibit A, 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.

LXV. SBE Requirements

Consultant shall comply with the SBE provisions contained in Exhibit D, which are incorporated by reference as though fully set forth herein, including, but not limited to, achieving and maintaining the SBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Consultant to comply with any of these requirements shall be deemed a material breach of this Agreement.

LXVI. 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.

CITY

CONTRACTOR

Municipal Transportation Agency

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.

Nathaniel P. Ford, Sr.
Executive Director/CEO

Approved as to Form:

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Dennis J. Herrera
City Attorney

By _____
Robin M. Reitzes
Deputy City Attorney

Municipal Transportation Agency
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Dalph S. McNeil
President & CEO
Brookville Equipment Corporation
175 Evans Street
Brookville, PA 15825

Secretary, SFMTA Board

City vendor number: 65901

Board of Supervisors
Resolution No. _____
Dated: _____

Attest:

Clerk of the Board

Exhibits:

Exhibit A: FTA Requirements For
Personal Services And Procurement
Contracts

Exhibit B: Project Delivery Schedule

Exhibit C: Price Schedule

Exhibit D: Payment Schedule

Exhibit E: SBE Requirements

EXHIBIT A

FTA REQUIREMENTS FOR FEDERALLY FUNDED PERSONAL SERVICES AND PROCUREMENT CONTRACTS

DEFINITIONS

Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the City is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.

Contractor means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from FTA.

Cooperative Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project or Program, and in which FTA takes an active role or retains substantial control.

Federal Transit Administration (FTA) is an operating administration of the U.S. DOT.

FTA Directive includes any FTA circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and Project management guidelines. In addition to FTA directives, certain U.S. DOT directives also apply to the Project.

Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project, and in which FTA does not take an active role or retain substantial control, in accordance with 31 U.S.C. § 6304.

Government means the United States of America and any executive department or agency thereof.

Project means the task or set of tasks listed in the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement or Cooperative Agreement applicable to the Project. In the case of the formula assistance program for urbanized areas, for elderly and persons with disabilities, and non-urbanized areas, 49 U.S.C. §§ 5307, 5310, and 5311, respectively, the term "Project" encompasses both "Program" and "each Project within the Program," as the context may require, to effectuate the requirements of the Grant Agreement or Cooperative Agreement.

Recipient means any entity that receives Federal assistance directly from FTA to accomplish the Project. The term "Recipient" includes each FTA "Grantee" as well as each FTA Recipient of a Cooperative Agreement. For the purpose of this Agreement, Recipient is the City.

Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.

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

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

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

FEDERAL CHANGES

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

ACCESS TO RECORDS

The Contractor agrees to provide the City and County of San Francisco, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 49 CFR 18.36(i)(11).

DEBARMENT AND SUSPENSION

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

NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the

clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

CIVIL RIGHTS

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

Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOT) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

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

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

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

PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by fta*)

General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the FTA.

Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

The Contractor also agrees to include the requirements of this clause in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

RIGHTS IN DATA AND COPYRIGHTS (*applicable to contracts for planning, research, or development financed by fta*)

Definition. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineation in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to, computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term "subject data" does not include financial reports, cost analyses, and similar information incidental to contract administration.

Federal Restrictions. The following restrictions apply to all subject data first produced in the performance of this Agreement.

Publication of Data. Except for its own internal use in conjunction with the Agreement, Contractor may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may Contractor authorize others to do so, without the written consent of the Federal Government, until such time as the Federal Government may have either released or approved the release of such data to the public; this restriction on publication, however, does not apply to any contract with an academic institution.

Federal License. In accordance with 49 CFR §§ 18.34 and 19.36, the Federal Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, “for Federal Government purposes,” any subject data or copyright described below. As used in the previous sentence, “for Federal Government purposes” means use only for the direct purposes of the Federal Government. Without the copyright owner’s consent, the Federal Government may not extend its Federal license to any other party:

Any subject data developed under this Agreement, whether or not a copyright has been obtained; and

Any rights of copyright purchased by City or Contractor using Federal assistance in whole or in part provided by FTA.

FTA Intention. When FTA awards Federal assistance for a experimental, research or developmental work, it is FTA's general intention to increase transportation knowledge available to the public, rather than to restrict the benefits resulting from the work to participants in the work. Therefore, unless FTA determines otherwise, the Contractor performing experimental, research, or developmental work required by the underlying Agreement agrees to permit FTA to make available to the public, either FTA's license in the copyright to any subject data developed in the course of the Agreement, or a copy of the subject data first produced under the Agreement for which a copyright has not been obtained. If the experimental, research, or developmental work which is the subject of this Agreement is not completed for any reason whatsoever, all data developed under this Agreement shall become subject data as defined in Subsection a. above and shall be delivered as the Federal Government may direct. This subsection does not apply to adaptations of automatic data processing equipment or programs for the City’s use the costs of which are financed with Federal transportation funds for capital projects.

Hold Harmless. Unless prohibited by state law, upon request by the Federal Government, the Contractor agrees to indemnify, save, and hold harmless the Federal Government, its officers, agents, and employees acting within the scope of their official duties, against any liability, including costs and expenses, resulting from any willful or intentional violation by the Contractor of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use, or disposition of any data furnished under this Agreement. The Contractor shall not be required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

Restrictions on Access to Patent Rights. Nothing contained in this section on rights in data shall imply a license to the Federal Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Federal Government under any patent.

Application to Data Incorporated into Work. The requirements of Subsections (2), (3) and (4) of this Section do not apply to data developed by the City or Contractor and incorporated into the work carried out under this Agreement, provided that the City or Contractor identifies the data in writing at the time of delivery of the work.

Application to Subcontractors. Unless FTA determines otherwise, the Contractor agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Provision of Rights to Government. Unless the Federal Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), the City and Contractor agree to take the necessary actions to provide, through FTA, those rights in that invention due the Federal Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR Part 401.

Flow Down. The Contractor also agrees to include these requirements in each subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by FTA.

Contract Work Hours and Safety Standards (*applicable to nonconstruction contracts in excess of \$100,000 that employ laborers or mechanics on a public work*)

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

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

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

Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause

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

ENERGY CONSERVATION REQUIREMENTS

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

CLEAN WATER REQUIREMENTS *(applicable to all contracts in excess of \$100,000)*

The Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

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

CLEAN AIR *(applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year)*

Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

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

PRIVACY

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

DRUG AND ALCOHOL TESTING

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

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

See Agreement Terms and Conditions.

TERMINATION FOR DEFAULT *(required for all contracts in excess of \$10,000)*

See Agreement Terms and Conditions.

BUY AMERICA

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

CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

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

RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including, but not limited to, the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

BUS TESTING *(applies to contracts for rolling stock)*

To the extent applicable, the Contractor (or Manufacturer) agrees to comply with the requirements of 49 U.S.C. § 5323(c) and FTA implementing regulations at 49 CFR Part 665, and shall perform the following:

A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the Recipient at a point in the procurement process specified by the Recipient which will be prior to the Recipient's final acceptance of the first vehicle.

A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the Recipient prior to Recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

PRE-AWARD AND POST-DELIVERY AUDIT REQUIREMENTS *(applies to contracts for rolling stock)*

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

Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists (1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and (2) the location of the final assembly point for the rolling stock, including a description of the activities that are planned to take place and actually took place at the final assembly point and the cost of final assembly.

Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications and provide information and access to Recipient and its agents to enable them to conduct post-award and post-delivery audits.

Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit (1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or (2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FLY AMERICA

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

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular

4220.1E, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any (name of grantee) requests which would cause (name of grantee) to be in violation of the FTA terms and conditions.

TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS *(applicable to each contract for transit operations performed by employees of a contractor recognized by fta to be a transit operator)*

The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection A, however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized

by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

EXHIBIT B

PROJECT DELIVERY SCHEDULE

Base Contract:

1. 11 Former New Jersey Transit PCCs:

The pilot PCC shall be delivered and ready for acceptance testing within 365 calendar days from the date of SFMTA's Notice to Proceed to the Contractor.

SFMTA will test the pilot PCC for a period not to exceed 1,000 miles or 60 calendar days, whichever comes first.

After receiving written approval of the pilot PCC, the 2nd car shall be delivered to Muni for testing and approval no later than 60 calendar days later. The remaining PCCs shall be delivered to MTA for at a rate of at least one car per month. The Contractor proceeds at its own risk prior to SFMTA's written approval of the pilot PCC.

All other Project deliverables are due to SFMTA within 150 calendar days from the date of SFMTA's written approval of the Pilot PCC streetcar, including spare parts, training materials, and documents

2. 4 Double-Ended PCCs (Torpedoes)

- a. The pilot PCC shall be delivered and ready for acceptance testing within 540 calendar days from the date of SFMTA's Notice to Proceed to the Contractor.
- b. SFMTA will test the pilot PCC for a period not to exceed 1,000 miles or 60 calendar days, whichever comes first.
- c. After receiving written approval of the pilot PCC, the 2nd car shall be delivered to MTA for testing approval no later than 90 calendar days later. The remaining PCCs shall be delivered to SFMTA at a rate of at least one car per month. The Contractor proceeds at its own risk prior to SFMTA's written approval of the pilot PCC streetcar.
- d. All other Project deliverables are due to SFMTA within 150 calendar days from the date of SFMTA's written approval of the pilot PCC streetcar, including spare parts, training materials, documents, etc.

3. Car No. 1040 (Single-Ended PCC)

- a. The rehabilitated Car No. 1040 shall be delivered and ready for acceptance testing within 365 calendar days from the date of SFMTA's Notice to Proceed to the Contractor.
- b. SFMTA will test this car for a period not to exceed 1,000 miles or 60 calendar days, whichever comes first.
- c. All other Project deliverables are due to SFMTA within 150 calendar days from the date of SFMTA's written approval of the Pilot PCC streetcar, including spare parts, training materials, documents, etc.

Deliveries:

All deliveries to SFMTA shall be to an SFMTA-specified Historic Streetcar facility, weekday working hours, Monday through Friday, 9 a.m. – 3 p.m., except SFMTA holidays, or as

otherwise specified in writing by SFMTA. Contractor shall provide at least 48 hours notice to SFMTA prior to delivery.

EXHIBIT C**PRICE SCHEDULE****FOR SFMTA COMPLETE REHABILITATION OF 16 PCC STREETCARS**

Item	Description	Quantity	Unit Price	Total Price
1	Mechanical and Electrical Rehabilitation of 11 Former New Jersey Transit PCC including Site Support & Warranty	11	665,575.00	7,321,325.00
1A	Axle Rehab (36) NJT PCC Axles	36	35,666.00	1,283,976.00
1B	New Door Equipment Installation	11	34,525.00	379,775.00
2	Complete Rehabilitation of 4 Double Ended PCC Streetcars including Site Support & Warranty	4	1,562,069.00	6,248,276.00
3	Complete Rehabilitation of Car No. 1040 including Site Support & Warranty	1	1,453,487.00	1,453,487.00
4	Training (If applicable)	Lump Sum		66,974.00
5	Spare Parts & Special tools			
Spare Parts & Special tools For 11 NJT PCC				
(a)	Rebuilt B2 truck w/o motors	1	199,712.00	199,712.00
(b)	Propulsion Package	1	247,983.00	247,983.00
(c)	Car set light bulbs	4	209.50	838.00
(d)	Car set door relay panels	4	1,025.25	4,101.00
(e)	Car set relays & circuit breakers	4	1,433.50	5,734.00
Spare Parts & Special tools for 4 DE- PCCs				
(f)	Rebuilt B3 truck w/o motors	1	199,712.00	199,712.00
(g)	Door motor/gearbox rebuilt	4	4,296.50	17,186.00
(h)	Passenger 2 position seat frames	10	325.50	3,255.00
(i)	Limit relay assembly complete	4	5,208.00	20,832.00
(j)	Line switch	2	13,020.00	26,040.00
(k)	Car set relay contactors & interlocks	2	81,870.00	163,740.00
(l)	Rebuilt GE PCC motor with brake equipment	2	42,315.00	84,630.00

Item	Description	Quantity	Unit Price	Total Price
(m)	Car set light bulbs	2	209.50	419.00
Spare Parts & Special Tools for car 1040				
(n)	Limit relay assembly complete	4	5,208.00	20,832.00
(o)	Propulsion Package	1	247,983.00	247,983.00
(p)	Rebuilt West PCC motors w/ brake equip	2	42,315.00	84,630.00
Spare Part Cost (Including Tax and shipping cost)				1,327,627.00
6	Vehicle Shipping	16	39,446.00	631,136.00
TOTAL				\$18,712,576.00

TOTAL CONTRACT PRICE
 (All applicable taxes are included)

\$ 18,712,576.00

EXHIBIT D
PAYMENT SCHEDULE

1. Rehabilitation of 11 Former New Jersey PCCs

Item	Description	Milestone
1a.	Completion of the vehicle disassembly as approved by SFMTA	10% of the amount of Line Item 1 of Price Schedule
1b.	Completion of the underfloor Repairs and Painting as approved by SFMTA	10% of the amount of Line Item 1 of Price Schedule
1c.	Completion of all vehicle rehabilitation as approved by SFMTA	60% of the amount of Line Item 1 of Price Schedule
1d.	Successful completion of all vehicle acceptance testing at SFMTA	15% of the amount of Line Item 1 of Price Schedule
1e.	Final acceptance of all contract deliverables by SFMTA	5% of the amount of Line Item 1 of Price Schedule

1A. Rehabilitation of 36 New Jersey PCCs Axles

Item	Description	Milestone
1A-a.	Completion of the vehicle detucking and axle removal as approved by SFMTA	10% of the amount of Line Item 1A of Price Schedule
1A-b.	Completion of axle rehabilitation and testing as approved by SFMTA	70% of the amount of Line Item 1A of Price Schedule
1A-c.	Successful completion of all vehicle acceptance testing at SFMTA	15% of the amount of Line Item 1A of Price Schedule
1A-d.	Final acceptance of all contract deliverables by SFMTA	5% of the amount of Line Item 1A of Price Schedule

1B. Installation of New Door Equipment for 11 Former New Jersey PCCs

Item	Description	Milestone
1B-a.	Completion of Door Equipment systems design as approved by SFMTA	10% of the amount of Line Item 1B of Price Schedule
1B-b.	Completion of all vehicle rehabilitation as approved by SFMTA	70% of the amount of Line Item 1B of Price Schedule
1B-c.	Successful completion of all vehicle acceptance testing at SFMTA	15% of the amount of Line Item 1B of Price Schedule
1B-d.	Final acceptance of all contract deliverables by SFMTA	5% of the amount of Line Item 1B of Price Schedule

2. Rehabilitation of 4 Double Ended PCCs (Torpedoes)

Item	Description	Milestone
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2a.	Completion of the vehicle disassembly as approved by SFMTA	10% of the amount of Line Item 2 of Price Schedule
2b.	Completion of the Carbody Inspection and Repair Report as approved by SFMTA	10% of the amount of Line Item 2 of Price Schedule
2c.	Completion of all carbody rehabilitation as approved by SFMTA	20% of the amount of Line Item 2 of Price Schedule
2d.	Completion of carbody painting as approved by SFMTA	15% of the amount of Line Item 2 of Price Schedule
2e.	Completion of all vehicle rehabilitation as approved by SFMTA	25% of the amount of Line Item 2 of Price Schedule
2f.	Successful completion of all vehicle acceptance testing at SFMTA	15% of the amount of Line Item 2 of Price Schedule
2g.	Final acceptance of all contract deliverables by SFMTA	5% of the amount of Line Item 2 of Price Schedule

3. Rehabilitation of Car No. 1040

Item	Description	Milestone
3a.	Completion of the vehicle disassembly as approved by SFMTA	10% of the amount of Line Item 3 of Price Schedule
3b.	Completion of the Carbody Inspection and Repair Report as approved by SFMTA	10% of the amount of Line Item 3 of Price Schedule
3c.	Completion of all carbody rehabilitation as approved by SFMTA	20% of the amount of Line Item 3 of Price Schedule
3d.	Completion of carbody painting as approved by SFMTA	15% of the amount of Line Item 3 of Price Schedule
3e.	Completion of all vehicle rehabilitation as approved by SFMTA	25% of the amount of Line Item 3 of Price Schedule
3f.	Successful completion of all vehicle acceptance testing at SFMTA	15% of the amount of Line Item 3 of Price Schedule
3g.	Final acceptance of all contract deliverables by SFMTA	5% of the amount of Line Item 3 of Price Schedule

4. Training

Item	Description	Milestone
4a.	Acceptance of the Training Plan / Materials by SFMTA	20% of the amount of Line Item 4 of Price Schedule
4b.	Completion of all training	75% of the amount of Line Item 4 of Price Schedule
4c.	Final acceptance of all contract deliverables	5% of the amount of Line Item 4 of Price Schedule

5. Spare Parts

Spare parts delivered and accepted by SFMTA in San Francisco shall be paid according to the detailed list in Line Item 5 of Price Schedule

6. Vehicle Shipping

Description	Milestone
Shipping (upon receipt of each car at the Contractor facility	50% of the amount of Line Item 6 (Unit Price) of Price Schedule
Shipping (upon receipt of each car by the SFMTA in San Francisco	50% of the amount of Line Item 6 (Unit Price) of Price Schedule

NOTE: Payment for the rehabilitation of the PCCs will be paid upon completion of listed items on this Payment Schedule, upon proper receipt of an invoice requesting payment and acceptable completion of all contract terms.

APPENDIX E

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SBE REQUIREMENTS

Architects, Engineers, Planners, and Environmental Scientists and Other Professional Services

I. POLICY

The San Francisco Municipal Transportation Agency (SFMTA), recipient of federal financial assistance from the Federal Transit Administration (FTA), is committed to and has adopted, a Small Business Enterprise (SBE) Program to implement the Disadvantaged Business Enterprise regulations in 49 C.F.R. Part 26 (the "Regulations"), issued by the Department of Transportation (DOT).

It is the policy of the SFMTA to ensure nondiscrimination in the award and administration of DOT-assisted contracts and to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to SFMTA's construction, procurement and professional services activities. To this end, SFMTA has developed procedures to remove barriers to SBE participation in the bidding and award process and to assist SBEs to develop and compete successfully outside of the SBE program. In connection with the performance of this contract, the Contractor will cooperate with SFMTA in meeting these commitments and objectives.

Pursuant to 49 C.F.R. Section 26.13, the Contractor is required to make the following assurance in its agreement with SFMTA and to include this assurance in any agreements it makes with subcontractors in the performance of this contract:

The Contractor or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor or Subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SFMTA deems appropriate.

A. Applicability

Pursuant to 49 C.F.R. Sections 26.3 and 26.21, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement an SBE Program in accordance with the Regulations. The Regulations are incorporated into this Program as though fully set forth herein. This Program applies to all SFMTA contracts that are funded, in whole or in part, by

DOT federal financial assistance.

B. Objectives

The objectives of this program are to:

1. Remove barriers to SBE participation in the bidding, award and administration of SFMTA contracts;
2. Assist SBEs to develop and compete successfully outside of the Program;
3. Ensure that the Program is narrowly tailored in accordance with 49 C.F.R. Part 26;
4. Ensure that only SBEs meeting the eligibility requirements are allowed to participate as SBEs;
5. Identify business enterprises that are qualified as SBEs and are qualified to provide SFMTA with required materials, equipment, supplies and services; and to develop a good rapport with the owners, managers and sales representatives of those enterprises;
6. Develop communications programs and procedures which will acquaint prospective SBEs with SFMTA's contract procedures, activities and requirements and allow SBEs to provide SFMTA with feedback on existing barriers to participation and effective procedures to eliminate those barriers; and
7. Administer the Program in close coordination with the various divisions within SFMTA so as to facilitate the successful implementation of this Program.

C. Administration of Program

The Executive Director/CEO of SFMTA is responsible for adherence to this policy. The Director of the SFMTA Contract Compliance Office (CCO) shall be responsible for the development, implementation and monitoring of this program. It is the expectation of the Municipal Transportation Board of Directors and the Executive Director/CEO that all SFMTA personnel shall adhere to the provisions and the spirit of this program.

D. Prohibited Discrimination

SFMTA shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any

contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the basis of (the fact or perception of a person's) race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

SFMTA shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals in the groups or categories or having the characteristics listed above.

SFMTA has signed the federal assurances regarding non-discrimination required under 49 C.F.R. Section 26.13.

II. DEFINITIONS

Any terms used in SFMTA's SBE Program that are defined in 49 C.F.R. Section 26.5 or elsewhere in the Regulations shall have the meaning set forth in the Regulations. An SBE is defined as follows:

Small Business Enterprise (SBE): An SBE is a for-profit, small business concern with a three- (3-) year average gross revenue not exceeding \$12 million and is certified under any of the following programs: the State of California's Small Business Program with the Department of General Services, the California Unified Certification Program with a U.S. Department of Transportation recipient, or the City and County of San Francisco's LBE program with the Human Rights Commission.

III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE Participation Goal

A goal of 3% SBE participation has been established for this contract. This SBE goal will apply to the following types of contracts or scope of work in the contract: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

B. Determining the Amount of SBE Participation

The SFMTA strongly encourages the prime contractor to make every good faith effort to

include SBEs to perform meaningful work in all aspects of the projects. To accomplish this goal, the following guidance is provided:

E. 1. SBE Participation

SBE participation includes contracts (other than employee contracts) with SBEs for any goods or services specifically required for the completion of the work under the Agreement. An SBE may participate as a prime contractor/consultant, subcontractor/consultant, joint venture partner with a prime or consultant, vendor of material or supplies incorporated or expended in the work, or a supplier of other services such as shipping, transportation, testing, equipment rental, insurance services and other support services necessary to fulfill the requirements of the Agreement.

2. Function

An SBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work. However, an SBE may contract out a portion of the work if it is considered to be a normal industry practice. If an SBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE shall be presumed not to be performing a commercially useful function.

3. Determining the amount of SBE Participation

SBE participation includes that portion of the contract work actually performed by a certified SBE with its own forces. An SBE may participate as a prime contractor, subcontractor, joint venture partner, or vendor or supplier of materials or services required by the contract.

An SBE's participation can only be counted if it is performing a commercially useful function.. An SBE is performing a commercially useful function when it actually performs, manages and supervises a portion of the work involved. There is a rebuttable presumption that if the SBE is not responsible for at least 30% of the work with its own forces, or subcontracts a greater portion of the work than the normal industry standard, it is not performing a commercially useful function.

The Contractor shall determine the amount of SBE participation for each SBE performing work on the contract in terms of both the total value of the work in dollars and the percentage of the total contract bid price. The Contractor shall also determine the total amount of SBE participation for the entire contract. The Contractor shall count SBE participation according to the following guidelines:

SBE Prime Contractor

Count the entire dollar amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE participation by the SBE Prime Contractor.

SBE Subcontractor

Count the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Contractor) and reasonable fees and commissions charged for the services. Do not count any work subcontracted by an SBE subcontractor to another firm as SBE participation by said SBE subcontractor. If the work has been subcontracted to another SBE, it will be counted as SBE participation by that other SBE.

SBE Joint Venture Partner

Count the portion of the work that is performed solely by the SBE's forces or if the work is not clearly delineated between the SBE and the joint venture partner, count the portion of the work equal to the SBE's percentage of ownership interest in the joint venture.

SBE Regular Dealer

Count 60% of the costs of materials and supplies obtained from an SBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business (except regular dealers of bulk items such as petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business). This applies whether an SBE is a prime contractor or subcontractor.

Other SBEs

Count the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from an SBE that is not a manufacturer or regular dealer. Do not count the cost of the materials and supplies.

C. Submission of Certification for SBEs

All firms wishing to work for the City and County of San Francisco must be certified as bona fide SBEs with the SFMTA. This requires submission of the completed certification applications for either SBEs, DBEs, or LBEs. For information where to obtain applications for these certifications, please contact the SFMTA Contract Compliance at:

San Francisco Municipal Transportation Agency
Contract Compliance Office
One South Van Ness Avenue
San Francisco, California 94103
(415) 701-4362

D. Prompt Payment to Subcontractors

In accordance with SFMTA's SBE Program, no later than thirty (3) days from the date of Contractor's receipt of progress payments by SFMTA, the Contractor shall pay any subcontractors for work that has been satisfactorily performed by said subconsultants. Unless the prime consultant notifies the CCO Director in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between the prime consultant and the subconsultant. Within five (5) working days of such payment, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

Consultant may withhold retention from subconsultants if City withholds retention from Consultant. Should retention be withheld from Consultant, within thirty (30) days of City's payment of retention to Consultant for satisfactory completion of all work required of a subconsultant, Contractor shall release any retention withheld to the subconsultant. Satisfactory completion shall mean when all the tasks called for in the subcontract with subconsultant have been accomplished and documented as required by City.

If the Consultant does not pay its subconsultant as required under the above paragraph, it shall pay interest to the subconsultant at the legal rate set forth in subdivision (a) of Section 685.010 of the California Code of Civil Procedure.

IV. MONITORING AND COMPLIANCE

A. SBE Records; Reporting Requirements

The Contractor shall maintain records of all SBE participation in the performance of the contract including subcontracts entered into with certified SBEs

and all materials purchased from certified SBEs.

The Contractor shall submit SBE participation reports to SFMTA on a monthly basis, or as otherwise directed by the CCO. The reports shall identify the name and address of each SBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE. Within thirty (30) days of completion of the contract, or as otherwise directed by the CCO, the Contractor shall submit a final summary SBE report to the CCO.

B. Noncompliance; Administrative Remedies

SFMTA will implement appropriate mechanisms to ensure that its prime contractors and subcontractors comply with SBE Program regulatory requirements. SFMTA will apply legal and contractual remedies available under federal, state and local law.

SFMTA will also include a monitoring and enforcement mechanism to verify that the work committed to SBEs at contract award is actually performed by the SBEs. This mechanism will provide for a running tally of actual SBE attainments and include a provision ensuring that SBE participation is credited toward overall or contract goals only when payments are actually made to SBE firms.

THIS PRINT COVERS CALENDAR ITEM NO. : 10.7

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

DIVISION: TRANSPORTATION PLANNING AND DEVELOPMENT

BRIEF DESCRIPTION:

Requesting authorization to award and execute San Francisco Municipal Transportation Agency Contract No.1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment Project, to Cal State Constructors, Inc., located at 246 Second Street, Suite 808, San Francisco, CA 94105, as the lowest responsive and responsible bidder, for a total contract amount not to exceed \$4,532,600.

SUMMARY:

- The San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 08-188 on November 18, 2008, approving the plans and specifications, and authorizing bid call for San Francisco Municipal Transportation Agency Contract No.1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment Project. Four bids were received on May 12, 2009.
- Staff recommends awarding this contract to Cal State Constructors, Inc., in the amount of \$4,532,600 as the lowest responsive and responsible bidder.
- The scope of work under Contract No. 1232 consists of procuring and installing a new wheel truing machine at the Metro East facility, along with blowdown equipment. The scope of work also includes procuring a rail car mover and other miscellaneous shop equipment.
- California I-Bond funds will fund the entire contract. No Federal funding will be used for this contract.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Finance Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION Contracting Section Attn: Gigi Pabros
BE RETURNED TO:

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The purpose of this item is to award SFMTA Contract No. MR – 1232, which will involve procurement and installation of maintenance equipment to be used at the Metro East light rail facility. This equipment will improve the efficiency and increase the capabilities of the Metro East facility.

GOAL

SFMTA Contract No. 1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment, would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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.

Objective 1.5 - Increase percentage of trips using more sustainable modes.

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

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

DESCRIPTION

Scope of Work

The scope of work under Contract No. 1232 will involve procurement and installation of a new lathe-type wheel truing machine at the Metro East facility. The scope of work will also include the procurement and installation of equipment for the blowdown pit at Metro East, including a hot water pressure washer and breathable compressed air system. Additionally, the scope of work will include the procurement and installation of a rail car mover and other miscellaneous shop equipment such as repair benches/stands that will require custom fabrication.

Bids and Bid History

After the passage of State Proposition 1B, the Highway Safety, Traffic Reduction Air Quality and Port Security Bond Act in 2006, SFMTA applied to the State for the Proposition 1B funds for various project needs within the Agency. The Metro East Facility was identified to have critical needs. Recently, SFMTA received the applied Proposition 1B funding, sufficient to allow for work to proceed with the procurement and installation of the wheel truing machine, blowdown equipment, rail car mover and miscellaneous equipment. The State has stipulated that this allocated bond fund received by SFMTA must be used exclusively for the procurement and installation of a wheel truing machine, blowdown equipment, rail car mover, and portable shop equipment for Metro East.

On November 18, 2008, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 08-188, approving the plans and specifications, and authorizing bid call for Contract No.1232.

While the miscellaneous equipment could be procured in the early part of the contract, the procurement of the wheel truing machine will involve a long lead time. The time allotted to substantially complete the work under Contract No. 1232 is 540 calendar days. The liquidated damages are \$2,500 per day for failure to complete the work on time.

Bids Received

On May 12, 2009, the Municipal Transportation Agency received four bid proposals:

	<u>Bidder</u>	<u>Bid Amount</u>
1	Cal State Constructors, Inc. 246 Second St., Suite 808 San Francisco, CA 94105	\$4,532,600
2	NTK Construction, Inc. 501 Cesar Chavez St., Suite 123 San Francisco, CA 94124	\$4,569,400
3	Angotti & Reilly, Inc. 100 Mariposa St. San Francisco, CA 94107	\$4,606,445
4	Schram Construction Inc. 3162 Regional Parkway Santa Rosa, CA 95403	\$4,867,000

The Engineer’s estimated cost at the time of advertising for Contract No. 1232 was \$4,200,000. The bid exceeded the engineer’s estimate by \$332,600, approximately 8 percent above the engineer’s estimate.

ALTERNATIVES CONSIDERED

Prior to the award of Contract No. MR-1182R1, for the construction of the Metro East facility, the SFMTA recognized that not all of the intended project scope could be provided within the budgetary limits of the project. Absent any additional funding that could be made available immediately, the construction and operation divisions, with concurrence from senior management, recommended that certain functions, such as wheel truing, be postponed until a new funding source is identified to procure/install such shop equipment at Metro East.

The passage of State Proposition 1B, the Highway Safety, Traffic Reduction Air Quality and Port Security Bond Act in 2006, allowed the SFMTA to secure the needed project funds and restore the full and originally intended maintenance capabilities to Metro East.

FUNDING IMPACT

California Infrastructure Bond (I-Bond) funds will fund the entire contract. No Federal funding will be used for this contract.

APPROVALS RECEIVED OR STILL REQUIRED

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

The Contract Compliance Office has reviewed this calendar item and determined that Cal State Constructors, Inc. will meet the 5% Local Business Enterprise (LBE) participation goal established for this contract.

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

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the award and execution of San Francisco Municipal Transportation Agency Contract No.1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment Project, to Cal State Constructors, Inc., as the lowest responsive and responsible bidder, in the amount of \$4,532,600, with a term not to exceed 540 calendar days.

ENCLOSURE 2
METRO EAST WHEEL TRUING MACHINE, BLOWDOWN EQUIPMENT, RAIL CAR MOVER AND
MISCELLANEOUS EQUIPMENT PROJECT

Municipal Railway Contract No. 1232
Project Budget and Financial Plan

Item	Budget
Construction Contract	\$4,532,600
Contingency	\$567,400
Staff Support (SFMTA and Dept of Admin Services)	\$1,575,000
Total Cost	\$6,675,000

Funding	Amount
State Grants	
Proposition 1B	\$6,675,000
Total Funding	\$6,675,000

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On November 18, 2008, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 08-188, approving the plans and specifications, and authorizing bid call for San Francisco Municipal Transportation Agency Contract No.1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment Project; and,

WHEREAS, The time allotted to substantially complete the work under Contract No. 1232 is 540 calendar days from the written Notice to Proceed; and,

WHEREAS, Four bid proposals were received and opened publicly on May 12, 2009; and,

WHEREAS, Cal State Constructors Inc. is the lowest responsible and responsive bidder, with a bid of \$4,532,600; and,

WHEREAS, Contract No. 1232 will assist SFMTA in meeting the objectives of Strategic Plan Goal No. 1 (Customer Focus) – to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; and Goal No. 2 (System Performance) – to improve transit reliability; and,

WHEREAS, The Contract Compliance Office reviewed the bid documents and determined that Cal State Constructors meets the 5% LBE participation goals, and is committed to achieving the Non-discrimination /Equal Employment Requirements of the contract; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute San Francisco Municipal Transportation Agency Contract No. 1232, Metro East Wheel Truing Machine, Blowdown Equipment, Rail Car Mover and Miscellaneous Equipment Project, to Cal State Constructors, Inc., located at 246 Second Street, Suite 808, San Francisco, CA 94105, as the lowest responsive and responsible bidder, for a total contract amount not to exceed \$4,532,600, and a term not to exceed 540 calendar days.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

THIS PRINT COVERS CALENDAR ITEM NO. : 10.8

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Parking and Traffic

BRIEF DESCRIPTION: Authorizing the Department of Public Works (“DPW”) to execute Contract Modification No. 6 to DPW Contract No. 0780J(R), SFgo (ITMS) Initial Phase – Portions A & B, with Edward W. Scott Electric, Inc. (“Contractor”) to increase the contract amount by \$113,731.14 as a final payment to the Contractor for additional work performed due to unforeseen site conditions and unexpected delays; and to decrease the contract amount by \$9,530.69 due to unspent funds, for a total contract amount not to exceed \$3,360,108.47.

SUMMARY:

- On April 6, 2004, the SFMTA Board of Directors approved the award of DPW Contract No. 0780J(R), SFgo (ITMS) Initial Phase – Portions A & B construction contract, in the amount of \$2,905,371 to Scott Electric, as the lowest responsive and responsible bidder.
- SFMTA staff requests authorization for DPW to execute Contract Modification No. 6 to increase the contract amount by \$113,731.14, as a final payment to the Contractor for unforeseen site conditions and unexpected delays, and to decrease the contract amount by \$9,530.69 due to unspent funds, for a total contract amount not to exceed \$3,360,108.47.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION
SHOULD BE RETURNED TO _____

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

SFMTA staff requests this Board to authorize the Department of Public Works (“DPW”) to execute Contract Modification No. 6 to DPW Contract No. 0780J(R), SFgo (ITMS) Initial Phase – Portions A & B, with Edward W. Scott Electric, Inc. (“Contractor”) to increase the contract amount by \$113,731.14 as a final payment to the Contractor for additional work performed due to unforeseen site conditions, and to decrease the contract amount by \$9,530.69 due to unspent funds, for a total contract amount not to exceed \$3,360,108.47.

GOAL

The SFMTA will further the following goals of the Strategic Plan through the approval of this contract modification:

GOAL 2: Customer Focus - To get customers where they want to go, when they want to be there.

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

Objective 2.3 Fulfill bicycle and pedestrian network connectivity.

Objective 2.4 Reduce congestion through major corridors.

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

GOAL 6: Information Technology - To improve service and efficiency, the SFMTA must leverage technology.

Objective 6.1 Information and technology leadership: identify, develop and deliver the new and enhanced systems and technologies required to support SFMTA’s 2012 goals.

DESCRIPTION

The SFgo Program is a citywide transportation management system that allows the SFMTA to control traffic signals from remote command centers, respond to traffic conditions by routing traffic away from congested areas, and assist in maintaining open corridors for emergency responders and public transit. The system will also help SFMTA to gather real-time information on current traffic flow and levels of congestion, process and analyze this information, respond to changes in roadway conditions, and disseminate up-to-the-minute information to travelers.

On April 6, 2004, the SFMTA Board of Directors authorized the award of DPW Contract No. 0780J(R): SFgo Initial Phase Portions A & B to Edward W. Scott Electric, located at 1150 - 25th Street, San Francisco, CA, 94107, as the lowest responsive and responsible bidder for a total contract amount of \$2,905,371. On August 23, 2004, DPW issued a written Notice to Proceed (NTP) for the work. The Disadvantaged Business Enterprises (DBE) goal for the contract was 16.5%.

As part of the SFgo (ITMS) Initial Phase construction contract, the Contractor was required to furnish and install various intelligent transportation systems (ITS) field devices in the South of Market and Civic Center areas, including traffic cameras, variable message signs, vehicle detection cameras, and advanced traffic signal controllers. All field devices have been connected

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via a fiber optic communications network to SFgo's Main Transportation Management Center (TMC) located at 25 Van Ness Avenue, which is equipped with operator consoles and computers to operate and manage the SFgo network. The remote workstation at AT&T Park was also upgraded. Additionally, the construction contract included a connection to the BART fiber at the Civic Center BART station to facilitate the Center-to-Center integration with the California Department of Transportation (Caltrans) and California Highway Patrol Transportation Management Center in Oakland, CA.

Contract Modifications Nos. 1 through 4, issued for extra work required to respond to unforeseen field conditions, increased the contract amount by \$290,537, which is within 10 percent of the original contract amount. DPW, as the designated contracting agency, executed these four contract modifications. The unforeseen conditions included underground obstructions such as old buried streets, and difficulty locating some existing conduits and pull boxes.

On May 30, 2006, the SFMTA Board of Directors approved Contract Modification No.5 for an amount of \$60,000 to pay for additional work required by additional unforeseen site conditions at various other locations, for a total contract amount not to exceed \$3,255,908.

On November 20, 2006, the Contractor requested compensation for additional expenses incurred in an amount of \$525,864 due to further unforeseen conditions at more sites and unexpected construction delays. The unforeseen conditions included conflicts with other concurrent roadway construction projects, such as the Caltrans retrofit work on the I-80 freeway structure. The Contractor also experienced work permit and coordination issues involving various City agencies. SFMTA and DPW staff jointly conducted a detailed construction delay analysis and have determined that the Contractor legitimately incurred these additional expenses. Staff further concluded that the Contractor is entitled to additional compensation in an amount of \$113,731.14.

The City Attorney has reviewed this calendar item.

ALTERNATIVES CONSIDERED

Approval of this change order would bring SFgo Initial Phase closer to a full completion. This change order is required to address expenses incurred by the Contractor in order to mitigate unforeseen conditions.

FUNDING IMPACT

The SFgo Initial Phase is funded by several Federal grants, and Propositions B and K Sales Tax revenues. Please refer to Enclosure 2 for details. The funds designated for the SFgo Initial Phase project are sufficient to pay for this change order.

Operating funds required for the maintenance of the SFgo facilities constructed by DPW Contract No. 0780J (R) are included in the DPT budget for FY 08-09.

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OTHER APPROVALS RECEIVED OR STILL RQUIRED

The Department of Public Works will issue the final payment to the Contractor after the SFMTA Board's approval of this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Department of Public Works to execute Contract Modification No. 6 to DPW Contract No. 0780J(R), SFgo (ITMS) Initial Phase – Portions A & B, with Edward W. Scott Electric (“Contractor”), to increase the cost of the contract by \$113,731.14, as a final payment to the Contractor, for additional work performed due to unforeseen site conditions and unexpected delays; and to decrease the contract amount by \$9,350.69 due to unspent funds, for a total contract amount not to exceed \$3,360,108.47.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA Board of Directors originally approved the award of Department of Public Works ("DPW") Contract No. 0780J(R), SFgo (ITMS) Initial Phase – Portions A & B to Edward W. Scott Electric, Inc. ("Contractor") on April 6, 2004, for a total contract amount of \$2,905,371, with a Notice to Proceed issued on August 23, 2004; and,

WHEREAS, All contract work has been completed, which includes furnishing and installing various Intelligent Transportation System (ITS) field devices in the South of Market and Civic Center areas, building a connection to BART fiber optic equipment at the Civic Center BART Station, and completing tenant improvements to the Main Transportation Management Center (TMC) and a remote workstation at AT&T Park; and,

WHEREAS, The Contractor encountered unforeseen site conditions and unexpected delays during construction, including underground obstructions, difficulty locating some existing conduits and pull boxes, conflicts with other concurrent roadway construction projects, and permit and coordination issues involving various City agencies; and,

WHEREAS, DPT and DPW jointly conducted a detailed construction delay analysis and determined that Scott Electric legitimately incurred additional expenses due to the reasons listed above; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorize the Department of Public Works to execute Contract Modification No. 6 to DPW Contract No. 0780J(R), SFgo (ITMS) Initial Phase – Portions A & B, with Edward W. Scott Electric ("Contractor"), to increase the cost of the contract by \$113,731.14, as a final payment to the Contractor, for additional work performed due to unforeseen site conditions and unexpected delays; and to decrease the contract amount by \$9,350.69 due to unspent funds, for a total contract amount not to exceed \$3,360,108.47.

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

_____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Enclosure 2**Department of Public Works Contract No. 0780J (R): SFgo Initial Phase – Portions A & B
Project Budget and Financial Plan****PROJECT BUDGET**

Category	Budget Amount
Preliminary Engineering Phase	
SFMTA DPT Traffic Engineering, DPW Bureau of Engineering (BOE) and design consultant services: Planning, design, coordination, & detailed electrical and network design.	\$1,318,706
Software integration: Central software, signal controller software & Center-to-Center software integration.	\$1,248,619
Construction Phase	
Construction contract and change orders	\$3,360,109
Non-competitive contract work: Conduit installation work done through other construction contracts.	\$61,898
City-furnished materials: Traffic signal cabinets/controllers, SFgo fiber optic network equipment, Transportation Management Center video wall, Toll-tag readers, and Center-to-Center hardware.	\$1,004,830
Force account work by other City departments and Traffic Signal Shop: Transportation Management Center conduit and wiring installation, traffic signal cabinet and controller replacement.	\$160,144
Construction Engineering by DPW Bureau of Construction Management (BCM), Bureau of Engineering (BOE) and Bay Area Rapid Transit (BART): Construction inspection, coordination, material testing, and wage check.	697,898
TOTAL	\$7,852,204

FINANCIAL PLAN

Funding Source	Amount	Percentage
Federal grants	\$6,782,204	86%
Local Half Cent Sales Tax – Proposition B	\$1,000,000	12%
Local Half Cent Sales Tax - Proposition K	\$70,000	1%
TOTAL	\$7,852,204	100%

THIS PRINT COVERS CALENDAR ITEM NO. : 10.9

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Administration

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency ("SFMTA"), through its Executive Director/CEO (or his designee), to execute a contract for Back Strengthening, Employee Exercise and Education and Wellness Program Services, with Michael K. Leary, P.T., Inc., dba BackFirst for an amount not to exceed \$1,050,000.00 and a term not to exceed three years. The contract may also be extended for one additional year at the sole discretion of the Executive Director/CEO for an additional \$350,000.

SUMMARY:

- Staff requests the San Francisco Municipal Transportation Agency's (SFMTA) Board of Directors approval to negotiate and execute a contract for Back Strengthening, Employee Exercise, Education and Wellness Program Services, for three years, for an amount not to exceed \$350,000 per year.
- A Request For Proposals (RFP) was issued on January 7, 2009 and April 7, 2009. Michael K. Leary, P.T., Inc., was the sole responsive and responsible bidder.
- These services are required in order to reduce Workers' Compensation costs, address increasing ergonomic issues of administrative staff and improve overall employee health and wellness.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract

APPROVALS:

	DATE
DEPUTY OF DIVISION PREPARING ITEM _____	_____
FINANCE _____	_____
EXECUTIVE DIRECTOR /CEO _____	_____
SECRETARY _____	_____

ADOPTED RESOLUTION

BE RETURNED TO: Jeffery L. Gary

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

Requesting authority to negotiate and execute a contract for Back Strengthening, Employee Exercise, Education and Wellness Program Services.

GOAL

This program is consistent with the following SFMTA Strategic Plan goals and objectives:

Goal 5: SFMTA Workforce:

To provide a flexible, supportive work environment and develop a workforce that takes pride and ownership of the agency's mission and vision and leads the agency into the ever evolving, technology-driven future.

Objective: 5.8 Improve work life balance of employees

DESCRIPTION

The SFMTA initiated a back strengthening program in 2001, at Presidio Bus Division and Cable Car divisions. The primary goal of the program was to use the Med-X back strengthening regimen to strengthen lower back muscles, thereby, reducing the incidence of back injuries, lost days and Workers' Compensation claims.

Historically, back injuries have been one of the leading causes of Workers' Compensation claims at the SFMTA, followed by other orthopedic injuries to shoulders, knees and wrists.

During the initial phase of the program, the focus of the program was to reduce the frequency and severity of back injuries by strengthening back muscles and improving overall employee wellness. As the program evolved, it became clear that we needed to expand the program beyond the original two locations, in order to have greater impact on reducing injury frequency and Workers' Compensation costs.

The current contract for these services expires on June 30, 2009. A Request for Proposals (RFP) was issued on January 7, 2009 and re-issued due to lack of sufficient responses on April 7, 2009. Although we received three responses to the April 2009 RFP re-issue, only one of the proposals was determined to be responsive to the San Francisco Administrative Code 14B provision, Michael K. Leary, P.T., Inc., dba BackFirst.

BackFirst is the incumbent vendor for these services, having provided them to the Agency for the past five years.

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In addition to continuing the existing services at Presidio Division, Cable Car Division and the mobile exercise component at the remaining five divisions, this contract will allow us to install an Employee Exercise and Education Center at One South Van Ness, that will address health and wellness issues specifically related to office/administrative positions. Finally, a provision was included in the contract to allow for expansion of the program to the Muni Metro East facility when that facility is fully operational.

This injury prevention and reduction program will proactively address our efforts to control and reduce risk from injuries of this type.

Staff requests authority to negotiate and execute a contract for Back Strengthening, Employee Exercise, Education and Wellness Program Services for the purpose of entering into a three-year professional services contract not to exceed \$350,000 per year, with a one-year option at the sole discretion of the Agency's Executive Director/CEO or his designee.

By doing so, staff expects that SFMTA will realize continued savings in reduced costs associated with lost days, medical treatment and new work-related injury claims.

ALTERNATIVES CONSIDERED

The City and County currently does not have the ability to provide Back Strengthening, Employee Exercise and Wellness Program Services to effectively address the desired outcome of significantly reducing Workers' Compensation costs, claim frequencies and lost days from work. Without a program of this type the preventative measures needed to help reduce Workers' Compensation costs would not be available.

FUNDING IMPACT

Funding for the Back Strengthening, Employee Exercise and Wellness Program Services contract is in the amount of \$350,000. A total of \$250,000 is provided for in the fiscal year 2009-10 Workers' Compensation budget. The difference of \$100,000 will be moved from the existing Workers' Compensation budget to cover the full funding for this program on an annual basis thereafter.

OTHER APPROVALS RECEIVED OR STILL REQUIRED:

Civil Service Commission Approval of the contract is pending the next meeting in June 2009.

SFMTA's Contract Compliance Office has established a five percent Local Business Enterprise (LBE) sub-consulting participation goal for this contract.

The City Attorney's office has reviewed this item.

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RECOMMENDATION

Staff recommends authorizing the Executive Director/CEO or his designee to negotiate and execute a contract for Back Strengthening, Employee Exercise, Education and Wellness Program Services for the purpose of entering into a three-year professional services contract, with a one-year option to extend the contract at the sole discretion of the Agency's Executive Director/CEO or his designee.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) initiated a Back Strengthening Program in 2001; and,

WHEREAS, The Back First Program was expanded in 2006 to include a mobile exercise vehicle that services the five operating divisions not previously served by the program,

WHEREAS, The SFMTA issued a Request For Proposals in January 2009 to extend and expand the program to include an Employee Exercise and Education Center at One South Van Ness and an exercise facility at Muni Metro East;

WHEREAS, Michael K. Leary, P.T., Inc., dba BackFirst was the sole responsive and responsible bidder and,

WHEREAS, The SFMTA requires a program to reduce employee injuries and improve employee health and wellness and,

WHEREAS, Staff recommends that a contract be negotiated and executed for said services; and, now therefore be it;

RESOLVED, That the San Francisco Municipal Transportation Agency Board authorizes the Executive Director/CEO to execute a contract for Back Strengthening, Employee Exercise and Education and Wellness Program Services, with Michael K. Leary, P.T., Inc., dba BackFirst for an amount not to exceed \$1,050,000 and a term not to exceed three years; and be it;

FURTHER RESOLVED, that the contract may be extended for one additional year at the sole discretion of the Executive Director/CEO for an additional \$350,000.

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

Secretary, Municipal Transportation Agency Board of Directors

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

Agreement between the City and County of San Francisco and

Michael K. Leary P.T., Inc.

Contract No. _____

This Agreement is made this 19th day of May, 2009, in the City and County of San Francisco, State of California, by and between: Michael K. Leary, P.T., Inc., hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA")

Recitals

WHEREAS, the SFMTA wishes to implement an on-site back strengthening, exercise and comprehensive wellness program services; and,

WHEREAS, a Request for Proposal ("RFP") was issued on January 7, 2009, and April, 7, 2009 and City selected Contractor as the highest ranked proposer; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as described in this Contract; and,

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved contract number _____ on _____;

Now, THEREFORE, the parties agree as follows:

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

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

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

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

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

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from July 1, 2009 to June 30, 2012, with the option of a single one-year extension at the sole discretion of the SFMTA's Executive Director/CEO or his designee.

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

Compensation shall be made in monthly payments on or before the 5th day of each month for work, as set forth in Section 4 of this Agreement, that the SFMTA's Executive Director/CEO, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed \$350,000.00. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by 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.

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

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

6. Guaranteed Maximum Costs

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

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

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

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

7. Payment; Invoice Format

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

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

8. Submitting False Claims; Monetary Penalties

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

9. Disallowance

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

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

9A. Use of SFMTA Facilities

The use of the SFMTA facilities located at 949 Presidio Ave, 1201 Mason Street and One South Van Ness Ave and the Muni Metro East Facility for the provision of services described in this agreement are conditional on contractor's full compliance with the terms of this contract and with rules and directives issued by assigned SFMTA staff. Use of said facilities is for the benefit of SFMTA and the City and County of San Francisco, and may be revoked by the SFMTA at any time, for any reason or no reason.

10. Taxes

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

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

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

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

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

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

11. Payment Does Not Imply Acceptance of Work

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

conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

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

13. Responsibility for Equipment

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

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

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

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

b. Payment of Taxes and Other Expenses

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

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

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor

shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

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

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

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

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

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

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

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

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

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

Jeffrey L. Gary
Manager/Absence Management
San Francisco Municipal Transportation Agency
One South Van Ness Ave, 6th Floor
San Francisco, CA 94103

**Copy to: Contracts and Procurement Office
San Francisco Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, CA 94103**

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

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

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

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

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

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

j. Any of the terms of conditions of this Section 15 may be waived by the City's Risk Manager in writing, signed by the Risk Manager, and attached to this Agreement as Appendix C. Such waiver is fully incorporated herein. The waiver shall waive only the requirements that are expressly identified and waived, and under such terms and conditions as stated in the waiver.

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. This section left blank by agreement of the parties.

20. Default; Remedies

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

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

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

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

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

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

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

21. Termination for Convenience

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

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

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

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

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

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

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

22. Rights and Duties upon Termination or Expiration

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

b. Subject to the immediately preceding subsection 22(a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times,

and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

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

24. Proprietary or Confidential Information of City

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

25. Notices to the Parties

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

To City: **Jeffrey Gary**
 Manager/Absence Management
 San Francisco Municipal Transportation Agency
 One South Van Ness Ave, 6th Floor
 San Francisco, CA 94103
 Email: jeff/gary@sfmta.com
 Fax: 415-701-5001

To Contractor:

Michael K. Leary, P.T., Inc dba BackFirst
51 Chipman Place
San Anselmo, CA, 94960
Phone: 415-310-8834 – Fax – 415-485-0702
Email: mlleary@earthlink.net

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 and by the City. contractor's failure to comply with this term shall be a material breach of this agreement.

31. Non-Waiver of Rights

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

32. Earned Income Credit (EIC) Forms

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

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

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

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

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

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance

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

b. Compliance and Enforcement

(1) Enforcement

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

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

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

(2) Subcontracting Goals

The LBE subcontracting participation goal for this contract is 5%. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(3) Subcontract Language Requirements

Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(4) Payment of Subcontractors

Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

34. Nondiscrimination; Penalties

a. Contractor Shall Not Discriminate

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

b. Subcontracts

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code copies of which are posted on the internet <http://www.sfgov.org/oca/purchasing/forms.htm> 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, in accordance with the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract

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

e. Incorporation of Administrative Code Provisions by Reference

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

35. MacBride Principles—Northern Ireland

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

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

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

38. Resource Conservation

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

39. Compliance with Americans with Disabilities Act

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

40. Sunshine Ordinance

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

41. Public Access to Meetings and Records

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

42. Limitations on Contributions

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

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

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

f. Contractor's failure to comply with the Minimum Compensation shall be a material breach of this Agreement. The City in its sole discretion shall determine whether 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.

44. Requiring Health Benefits for Covered Employees

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

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

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

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

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

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating

in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

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

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City contract. If Contractor fails to do so, it shall be presumed that any employee who has worked on the this contract is a Covered Employee.

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

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

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

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

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

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

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference

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

b. First Source Hiring Agreement

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

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

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

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

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

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

(6) Set the term of the requirements.

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

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

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

c. Hiring Decisions

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

d. Exceptions

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

e. Liquidated Damages

Contractor agrees:

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

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

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

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

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

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

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

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

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

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

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

f. **Subcontracts**

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

46. Prohibition on Political Activity with City Funds

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

47. Preservative-treated Wood Containing Arsenic

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

48. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law and by the City. Contractor's failure to comply with this term shall be a material breach of this agreement.

49. Administrative Remedy for Agreement Interpretation

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

50. Agreement Made in California; Venue

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

51. Construction

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

52. Entire Agreement

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

53. Compliance with Laws

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

54. Services Provided by Attorneys

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

55. Supervision of Minors

Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care.

If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3 (h)(1) or 11105.3(h)(3).

If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian.

Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor.

Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under

this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not be limited to any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

56. Severability

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

57. Protection of Private Information

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

58. Graffiti Removal

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

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

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

59. Food Service Waste Reduction Requirements

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

60. Slavery Era Disclosure

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the contract, 10 percent of the total amount of the contract, or \$1,000, whichever is greatest as determined by the Director. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

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

CITY	CONTRACTOR
<p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Nathaniel P. Ford, Sr. Executive Director/CEO</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Lorenzo Donati Deputy City Attorney</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary to the SFMTA Board of Directors</p>	<p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <hr/> <p>Michael K. Leary, P.T., Inc. dba BackFirst 51 Chipman Place San Anselmo, CA 94960 Tax ID # - 68-0130774</p> <p>City vendor number: 55714</p>

Appendices

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

Appendix A

Services to be provided by Contractor

1. Description of Services

Contractor agrees to perform the following services:

"Contractor's proposal, dated April 28, 2009 is incorporated by reference as though fully set forth. In the event of any conflict, the documents making up the Agreement between the parties shall govern in the following order of precedence: 1) this Agreement and its appendices, 2) the Request for Proposals dated January 7, 2009 and April 7, 2009, 3) Contractor's Proposal, dated **April 28, 2009.**"

2. Reports

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

3. SFMTA Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be Jeffrey Gary.

4. On-Site Back Strengthening Services-----\$145,000.00

Locations for Services: Presidio Division and Cable Car Division

Comprehensive Wellness Program-----\$70,000.00

Program Components: Health Risk Assessments, Employee Exercise and Education Center (E3C)

HealthStrong Mobile Unit-----\$135,000.00

Total Program Fee-----\$350,000.00

5. Muni Metro East Facility Expansion

Parties agree that implementation of the Muni Metro East facility is deferred until such time as the Metro East facility is fully operational. The parties agree to modify the existing contract at that time to incorporate funding and modalities for the Metro East component.

Appendix B
Calculation of Charges

Left blank by agreement of the parties.

Appendix D

Communication Prior to Contract Award

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the contractor selection is finally approved by the SFMTA Board of Directors and, if required, by the San Francisco Board of Supervisors.

All firms and subcontractor(s) responding to this RFP are hereby notified that they may not contact any SFMTA staff member, other than a person with whom contact is expressly authorized by this RFP for the purpose of influencing the contractor selection process or the award of the contract from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and, if required, by the San Francisco Board of Supervisors. This prohibition does not apply to communications with SFMTA staff members regarding normal City business not regarding or related to this RFP.

All firms and subcontractor(s) responding to this RFP are hereby notified that any written communications sent to one or more members of the SFMTA Board of Directors concerning a pending contract solicitation shall be distributed by the SFMTA to all members of the SFMTA Board of Directors and the designated staff contact person(s) identified in the RFP.

Except as expressly authorized in the RFP, where any person representing a Proposer or potential Proposer contacts any SFMTA staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the SFMTA Board of Directors, and, if required, by the San Francisco Board of Supervisors, the Proposer or potential Proposer shall be disqualified from the selection process. However, a person who represents a Proposer or potential Proposer may contact City elected officials and may contact the Executive Director/CEO of the SFMTA if s/he is unable to reach the designated staff contact person(s) identified in the RFP or wishes to raise concerns about the competitive solicitation.

Additionally, the firms and subcontractor(s) responding to this RFP will not provide any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any SFMTA staff member from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and if required, by the San Francisco Board of Supervisors.

All lobbyists or any agents representing the interests of proposing prime contractors and subcontractor(s) shall also be subject to the same prohibitions.

An executed Attestation of Compliance (See Below) certifying compliance with this section of the RFP will be required to be submitted signed by all firms and named subcontractor(s) as part of the response to this RFP. Any proposal that does not include the executed Attestation of Compliance as required by this section will be deemed non-responsive and will not be evaluated. Any Proposer who violates the representations made in such Attestation of Compliance, directly or through an agent, lobbyist or subcontractor will be disqualified from the selection process.

ATTESTATION OF COMPLIANCE

To be completed by all Proposing Firms and All Individual Subcontractors

(Please check each box, sign this form and submit it with your response.)

Name of individual completing this form:

The form is submitted on behalf of firm:

Name of RFP: Back Strengthening, Employee Exercise, Education and Wellness
Program Services

1. I attest that I and all members of the firm listed above will and have complied to date with Section VI. J of the above RFP. Yes
2. I understand that if my firm or any members of the firm listed above are found to be in violation of the Section VI. J of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration. Yes

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: _____

Date: _____

Appendix E

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

By signing and submitting its Proposal, the Proposer or proposed subcontractor certifies as follows:

(Proposer or Proposed Subcontractor Business Name)

certifies to the best of its knowledge and belief that it and its principals:

- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from contracting with any federal, state or local governmental department or agency;
 - b. Have not within a three-year period preceding the date of this Proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
 - d. Have not within a three-year period preceding the date of this Proposal had one or more public contracts (federal, state, or local) terminated for cause or default.
- (2) Where the firm executing this RFP Appendix D is unable to certify to any of the statements in this certification, such firm shall attach a detailed explanation of facts that prevent such certification.
- (3) The certification in this clause is a material representation on fact relied upon by the San Francisco Municipal Transportation Agency (SFMTA).

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: _____

Authorized Representative Name (print)

Authorized Representative Title (print)

Authorized Representative Signature

Date

Appendix F

Certification Regarding Lobbying

(Proposer or Proposed Subcontractor Business Name)

Certifies that it will not and has not paid any person or organization for influencing or attempting to influence a member of the San Francisco Municipal Transportation (“SFMTA”) Agency Board of Directors, or an officer or employee of the SFMTA in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in this Request for Proposals. The Proposer or proposed subcontractor submitting this certification shall also disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals.

This certification is a material representation of fact upon which reliance was placed for the purposes of the SFMTA's evaluation of Proposals and award of a contract pursuant to the Request for Proposals. Submission of this certification is a prerequisite for submitting a Proposal responsive to the Request for Proposals.

Following submission of Proposals with this signed certification, any firm who 1) pays any person or organization for influencing or attempting to influence a member of the San Francisco Municipal Transportation Agency Board of Directors, or an officer or employee of the SFMTA in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in the RFP, 2) fails to disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals, or 3) pays or agrees to pay to any SFMTA employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA any fee or commission, or any other thing of value contingent on the award of a contract, will disqualify any Proposal in which that firm is named as a prime contractor, joint venture partner or subcontractor from the selection process.

By signing and submitting its proposal, the Proposer or proposed subcontractor also certifies to the SFMTA that the Proposer or proposed subcontractor has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or any other thing of value contingent on the award of a contract to any SFMTA employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA. As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name: _____

Authorized Representative Name (print)

Authorized Representative Title (print)

Authorized Representative Signature

Date

THIS PRINT COVERS CALENDAR ITEM NO. : 10.10

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: TAXIS AND ACCESSIBLE SERVICES

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO or his designee to issue a Request for Proposals for Paratransit Broker services, evaluate the proposals, and negotiate a contract with the selected proposer for a five-year term, commencing April 1, 2010, with an optional five-year extension.

SUMMARY:

- For the past 28 years, SFMTA has contracted out paratransit services to a Paratransit Broker who performs many important functions such as managing subcontracts with paratransit service providers, monitoring service quality, administering client eligibility, managing the sale of fare instruments, and acting on behalf of the Agency as the principal customer service representative for paratransit services.
- The current Paratransit Broker contract began on April 1, 2000 for a five-year period and was extended twice by the SFMTA Board -- on December 29, 2004, for an additional three-year period through March 31, 2008, and on March 28, 2008, for an additional two-year period through March 31, 2010.
- SFMTA is issuing a Request for Proposals (RFP) to solicit bids for the new contract period beginning April 1, 2010 and ending June 30, 2015, with an optional five-year extension, to administer a cost plus fixed fee contract for approximately \$116 million for the provision of paratransit services. Generally, 86% of the budget is spent on direct service costs and 14% on Paratransit Broker administrative costs.
- The RFP outlines the scope of work and requisite organizational capacity necessary to administer the distinct service characteristics of SFMTA's paratransit program and incorporates feedback from consumers and stakeholders regarding performance expectations of the Paratransit Broker.

ENCLOSURES:

1. SFMTAB Resolution
2. Request for Proposals for Paratransit Broker Services

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION BE RETURNED TO Annette Williams

ASSIGNED SFMTAB CALENDAR DATE: _____

San Francisco Municipal Transportation Agency
Request for Proposals for Paratransit Broker Services

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PURPOSE

To seek the SFMTA Board approval to release the RFP for Paratransit Broker services, evaluate the proposals, and negotiate a contract with the selected proposer.

GOAL

The Paratransit Broker RFP process helps the SFMTA meet the following goal and objective of the 2008-2012 Strategic Plan:

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

- Objective 1.4 Improve accessibility across transit service.

DESCRIPTION

For the past 28 years, SFMTA has contracted out paratransit services to a Paratransit Broker who performs many important functions such as managing subcontracts with paratransit service providers, monitoring service quality, administering client eligibility, managing the sale of fare instruments, and acting on behalf of the San Francisco Municipal Transportation Agency (SFMTA) as the principal customer service representative for paratransit services. The current Paratransit Broker contract began on April 1, 2000 for a five-year period and was extended twice by the SFMTA Board of Directors. Amendment No. 4 to the Agreement, executed on December 29, 2004, extended the contract for three years, through March 31, 2008. On March 28, 2008, the parties executed Amendment 7 to the Agreement, which extended it for an additional two-year period through March 31, 2010.

The SFMTA will be soliciting interested parties to submit proposals for an agreement for a Paratransit Broker to administer paratransit services. These services include the management of a comprehensive program for the delivery of subsidized accessible van and taxi services for persons with disabilities who reside in or visit San Francisco. This cost plus fixed fee agreement will begin with transition tasks during the period of January 1 to March 31, 2010, if a Proposer other than the current Contractor is selected, and will include the management of paratransit services for the City and County of San Francisco for the five-year period beginning April 1, 2010 and ending June 30, 2015. The SFMTA may also exercise an option to extend the contract an additional five years, through June 30, 2020, if satisfied with the services rendered. The total amount of this agreement will be subject to the availability of funds which must be approved annually.

The award of this agreement will be made to the prospective contractor whose proposal outlines a program for efficient administration of services, appropriate and customer service oriented services for senior and disabled clients, and cost-effectiveness in transportation service delivery that best meets the requirements of the SFMTA's SF Paratransit Program. The services to be provided by the applicant selected by the SFMTA will continue the commitment of the City to maintain a comprehensive program of van and taxi paratransit services which is compliant with the Americans with Disabilities Act (ADA) and meets the needs of its diverse customer base. The program is also part of a larger system of accessible services which includes the San

San Francisco Municipal Transportation Agency
Request for Proposals for Paratransit Broker Services

Francisco

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Municipal Railway's accessible fixed route diesel coach, trolley coach, light rail, and historic streetcar services.

San Francisco has a mature paratransit program, which began in 1979, long before the ADA required paratransit services in 1990. The program has evolved over time to respond to the needs of San Francisco's senior and disabled residents. Additionally, the program has undergone significant changes to achieve compliance with federal mandates. Paratransit Brokers have historically worked closely with the SFMTA, as well as the Paratransit Coordinating Council, to implement modifications to improve the quantity, quality, and cost-effectiveness of services. Flexibility and innovation has been required on the part of the Paratransit Broker as opportunities have arisen to test and develop promising concepts.

The attached Paratransit Broker Request for Proposals outlines the scope of work and requisite organizational capacity of the Paratransit Broker and specifies the tasks necessary for the administration of paratransit services. Exhibits to the RFP are available for inspection upon request from the Accessible Services Program at 415.701.4485.

A small subcommittee of the Paratransit Coordinating Council has reviewed and provided input into the Request for Proposals. The Request for Proposals will be advertised and available for download on the Office of Contract Administration's website (www.sfgov.org/oca), and advertised in public transit publications and as an official public notice in the *San Francisco Examiner*.

An evaluation of proposals submitted by the anticipated deadline will be made by an evaluation team consisting of employees of the SFMTA, members of the disability community, and one or more independent specialists in transportation services for persons with disabilities. An SFMTA Contract Compliance Officer will also be present.

The evaluation team will review the written proposals, assess each proposal's strengths and weaknesses, and make a selection of finalists to be invited to an oral presentation and interview. Following these interviews, the evaluation team will rank the proposals. SFMTA staff will initiate contract negotiations with the highest ranked proposer. By late fall 2009 a contract will be negotiated with the prospective contractor, including the establishment of a final list of tasks, special conditions, and terms and costs of services to be performed. This contract will be presented to the SFMTA Board for approval.

ALTERNATIVES CONSIDERED

Accessible Services staff, through the annual Proposition J submittal process, has explored providing the paratransit services in-house. Each year, staff goes through an extensive review process of the costs to provide paratransit services in-house as compared to contracting out to a Paratransit Broker. The Controller's office also provides an independent analysis of the cost of the City service compared with contractor's cost. According to the Fiscal Year 2009-10 Proposition J analysis, the SFMTA is budgeting for a maximum of 1,152,290 passenger trips of paratransit service. Providing this service level via private contractors will cost \$20,844,421. The cost of maintaining a paratransit operation with City employees capable of providing this

San Francisco Municipal Transportation Agency
Request for Proposals for Paratransit Broker Services

service level for the same time period would be at least \$28,157,398. The major reason for this large difference is the ability to take advantage of the economies of scale and available service
PAGE 4.

capacity in the taxicab industry.

FUNDING IMPACT

Operating funds required for the paratransit contract are budgeted in the Accessible Services budget.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The final Paratransit Broker contract will be presented to the Board of Supervisors for final approval subsequent to approval by the SFMTA Board.

The SFMTA's Contract Compliance Office has reviewed the RFP and established a Small Business Enterprise participation goal of 20 percent on the administrative services portion of the contract.

RECOMMENDATION

Staff recommends approval of the Request for Proposals and approval to initiate the contractor selection process.

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

San Francisco Municipal Transportation Agency
Request for Proposals for Paratransit Broker Services

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, For the past 28 years, the San Francisco Municipal Transportation Agency (SFMTA) has contracted out paratransit services to a Paratransit Broker who in turn manages subcontracts with paratransit service providers, monitors service quality, administers client eligibility, manages the sale of fare instruments; and acts on behalf of the SFMTA as the principal customer service representative for paratransit services; and,

WHEREAS, The current Paratransit Broker contract began on April 1, 2000 for a five-year period; Amendment No. 4 to the Agreement, executed on December 29, 2004, extended the contract for three years, through March 31, 2008, and on March 28, 2008, the parties executed Amendment 7 to the Agreement, which extended it for an additional two-year period through March 31, 2010; and,

WHEREAS, SFMTA intends to issue a Request for Proposals to solicit proposals for the new contract period beginning April 1, 2010 and ending June 30, 2015, with an optional five-year extension; and,

WHEREAS, The Request for Proposals outlines the scope of work and requisite organizational capacity necessary to administer the distinct service characteristics of SFMTA's paratransit program and incorporates feedback from consumers and stakeholders regarding performance expectations of the Paratransit Broker; now therefore be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to issue a Request for Proposals for Paratransit Broker services, evaluate the proposals, and negotiate a contract with the selected proposer for a five-year term, with an option for five additional 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

SFMTA

Municipal Transportation Agency

Request for Proposals for Paratransit Broker Services

Contract No. SFMTA 2008/09-54

CCO No. 09-1078

For Period of April 1, 2010
through June 30, 2015



DATE: JUNE 16, 2009

PRE-PROPOSAL CONFERENCE: JULY 1, 2009, 10:00 A.M.

DEADLINE FOR SUBMISSION: AUGUST 14, 2009, 4:00 P.M.

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REQUEST FOR PROPOSALS FOR PARATRANSIT BROKER SERVICES

I. INTRODUCTION AND BACKGROUND

A. Introduction

The San Francisco Municipal Transportation Agency (SFMTA) invites interested parties to submit proposals for an exclusive agreement to provide paratransit brokerage Services for administration and oversight of the City's Paratransit Program. These Services include the direct management of a comprehensive program for the delivery of subsidized accessible van and Taxi services for persons with disabilities who reside in or visit San Francisco. The program meets the requirements of the transportation provisions of the Americans with Disabilities Act (ADA) of 1990, and is an integral component of a system of accessible services, which includes the San Francisco Municipal Railway's accessible fixed route diesel coach, trolley coach, light rail, and historic streetcar services.

On behalf of the City and County of San Francisco, management of the Paratransit Broker contract is overseen by the SFMTA, which is comprised of Parking and Traffic and the Municipal Railway.

This exclusive agreement will begin with start-up tasks (if required) during the period of January 1 through March 31, 2010. The agreement includes the management of paratransit Services for the City and County of San Francisco for the period beginning April 1, 2010 and ending June 30, 2015. Upon completion of this contract period, the SFMTA may also exercise an option to extend the contract an additional five years, through June 30, 2020. The total amount of this agreement is subject to the availability of funds, which must be approved annually.

The award of this agreement will be made to the prospective contractor whose proposal best:

- Demonstrates the ability to carry out appropriate and customer service-oriented programs for senior and disabled clients;
- Provides a plan to manage the delivery cost-effective transportation service that meets the requirements of the SFMTA's Paratransit Program in compliance with the ADA;
- Describes an efficient approach for the administration of Services; and
- Meets the minimum qualifications detailed in Section IV.A of this RFP.

B. Background

The San Francisco Municipal Railway (Muni) has offered paratransit services since 1978, 12 years before the Americans with Disabilities Act of 1990 (ADA) required paratransit services to be offered as a matter of federal law. Because paratransit in San Francisco was provided prior to the passage of the ADA, many of the service elements of the SF Paratransit Program exceed the minimum requirements of the ADA. Over the past 26 years, the SF Paratransit Program has been contracted out to a paratransit broker, and the program has matured and evolved in order to

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Request for Proposals for Paratransit Broker Services

best respond to the needs of San Francisco's senior and disabled citizens. The program has periodically undergone significant changes to achieve compliance with federal mandates and local policy choices.

Proposers should note that previous paratransit brokers have historically worked closely with Muni, its governing bodies—the Public Utilities Commission (PUC), the Public Transportation Commission, and now the SFMTA and its Board of Directors -- as well as the San Francisco Paratransit Coordinating Council (PCC) -- to implement modifications to improve the quantity, quality, and cost-effectiveness of Services. Flexibility and innovation have been required on the part of the Paratransit Broker as opportunities have arisen to test and develop promising concepts. Proposers should also note the close liaison between Muni's paratransit and accessible fixed-route services.

Exhibit 1 documents the history and timeline of key activities and milestones of the program since its inception. The current rules and regulations governing the SF Paratransit Program are set forth in detail in **Exhibit 2** (SFMTA Rider's Guide for the SF Paratransit Program) and **Exhibit 3** (SFMTA Rules of Operation for the SF Paratransit Program).

The SF Paratransit Program is in the process of significantly upgrading its infrastructure. The current Broker is implementing an upgraded Customer database, reservations and scheduling system (Trapeze PASS, see **Exhibit 4**), and the SFMTA is in the process of acquiring the hardware and software necessary to convert the paper scrip currently used by paratransit Taxi Customers for Fare Media to a Paratransit Debit Card System (PDCS). The goal of these hardware and software upgrades is to increase the efficiency, accuracy and flexibility of the SF Paratransit Program, to reduce reliance on paper transaction records and to increase tracking, monitoring and reporting capabilities. It is anticipated that the PDCS will be fully implemented during the summer of 2009. See **Exhibit 5** for a description of the PDCS.

For an organizational chart depicting the participants in the Paratransit Program and their relationships, see **Exhibit 6**.

Capitalized terms used in this RFP shall have the meanings specified in **Exhibit 7**, "Agreement for Professional Services."

C. **Elements of the SF Paratransit Program**

The following are components of the SF Paratransit Program:

1. **SF Access**

SF Access provides pre-scheduled, door-to-door van Services for ADA paratransit-eligible individuals, which must be arranged one to seven days in advance. For qualified wheelchair users who are unable to independently negotiate the steps of their residences, SF Access also provides a limited number of stair assist Services. For a more complete description, please refer to **Exhibits 2 and 3**.

SF Access service is delivered by means of a service agreement executed between the Broker and Transportation Service Providers. Currently there is only one SF Access service agreement in place with Mobility Plus Transportation (MPT), formerly known as Trans Metro

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Express (**Exhibit 8**).

The City owns 60 paratransit vans; 40 are used in the SF Access service and 20 are used in the Group Van service . The Broker is responsible for subleasing the vans to Transportation Service Providers. Currently there are six subleases (**Exhibit 9**) between the Paratransit Broker and MPT to operate the 60 City-owned paratransit vans. See **Exhibit 10** for a list of the City-owned vehicles.

The SF Access service agreement and two vehicle subleases have a term that ends on March 31, 2011. Four vehicle subleases end on March 31, 2010 to coincide with the end of the Broker contract term. The Successor Contractor will be required to assume the existing subleases and service agreement for the remainder of their terms. The Contractor will also be required to extend the terms of the four vehicle subleases to coincide with the end of the term of the service agreement.

Currently, the Broker sells approximately 3,000 SF Access Fare Media tickets to paratransit Customers each month. There are approximately 12,000 registered SF Access Customers in the SF Paratransit Program.

2. **Group Van Services**

Group Van Services are routine, pre-scheduled group trips transporting ADA-eligible Customers to and from the facilities of approximately 35 San Francisco social service agencies. Group Van service is not required by the ADA but it is a cost effective approach to providing paratransit service to groups of ADA-eligible customers going to/from a single location. Group Van Services to social service agencies are currently provided by Transportation Service Providers using vans and buses that accommodate both ambulatory Customers and wheelchair users. Some Group Van Services are funded by the Department of Aging and Adult Services (DAAS), which also funds a small number of shopping trips for seniors (9,319 shopping trips in Fiscal Year 2007-08).

The Current Contractor manages agreements with six Group Van Transportation Service Providers listed in **Exhibit 11**. See **Exhibit 12** for a sample agreement in place between the Current Contractor, van providers, and social service agencies. The current Group Van Provider agreement terms expire on March 31, 2010, but the present Paratransit Broker is intending to extend the agreements until December 31, 2010, see **Exhibit 13** for a sample Group Van provider contract.

Tickets are not usually provided to Group Van participants; typically, service fares are billed monthly to agencies receiving Group Van Services. There are approximately 1,100 registered Group Van Customers in the SF Paratransit Program.

3. **Taxi Services, Including Sedans and Ramped Taxis**

As of March 1, 2009, the SFMTA has regulated and monitored the City's public Taxicab service. The San Francisco Municipal Code requires that all Taxi companies operating in San Francisco participate in the SF Paratransit Program provided they meet SFMTA's minimum participation requirements (**Exhibit 14**). The Current Contractor manages 14 contracts with Taxi companies and dispatch services governing their participation in the program.

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The San Francisco Taxi fleet consists of 1,400 sedans and 100 wheelchair-accessible ramped mini-vans. The entire fleet of 1,500 vehicles is equipped with two-way radios for dispatching and other communication needs, e.g., medical emergencies and road-call service. The paratransit Taxi Customer is able to use the general public Taxi system like any other Taxi patron by either calling or hailing a Taxi.

Though Taxis do serve ADA-eligible Customers, Taxi service is not required under the ADA or subject to all ADA paratransit requirements. For example, the paratransit Taxi service is not subject to ADA rules regarding trip denials (there are limits on available Taxi service) and fare limits (some long distance fares may exceed ADA maximums). All ADA-eligible Customers are entitled to use SF Access service if a Taxi does not meet their needs, but for many customers, Taxi Services are more convenient and better meet their transportation needs.

The SFMTA is in the process of replacing the current fare payment system, which consists of paper-based Taxi scrip booklets, with an electronic debit card processing system. The Paratransit Debit Card System (PDCS) is an account-based application that will allow ADA-eligible patrons to use a debit card for Taxi fare payment. The PDCS will use a magnetic stripe card with the Customer's name, unique identification number and photograph. Participating Taxi companies will have equipment in their vehicles to read and recognize the debit card and transmit the transactions back to the Debit Card Application servers for authorization, reconciliation, and data collection and analysis. See **Exhibit 5** for a description of the PDCS system. The SFMTA anticipates that the PDCS will be fully implemented during the summer of 2009.

The SFMTA has developed and is contemplating implementing a Ramped Taxi driver incentive program, which would include monthly payments to cab companies for distribution to ramped taxi drivers. The intent of the Ramped Taxi driver incentive program is to provide incentives to Ramped Taxi drivers to achieve better on-demand, accessible Ramped Taxi service to persons who use wheelchairs. This program is also intended to help compensate drivers for the additional cost of providing Ramped Taxi service and improve driver retention. Implementation is dependent upon funding availability.

The Broker's management tasks related to the Ramped Taxi incentive program would include reviewing electronic ramp taxi trip data, ascertaining that the trips were valid paratransit wheelchair trips, and developing a reimbursement protocol and schedule.

Currently, the Broker sells approximately \$650,000 worth of scrip/debit card value to paratransit Customers each month. There are approximately 12,000 registered paratransit Taxi Customers in the SF Paratransit Program.

4. **Inter-County Paratransit Service**

In an effort to better coordinate paratransit Services for Customers travelling between San Francisco and Marin County or the East Bay, direct regional paratransit service is available through agreements with local transit agencies to provide Inter-County Paratransit Services. Service is provided according to regional guidelines for Inter-County Paratransit Service as established by Metropolitan Transportation Commission (MTC), the nine-county San

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Francisco Bay Area regional transportation planning agency, and the Partnership Transit Coordinating Council's (PTCC) Accessibility Committee. The PTCC is a body comprised of the general managers of each transit agency in the nine-county Bay Area. The SFMTA has entered into on-going agreements with the Golden Gate Bridge, Highway and Transportation District in Marin County and the East Bay Paratransit Consortium serving BART and AC Transit, see **Exhibit 15**. The agreements stipulate that both Whistlestop Wheels (on behalf of Golden Gate Bridge, Highway and Transportation District) and East Bay Paratransit will provide certain paratransit services in the Muni service area and the SF Paratransit Broker will process, on behalf of MUNI, payments due to Whistlestop Wheels and East Bay Paratransit for providing such paratransit services on behalf of Muni.

Although the SFMTA does not have an agreement with SamTrans, the public transit operator for San Mateo County, SamTrans provides some direct paratransit service between San Francisco and San Mateo County. To complement its fixed route service to some areas of San Francisco, SamTrans provides paratransit service within three-quarters of a mile of SamTrans' routes. Transfer trips are also available for Customers traveling to or from San Mateo County from other parts of San Francisco.

5. Shop-n-Roll Shuttle

The SFMTA is in the process of establishing a shopping shuttle service for seniors and persons with disabilities funded with New Freedom and Lifeline Transportation grants. The New Freedom grant is expected to be expended over a two-year period and the Lifeline will be programmed over a three-year period. The service is expected to begin implementation by the fall of 2009.

The Shop-n-Roll Shuttle will provide group grocery shopping trips and escort Services (carrying of groceries from the store into the van and from the van to the residence) twice a month to low-income seniors and persons with disabilities who live in targeted public housing buildings and neighborhoods that have limited grocery shopping opportunities (fewer stores and less direct transit to stores than in other neighborhoods).

The selected Contractor will be responsible for the management of the Shop-n-Roll Shuttle, including managing provider contracts, participant registration, trip verification, and service quality oversight. See **Exhibit 16** for Shop-n-Roll eligibility guidelines and registration form.

6. Service Utilization Data

The following table illustrates a three-year trend of total number of trips, expenditures, complaints and on time reliability percentages for all of the modes of service described above.

FIGURE 1: THREE-YEAR PARATRANSIT GENERAL STATISTICS

	FY07-08	FY06-07	FY05-06
Trips			
Taxi	597,406	593,534	608,043
Ramp Taxi	46,038	34,953	34,259

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	FY07-08	FY06-07	FY05-06
Debit Card	1,214	1,748	1,952
Total Taxi	644,658	630,235	644,254
ADA Access	88,588	99,250	137,231
Lift Van	67,405	70,561	85,533
Intercounty	12,583	12,549	10,766
Group Van	287,784	283,864	280,447
OoA	57,618	54,640	53,796
Shopping Trips	9,319	7,383	6,285
Total Trips	1,167,955	1,158,482	1,218,312
Expenditures			
Taxi	\$7,233,481	\$7,270,259	\$6,837,606
ADA Access	\$1,956,683	\$2,039,622	\$2,602,617
Lift Van	\$2,787,232	\$2,540,013	\$3,141,263
Intercounty	\$111,600	\$94,387	\$83,469
Group Van	\$3,616,786	\$3,515,065	\$3,275,903
OoA	\$726,614	\$694,431	\$618,641
Broker	\$2,764,143	\$2,546,361	\$2,592,860
Total Expenditures	\$19,196,539	\$18,700,138	\$19,152,359
Complaints			
Taxi	9	25	19
Ramp Taxi	7	11	3
ADA Access	188	333	289
Lift Van	235	416	376
Group Van	15	22	6
Broker	6	6	3
On Time Reliability			
Taxi	99.02%	98.56%	97.30%
TME SF Access*		86.05%	90.38%
MPT SF Access**	92.76%	89.68%	
Group Van	94.35%	94.08%	93.84%

*7/1/06 - 4/30/07

**5/1/07 - present

7. ADA Paratransit Certification Process

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A key element of the Services to be provided under the Agreement is the evaluation of all applicants for eligibility for ADA paratransit Services. ADA eligibility for paratransit is limited to persons whose disability prevents independent use of fixed route transit some or all the time. See 49.C.F.R. § 37.123. The PTCC Accessibility Committee, in conjunction with MTC, has developed regional certification guidelines that are used by public transit operators within the Bay Area. Certification information is uploaded to a regional database, called the Regional Eligibility Database (RED), that is accessible to all participating transit agencies. Participating transit agencies have agreed to honor each other's eligibility decisions. See **Exhibit 17** for the ADA application currently in use by most participating operators.

Currently, approximately 15,000 ADA-certified paratransit Customers are enrolled in the Program, of which 11,139 are considered Active Users. Most ADA-certified individuals must undergo a re-certification process every three years, unless they were temporarily certified and thereby have a shorter eligibility period. Approximately 250 new applications are received each month (all of which are processed within 21 days). On average, 500 new and re-certification applications are received each month.

Approximately 24% of applicants who are denied eligibility request an appeals hearing. In Fiscal Year 07-08, there were 347 denials out of 5,984 total applications processed (6% denial rate). Of those 347 denials, 81 were appealed. Of the 81 denials that were appealed, 26 were overturned by the Appeals Panel.

8. **Paratransit Plus Program**

The Paratransit Plus Program is a limited Taxi program for persons who do not qualify for paratransit Services under the eligibility criteria of the ADA, but who have demonstrated a high level of difficulty using public transit. Paratransit Plus Customers are able to purchase a maximum of \$60 worth of taxi service per month at the same subsidized cost as ADA paratransit eligible taxi Customers (\$4.00 per \$30.00 worth of service before July 1, 2009. Fares will increase after July 1, 2009 to \$5.00 per \$30.00 worth of taxi service.)

The Broker works in conjunction with SFMTA staff to accept applications for participation in the Paratransit Plus program and certify Paratransit Plus Customers who do not meet ADA-eligibility criteria but have a physical difficulty that makes use of regular transit service difficult (**Exhibit 18**).

There are currently 198 participants enrolled in the Paratransit Plus program.

9. **Customer Database**

The Current Contractor manages the Customer database. Currently the database contains approximately 15,000 registered Customers, and operates on Mobility Master software owned by Trapeze. Customers may be registered in more than one mode of paratransit service. The Mobility Master software program is used by the Current Contractor to register eligible Program participants, to confirm Services provided to Customers in order to validate subcontractor invoices, and to track financial and other contract statistics in order to generate invoices and statistical reports.

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The Current Contractor is in the process of upgrading the Customer database to new software, Trapeze PASS. The City anticipates that the PASS database will be fully installed and operational by fall 2009. The City will hold the license to use the new database software.

10. Customer Service

Approximately 975 Customers visit the Broker's Office each week. Of those, approximately 85 Customers come in for photo ID appointments, and about 50 Customers come in for in-person second level assessment interviews that are conducted weekly as part of the process for certification of eligibility. The remaining Customers come in to purchase Fare Media (scrip and van tickets).

The Broker's Office receives approximately 700 phone calls per week.

II. SCOPE OF WORK

A. Scope of Work Tasks. The selected Contractor shall monitor and track the provision of Services through three delivery Modes (SF Access, Group Van and Taxi) in accordance with the Americans with Disabilities Act and Muni policies, as well as the Service Standards for persons who meet established Program eligibility requirements, and shall report to the SFMTA as required by the Agreement. The Service Standards for the SF Paratransit Program are established in the SF Access and Group Van provider contracts (**Exhibits 8 and 13**) and the SF Paratransit Rules of Operation (**Exhibit 3**). The Scope of Work tasks listed in this Section II are a general guide. The SFMTA encourages proposers to identify innovative and creative options and ideas for meeting program goals, lowering costs, increasing efficiencies and improving Customer service.

The duties of the selected Contractor may, at the City's discretion, be modified during the contract negotiation or during the term of the contract.

1. **Start-up Tasks if the Current Contactor is not the Selected Contractor.** If the Successor Contractor is not the Current Contractor, then the Successor Contractor shall perform the following start-up tasks:

a. Coordinate with the Current Contractor to implement an orderly transfer of all records, equipment, materials, supplies and anything else purchased with SFMTA funds or necessary for the performance of the Agreement to ensure that there is no interruption in paratransit Services to Customers or deterioration of the quality of paratransit Services resulting from any transition between Contractors.

b. Assumption of Current Contractor's existing vendor leases, subcontracts and subleases for the remainder of their terms. See **Exhibit 19** for a list of vendor contracts and leases with terms beyond the term of the current Broker contract. **Exhibit 20** and **21** contain agreements related to the operation and of the Broker's Office.

2. **Start-up Tasks for the Selected Contractor, Whether a Successor Contractor or the Current Contractor.** Any selected Contractor shall perform the following start-up tasks:

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Request for Proposals for Paratransit Broker Services

a. Enter into contracts with Taxi and Taxi company subcontractors by screening for compliance with minimum requirements for Program participation, as described in **Exhibit 14**.

b. Provide administrative and fiscal oversight for all subcontracts and subleases.

c. Monitor and document Transportation Service Provider performance and enforce subcontractor compliance with all applicable requirements of the Agreement. The Contractor's monitoring tasks shall include effective monitoring for fraud and misuse of the Program by Customers and Transportation Service Providers.

d. Extend sublease agreements of City-owned vehicles to subcontractors and implement an on-going inspection program to ensure that the SF Access sublessees provide regular maintenance of City-owned vehicles and documentation of such maintenance.

e. Coordinate and distribute reference and training materials between and among City, the selected Contractor, subcontractors and Customers as required by SFMTA.

f. Develop and maintain a structured asset management protocol for all assets purchased with City funds, including but not limited to City-owned vehicles, PDCS In Taxi Equipment (ITE) and all office furniture and equipment. See **Exhibit 22** for a current list of inventory of furnishings and equipment at the Paratransit Broker's Office.

3. **Staffing Requirements.** The selected Contractor shall provide staff in adequate numbers and with adequate qualifications to perform all requirements of the Agreement. In addition to the staff required to generally perform all work required by the Agreement, the selected Contractor must provide the following resources:

a. A Project Manager to act as a single point of contact for SFMTA.

b. Management level staff to conduct administrative review of appeals of denial or determination of conditional eligibility for Services, and for appeals of suspension decisions.

c. Staff to participate in and report on public meetings and working groups on paratransit service issues, including Customer and stakeholder committees of the Paratransit Coordinating Council (PCC). The selected Contractor will be responsible for staffing the three modal subcommittees of the PCC Executive Committee -- the Taxi/Ramped Taxi Subcommittee, the Group Van Subcommittee and the SF Access Subcommittee. Duties include developing the agendas, taking minutes, and mailing the agenda packets in conjunction with the Chair of each subcommittee. Typically there is one subcommittee meeting per month. The selected Contractor must prepare meeting minutes following each meeting, including any recommendations to SFMTA that result from the meeting.

d. Technical staff with sufficient skills and expertise to maintain the on-going operation and maintenance of the PDCS, Customer database, RED uplink and all associated interfaces, manage the contract with the PDCS host vendor (**Exhibit 23**) and who are qualified to oversee the on-going operation and maintenance of ITE in Taxis (**Exhibit 24**).

e. Provide one out-stationed employee to serve as the fixed route accessibility coordinator at the SFMTA. See **Exhibit 25** for a job description and cost information to include in the Cost Proposal.

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4. **On-Going Tasks: Service Monitoring.** As part of the requirement of the Agreement that the Contractor monitor subcontractor performance for each Mode, the selected Contractor shall perform the following tasks:

a. Coordinate with the SFMTA Taxis and Accessible Services Division to ensure that all Taxis participating in the Program are in compliance with all City permit requirements.

b. Monitor paratransit debit card reports daily to track all aspects of paratransit service usage.

c. Monitor and maintain ongoing cost-effectiveness of Services by tracking unit costs per trip for all Modes.

d. Implement a comprehensive Service Quality Monitoring Program that is based upon systematic monitoring and does not depend solely on Customer complaints to track performance issues such as on-time reliability, telephone response time, driver performance, etc. Ensure systematic monitoring of key service standards in all subcontracts.

e. Implement a problem-solving component to the monitoring program to develop long-term solutions to service quality issues.

f. Assure compliance of all SF Access and Group Van subcontractors with U.S. Department of Transportation drug testing requirements. This requirement does not apply to Section 5310 Vehicles that are owned by third parties. In the administration of drug testing, coordinate with and cooperate with SFMTA's Substance Abuse Program.

5. **On-going Tasks: Customer Service.** The selected Contractor shall serve as the principal Customer service representative for San Francisco Paratransit Customers, and shall be available to Customers through in-person visits to the Broker's Office, by telephone, by mail and through the internet.

a. **Customer Service Requirements.** Customer service must be performed in accordance with the following requirements:

i. Written, telephone and in-person Customer services under the Agreement must be made available in Chinese, Russian, and Spanish.

ii. All primary written information that the Broker provides to Customers must be available in large print, American Braille, ASCII, electronic text file, audio recording or other format required by the ADA upon Customer request.

iii. Customer information services shall be accessible via TTY (or other comparable telecommunications access methods, such as but not limited to, video relay services or California Relay Service).

iv. The Broker is required to maintain a website that complies with the City's Department of Telecommunications and Information Services standards for website accessibility. All electronic information shall comply with all accessibility standards of Section 508 (29 U.S.C. § 794d) of the Rehabilitation Act.

v. The selected Contractor shall endeavor to provide American Sign Language interpretation or real-time captioning at the Broker's Office if a Customer gives at least 72 hours notice of the request for such accommodations.

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b. Fare Media Sales. The selected Contractor shall sell Fare Media to Customers in accordance with all requirements of the Agreement and any additional requirements generally applicable to paratransit Fare Media vendors that are communicated to Contractor by SFMTA in writing.

i. Fare Media shall be available for purchase from Contractor during business hours at the Broker's Office, or by telephone order. The selected Contractor shall make Fare Media sales information available by internet as of the effective date of the Agreement, and shall implement a website capable of receiving secure Fare Media payments via internet in accordance with a schedule to be negotiated.

ii. Contractor shall accept at a minimum cash and personal checks with valid ID card as proof of identity. Broker Office staff shall be trained in procedures to accept payments when electronic cash registers or Contractor's computer systems are not operational.

c. Broker's Office. The selected Contractor, if not the Current Contractor, shall be required to assume the existing lease for Broker facilities. See **Exhibit 21**. The Broker's Office shall be open to the public for purposes related to the Program, including, but not limited to, the purchase of paratransit Fare Media, obtaining application forms or submitting applications for eligibility certification, obtaining Customer identification, taking photos for Customer identification, filing a complaint, or obtaining written instructional materials or in-person assistance regarding Program participation. At a minimum, the office shall be open to Customers between 9:00 a.m. and 4:45 p.m.

d. Telephone Service. At a minimum, the selected Contractor shall be available to Customers by telephone between 9:00 a.m. and 4:45 pm in accordance with the following standards:

i. Customer Service Availability: A Customer service representative shall be available to answer the phones on a daily average of 98% of the 465 minutes during each business day.

ii. Average Speed to Answer: 80% of all calls in during business hours must be answered by a person in 45 seconds or less. All calls put on hold must be answered by a person or be transferred to an answering machine within one minute.

iii. Average Call Hold Time: Average call hold time during a business day may not exceed 20 seconds.

e. TTY Service. Eighty percent of all TTY calls in a business day must be answered by a person within 45 seconds or less. All TTY calls must be transferred to an answering machine if not answered by a person within one minute.

f. Website. The Contractor shall update and maintain the SF Paratransit internet site (www.sfparatransit.com) that provides general information about the SF Paratransit Program, eligibility requirements and application forms. The SF Paratransit website shall operate in accordance with the following standards for availability, speed and security of data:

i. Website Availability: The website must be available 99.5% of the 1440 minutes in a calendar day, 365 days a year. With prior SFMTA approval of proposed website maintenance dates, the website may be taken down for maintenance between the hours of midnight and 6 a.m.

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ii. Website Speed: The average page load time into the network may not exceed four seconds on any ISP with a connection speed faster than 56kb.

iii. Website Security: Zero failures in encryption level and standardized intrusion testing routines.

g. Customer Resources and Feedback. The selected Contractor shall make information available to and actively solicit information from Customers for the purpose of continually improving Customer satisfaction with the Program. In fulfilling this requirement, The selected Contractor shall perform the following tasks:

i. Conduct a minimum of 20 Customer information sessions and/or workshops annually. The selected Contractor shall maintain documentation of all such workshops with records of attendance and all instructional materials provided to attendees.

ii. Develop, implement and administer a Paratransit Grievance Committee for Customers to submit grievances against Transportation Service Providers.

iii. Develop, implement and administer a Customer feedback system, which shall include but not be limited telephone and in-person processing of Customer complaints and commendations; detailed electronic logs of Customer complaints and commendations that can be sorted by Mode, Customer, driver, date and general subject matter category; and an annual, statistically significant, independent Customer satisfaction survey to measure Customer satisfaction with Contractor and with Transportation Service Providers.

iv. Provide travel training using certified travel trainers to encourage persons with disabilities to use the Muni system by increasing public transit skills and comfort level. The selected Contractor shall conduct outreach to appropriate agencies to identify suitable candidates for travel training, as well as make travel training available to individuals who applied for paratransit Services and were determined not eligible. The selected Contractor shall maintain documentation of all such training with records of attendance and all instructional materials provided to attendees.

h. Certification of Eligibility. The selected Contractor shall perform the following tasks to certify the eligibility of San Francisco residents and visitors to participate in the Program:

i. Make SFMTA-approved Program application (see **Exhibit 17**) available without charge to San Francisco residents at the Broker's Office, by mail or fax when requested, and through the website. Broker shall also distribute application forms to social service agencies serving senior citizens and persons with disabilities.

ii. Accept applications for Program participation by mail, in-person delivery or fax.

iii. Evaluate applicants for eligibility in accordance with all requirements of the Agreement, including new Customers and existing Customers who want to be recertified. In addition to reviewing the information provided on the application form, the selected Contractor shall verify the eligibility of at least 90% of new applicants who are San Francisco residents through a second level assessment by telephone, in-person interview, and/or verification by a medical professional. At least 50% of those second level assessments of new applicants must be conducted by in-person interviews. At least 30% of San Francisco resident applicants for recertification shall undergo a second level assessment.

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- iv.** Conduct a functional assessment of an applicant when necessary to verify eligibility for participation in the Program.
- v.** Send notice of eligibility, conditional eligibility or denial of eligibility to the applicant.
- vi.** Offer any applicant who is found ineligible or conditionally eligible an opportunity to appeal the determination by presenting evidence and arguments for reconsideration in person or in writing, including the forms necessary to file such an appeal. See **Exhibit 3** for more specific details and appeal timeline.
- vii.** Conduct a management-level administrative review of the appeal.
- viii.** If the denial of eligibility or conditional eligibility is upheld following administrative review, convene the appeals panel in conjunction with SFMTA staff and conduct a hearing of the appeal.
- ix.** Following the hearing and in coordination with SFMTA staff, send a Notice of Appeal Status to the applicant with the decision of the appeals panel and information on how and under what circumstances the applicant may re-apply.
- x.** Train new appeals panel members in ADA paratransit requirements and SF Paratransit procedures as necessary.
- xi.** Issue a photo identification card to registered Customers that includes a description of the categories of service for which the applicant is eligible, any limitations or conditions on the Customer's eligibility, and the date that their eligibility expires. For paratransit taxi Customers, their debit card is also their photo identification card.
- xii.** Re-assess or revoke the eligibility of any Customer who Contractor determines to be ineligible due to information on the application that is false, inaccurate, or that has changed sufficiently to warrant a change in eligibility with due process for an appeal.
- xiii.** Provide for the use of Paratransit by qualified visitors to San Francisco.
- xiv.** Enter Customers' eligibility status into the Customer Database and then upload the information daily on business days into the Regional Eligibility Database so that current eligibility certification information may be viewed by other participating transit agencies.
- xv.** In conjunction with SFMTA staff, offer applicants the ability to participate in the Paratransit Plus program when they do not meet ADA-eligibility criteria but who have demonstrated a high level of difficulty using regular bus and light rail service. (See **Exhibit 18**).
- xvi.** Administer and conduct eligibility certification and fare subsidy disbursements from donated private funds for the Helping Wheels Fund Fare Assistance Program, which provides financial assistance to low income individuals who are ADA-eligible and who have a sudden and unexpected need for paratransit. (See **Exhibit 26**)

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xvii. Administer and conduct eligibility certification for Shop-n-Roll participants. (See **Exhibit 16**)

i. Suspension of Service. The selected Contractor shall document any basis for suspension of paratransit services to any Customer and shall issue a warning notice to Customers in advance of any suspension that Contractor determines is required. A Notice of Suspension shall include the date and duration of the suspension of paratransit services to the Customer, the reason for the suspension, and forms and instructions for the Customer to appeal the suspension decision. The selected Contractor shall implement all required appeal procedures for suspension determinations (See **Exhibit 3**) and document the process and outcome of the appeal.

6. On-going Tasks: Records.

a. The selected Contractor shall maintain Records and prepare reports of all elements of the performance of the Agreement, transactions and communications as required by the Agreement or by any federal state or local law or regulation related to the performance of paratransit services, conduct of financial transactions or documentation of expenditures under the Agreement, or as required by SFMTA.

b. The selected Contractor shall maintain and secure personal information of Customers in its possession, including but not limited to legal documents such as powers of attorney and guardianship, contact information and medical information, in a manner that protects all rights of privacy of Customers.

c. The selected Contractor shall maintain a secure location for computer equipment and for archiving all electronic records.

7. On-going Tasks: Financial.

a. Manage and document all transactions related to Fare Media and billing for Group Van, SF Access and Taxi services, disbursing, collecting and maintaining fiduciary control over Fare Media. Contractor shall not charge any Customer amounts in excess of the amounts approved by SFMTA.

b. Prepare monthly invoices of Contractor and subcontractor expenses and income and submit to SFMTA for reimbursement in accordance with all requirements of the Agreement.

c. Manage and document all Customer information and transactions conducted as part of the Paratransit Debit Card System. (see **Exhibit 5**).

d. Manage and document payments made and received in accordance with regional Inter-County Paratransit Service agreements.

e. Disburse monthly Ramped Taxi driver incentive payments to Taxi companies, which in turn disburse the funds to the drivers.

f. Fund a Paratransit Drivers of the Year Program to award \$100 for one driver from each of the van and Taxi Paratransit Service Providers, as well as two overall awards for a van driver and a Taxi driver of the year, as nominated by Customers. At least 15 drivers shall receive awards each year.

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8. **On-going Tasks: Reports.** In the course of performing the Agreement, the selected Contractor shall submit reports as described in the Agreement or as requested by SFMTA, with format and content subject to approval by SFMTA, including, but not limited to:

a. Management Reports. Monthly and annual Performance Indicator Reports documenting all elements of Services provided under the Agreement, including but not limited to compliance with Service Standards, summaries of financial transactions, Customer feedback, paratransit service statistics, outreach and training activities, summaries of the number of applications for certification of eligibility received, certification decisions, number of eligibility appeals processed, and any Contractor recommendation for solutions to paratransit service quality issues. See **Exhibit 27** for a sample Monthly Performance Indicator Report.

b. FTA National Transit Database Section 15 Annual Report. Collection and compilation of all information requested by the SFMTA for the SFMTA's preparation of an annual audited independent report to the FTA.

c. Deliverables Status Report. A full status report on each contract deliverable and its completion or progress to meet that deliverable, provided at least once a year.

d. Daily Incident Reports/Monthly Incident Report Summaries. Daily reports to be filed by each of Contractor's and subcontractors' employees who personally witness any vehicle accident, incidents involving any violation of law, personal injury or property damage, safety violations, and Customer No-Shows. The selected Contractor shall provide accident reports to the SFMTA within 24 hours, and monthly Incident Report Summaries to SFMTA for each subcontractor.

e. Paratransit Operations Manual. Development and implementation of an Operations Manual specifying procedures for certain material requirements of the Agreement. The Manual will be reviewed by the Paratransit Coordinating Council prior to submittal to the SFMTA. The deliverable and the due date of each element of the Operations Manual is listed below. On the date specified after each deliverable, Contractor shall submit a written draft of the deliverable to the SFMTA for approval. Following approval of the draft by the SFMTA, Contractor shall incorporate SFMTA comments into a final deliverable within 30 days. Once the final deliverable is approved by the SFMTA in writing, Contractor shall distribute such deliverable to the SFMTA and to all Transportation Service Providers for their reference, and Broker shall comply and shall require all Transportation Service Providers to comply with the procedures set forth in the approved Operations Manual. The selected Contractor shall deliver the following documents, which together shall make up the San Francisco Paratransit Operations Manual:

i. Emergency Preparedness Protocol. To (a) provide continuity of paratransit services in the event of any foreseeable interruptions in the availability of labor, vehicles, materials, supplies, power or communications, and (b) to provide emergency transportation as directed by SFMTA in the event of a disaster (within 120 days of the Effective Date).

ii. Service Quality Monitoring Program. To ensure systematic and comprehensive monitoring of key Service Standards for all subcontractors, including a problem-solving component to develop long-term solutions to service quality issues (within 90 days of the Effective Date).

iii. Driver Training Protocol. To ensure safe and courteous Customer service in compliance with Service Standards (within 60 days of the Effective Date).

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iv. Scheduling Protocol. To minimize delays in response to Customer requests for paratransit service (within 60 days of the Effective Date).

v. IT Back-Up Procedures. To ensure regular archiving of all electronic data associated with the performance of the Agreement regardless of the failure of IT equipment or the intentional or negligent acts of any person that results in deletion or corruption of data (within 60 days of the Effective Date).

vi. Vehicle Maintenance Inspection Procedures. For City-owned paratransit vans leased to the Broker (within 60 days of the Effective Date).

vii. Asset Management Protocols. To track and monitor the condition of all assets purchased with City funds, including vehicles, hardware and software, furniture and equipment (within 60 days of the Effective Date)

viii. Paratransit Grievance Committee Forms and Procedures. Written grievance forms and procedures for Customer complaints (within 90 days of the Effective Date).

ix. Customer Feedback Forms and Procedures. Written Customer feedback forms and procedures for responding to comments (within 90 days of the Effective Date).

x. Fraud Prevention Procedures. For controlling fraud and misuse of Fare Media (within 90 days of the Effective Date).

xi. Customer Survey Form and Methodology. The form of a Customer survey and a methodology for implementing the survey (within 120 days of the Effective Date).

III. SUBMISSION REQUIREMENTS

A. Time and Place for Submission of Proposals

Proposals meeting all requirements of this RFP must be received by 5:00 p.m. on **August 14, 2009**, at the following address:

Mikhael Hart
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 3rd floor
San Francisco, California 94103

Proposals that are submitted by fax will not be accepted. Late submissions will not be considered.

B. Format of Proposals

Proposals must be received in sealed package(s) identified with the proposer's name and address and the Project Title. Each proposal shall be submitted in the following formats:

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1. Hard copy format: Proposers shall submit one original (marked "original" with the original signature of the responsible officer of the proposer) and nine paper copies of the proposal. The proposal shall be contained on 8 1/2" by 11" paper with fold-outs from this size utilized as required. The proposal shall be limited to no more than 60 pages, exclusive of Exhibits, where a sheet having printing on both sides constitutes two pages. The proposal should be bound along the long side.

2. CD ROM: A copy of the proposal on CD ROM in Microsoft Word

3. Proposers may also be requested to provide audio tape, Braille, and/or large print versions of their proposal, though such formats are not required for initial submittal of the proposal.

C. Content of Proposals

Firms interested in responding to this RFP must submit the following information, in the order specified below:

1. Letter of Introduction and Executive Summary

a. The letter must be signed by a person authorized by your firm to obligate your firm to perform the commitments contained in the proposal. Submission of the letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the proposal.

b. If the proposer is a joint venture, the proposal must designate only one individual principal authorized to conduct business and make commitments on behalf of the joint venture and to obligate all members to meet the terms of any agreement reached with SFMTA.

c. For proposals submitted by firms other than the Current Broker, the letter must include a statement indicating the proposer's agreement to assume existing leases and contracts that will expire after the Current Broker's contract expires, which are listed in **Exhibit 19** and reproduced in their entirety in **Exhibits 4, 8, 9, 13, 15, 20, 21, 23 and 24.** .

2. Statement of Organizational Capacity; Experience and Qualifications

Describe in detail the proposed organizational structure of the proposing firm or joint venture. Provide organizational or staffing charts or other supporting materials as needed to provide the following information:

a. A concise overview of the firm, including current organizational structure, when firm was established, subsidiary and parent companies (if any), identity of principals, office locations and size, and overall number of personnel by discipline. If the proposer is a joint venture of firms, furnish the above information for each member firm and clearly indicate the reason for the joint venture as it directly applies to this project.

b. Documentation of compliance with all Minimum Contractor Qualifications described in Section IV.A of this RFP.

c. A description of the role, function and composition of the board of directors and advisory bodies of the firm.

d. A description of the proposed staffing for work to be performed under the Agreement, including an organizational chart with names of key staff members. Provide job

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descriptions for key staff responsible for carrying out the specific functions called for in this RFP.

e. A description of the qualifications, background and experience of key personnel who will be performing services, and include resumes for these staff. Describe the tasks currently performed by these staff.

f. A description of the firm's experience conducting procurements under Federal Transit Administration (FTA) guidelines.

g. Description of two specific challenges the firm has experienced in providing ADA paratransit services in an efficient manner, and the firm's strategies for handling these challenges.

h. A list of at least three recent clients (including contact name(s), address, phone and email address) for whom work relevant to paratransit brokerage services has been performed. Provide references from such recent clients for key personnel identified in your proposal. Identify specific problems that your firm and/or proposed key personnel encountered in providing related services and how these problems were addressed.

i. A list of all locations where the Proposer currently provides paratransit brokerage services. Include location, agency name and contact information.

j. A description of the positions responsible for management information systems, including the collection of data, maintenance of records, and both program and financial reporting. Identify computer hardware and software resources proposed for use in performing this contract.

3. Technical Proposal

In preparing the technical proposal, proposers should respond with a summary work plan that describes each task in Section II, Scope of Work of this document and provides a detailed methodology to carry out the task. Proposals must address all requirements of the Technical Proposal, but may provide additional information on alternatives to the Scope of Work task details that meet the Paratransit Program objectives and that provide cost savings, process efficiencies or improved Customer service.

Proposers should assume annual service levels noted in Figure 1: Three-Year Paratransit General Statistics" as well as the description of current paratransit services, as the basis for the Technical Proposal. Proposers may discuss alternative assumptions in their Technical Proposals. The Technical Proposal shall be structured in the following order:

a. Start-Up Tasks: This section should anticipate the transition between the current and successor Broker Agreements, whether or not the Current Contractor is selected as the Broker. This section should anticipate implementing contract standards for the Program.

b. Administrative Tasks: Contract procurement and management, record-keeping, reporting, secure financial transaction processing, computer hardware and software installation and maintenance.

c. Customer Service Tasks: Broker's Office, Customer database, Fare Media sales, telephone system, website, taking Complaints and Commendations and providing

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Customer feedback and response, eligibility certification, staff services to PCC modal sub-committees, Taxi, Group Van and SF Access.

d. Service Monitoring Tasks: Subcontractor performance monitoring and enforcement, data collection and analysis, regulatory compliance, vehicle and equipment maintenance, improving processes for greater efficiency, cost savings and improved Customer service.

e. Mobile Data Terminal (MDT) Option: As an optional task, proposers should detail their experience purchasing and installing on-board computers with GPS capability on paratransit vehicles. The SFMTA is anticipating equipping all SF Access vehicles to allow interactive connectivity to the paratransit routing & scheduling system and management software at the Paratransit Broker's office. There are approximately 125 paratransit vans providing nearly 11,000 trips per month. The GPS system will be used to increase the monitoring of paratransit vans including their location and to aid in the reporting back of completion of assigned trips by enhancing communications between dispatchers and drivers and allowing for improved customer service reliability including more timely response to "where's my ride" phone calls, and to generate more accurate on-time performance reports. This equipment would also greatly improve the efficiency and accuracy of reporting trip cancelations to drivers and "add-on" trips.

4. Cost Proposal

Compensation for Services performed under the Agreement will be structured on a cost plus fixed fee basis, with total costs not to exceed anticipated program revenues as presented in Figure 2. Proposers are required to complete the enclosed Cost Proposal Worksheet (**Exhibit 27**) indicating projected costs for (i) Start-Up Tasks (**January 1 -March 31, 2010**), and (ii) annual Administrative Expenses for the five years, three months of service provision (**April 1, 2010 through June 30, 2015**). The first year will consist of a separate three-month start-up budget, and an annualized administrative budget, as if the selected Contractor were to administer start up and then administer the program for 12 months. If the selected Contractor is not the Current Contractor, the Administrative Expenses for the first year will be calculated and negotiated for the period of service to be performed during the first year. Proposers must complete **Exhibit 28** as its Cost Proposal, and the Cost Proposal must be signed and dated by the responsible officer, with the copy containing the original signature marked "original."

Proposers should state clearly and precisely all operating expenditures attributable to carrying out Broker activities as described in this RFP as follows:

a. Describe the positions of each individual employee directed by the Broker, state each position's hourly salary and indicate that portion of the position's time in tenths of a full time equivalent (FTE) to be spent on this contract. (E.g., 100% of a position is 1 FTE, 50% is .5 FTE, etc.)

b. Estimate the corresponding costs for personnel fringe benefits

c. Estimate the expenditures for each service Mode

d. Estimate additional related expenses (*i.e.*, rent, insurance, supplies and equipment, printing, postage, utilities, etc.)

e. Estimate the Administrative Costs associated with Mobile Data Terminal procurement option.

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Budget projections for contract

The following are budget projections based on current budget assumptions. Actual budgets for Broker services will be revised on an annual basis based on projected service level expenditures and anticipated demand. Broker Administrative Expenses are to be funded from these revenues.

Costs should be expressed in current dollars. **Figure 2** presents projected program revenue for the duration of the primary contract period. The projected revenues for the optional five-year period are detailed in **Figure 3**.

FIGURE 2: PROJECTED PROGRAM REVENUES

Fiscal Year	Projected Program Revenues
FY10-11	\$21,573,976
FY11-12	\$22,329,065
FY12-13	\$23,110,582
FY13-14	\$23,919,453
FY14-15	\$24,756,634
Total	\$115,689,710

FIGURE 3: PROJECTED PROGRAM REVENUES, FY14-FY16

Fiscal Year	Projected Program Revenues
FY15-16	\$25,623,116
FY16-17	\$26,519,925
FY17-18	\$27,448,122
FY18-19	\$28,408,807

5. SBE Forms

In addition to the requirements on the content of the proposal, Proposers must submit the following required SBE Forms as appendices to their proposals (See **Exhibit 29**):

- a. Consultant/Joint Venture and Subconsultant Participation Report (SFMTA SBE Form 1)
- b. SBE Consultant/Subconsultant Participation – Good Faith Efforts (SFMTA SBE Form 2)
- c. Bidders List (SFMTA SBE Form 2A)

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d. SBE Consultant/Joint Venture Partners/Subconsultant – Gross Revenue Declaration (SFMTA SBE Form 2B)

e. SFMTA Questionnaire on Recruitment, Hiring and Training Practices for Consultants (SFMTA SBE Form 3)

f. SBE Subconsultant Participation Declaration (SFMTA SBE Form 4)

g. SBE Acknowledgement Declaration (SFMTA SBE Form 5)

h. A copy of the firm's Nondiscrimination Program or Equal Employment Opportunity (EEO) Policy Statement.

6. Other City Forms

Proposers are responsible for submitting all required City forms. See the listing of City contracting requirements and forms in **Exhibit 30**.

7. Attestation Statements and Certifications

The **proposer and all subcontractors named in a proposal** must individually sign the Attestation Statement and Certification included herein as **Exhibits 31 and 32**. Any proposal that does not include the executed Attestation Statement and Certification as required by the RFP **will be deemed non-responsive and will not be scored**. Any proposer who violates representations made in the Attestation Statement and Certification, directly or through an agent, lobbyist or subcontractor, will be disqualified from the selection process for this contract.

IV. PROPOSAL EVALUATION & CONTRACTOR SELECTION PROCESS

A. Minimum Contractor Qualifications

In order for a proposer to be responsive to this RFP, the Proposal must document the proposer's compliance with the following minimum qualifications:

1. The proposer must have at least five years' experience functioning as a broker operating a complete ADA paratransit system delivering at least 1,000 trips a day.
2. The proposer and its key management staff must have at least two years of experience in managing multiple service providers for seniors and people with disabilities with a total fleet of at least 100 vehicles.
3. The designated Project Manager must have a minimum of five years of increasingly responsible management level experience in the paratransit industry and at least two years experience in ADA paratransit operation.
4. To avoid any potential conflict of interest, the Broker must be a separate legal entity from, and not have a financial interest in, any of the Transportation Service Providers.
5. The proposer must demonstrate that it has maintained an average annual positive net worth of at least \$2.5 million over the past three years, and submit audited financial statements for the past three years.

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6. The proposal must include a written commitment to provide a letter of credit in the amount of \$4,500,000.00. If the agreement is extended beyond its original term, the letter of credit would be required to increase to \$5,000,000.00.

7. The proposal must include a written commitment from a surety to provide a fidelity bond in an amount of not less than \$300,000 covering all officials, employees and agents handling or having access to funds received or disbursed by the Contractor for services performed or who are authorized to sign or countersign checks.

B. Selection Criteria

The selection of a responsible, qualified contractor to perform Paratransit Broker services will be made by the SFMTA. A selection committee appointed by the SFMTA will review and evaluate all written proposals based on the scoring criteria listed below. Following the scoring of the written proposals, the SFMTA will short-list those proposers determined to be in the competitive range. The short-listed proposers will be invited to an oral presentation and interview. After the oral presentation and interview, the selection committee will re-score the written proposals using the same criteria identified below. Only the final set of scores will be used to determine the highest-scoring proposal.

All proposals will be evaluated on the basis of the following criteria, with the weights noted assigned to each criterion:

1. Proposer Background and Experience; Organizational Capacity (50 points/25%)

a. Understanding and knowledge of multi-modal, coordinated paratransit systems such as San Francisco's Paratransit Program

b. Knowledge of paratransit industry regulation, especially the ADA

c. Relevant experience

d. Creative and productive problem-solving that increases efficiency, lowers costs and/or improves Customer service while meeting the goals of the Program.

e. Experience and ability of key personnel assigned to tasks in the work plan.

f. Experience conducting procurements under FTA guidelines

g. References

2. Content of the Technical Proposal (90 points/45%)

a. Start-Up Tasks: Proposal indicates a clear understanding, readiness and work plan for the efficient implementation of the start-up tasks.

b. Administrative Tasks: Proposal indicates a clear understanding of the Administrative tasks, a well articulated work plan and provides a detailed methodology to carry out the tasks.

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c. Customer Service Tasks: Proposal indicates a clear understanding of the Customer Service tasks, a well articulated work plan and provides a detailed methodology to carry out the tasks.

d. Service Contracting and Monitoring Tasks: Proposal indicates a clear understanding of the Service Contracting and Monitoring tasks, a well articulated work plan and provides a detailed methodology to carry out the tasks.

3. **Cost Proposal** (60 points/30%)

a. Completeness: Did the proposer include all budget items necessary to manage and operate a paratransit program?

b. Reasonableness: Are the costs allotted to the budget items reasonable? Do they indicate that the proposer is knowledgeable about operating a paratransit program in San Francisco?

c. Management Fee: Is the management fee reasonable and within industry norms?

4. Labor Code 1070 Points (10% preference points)

See Section VII.E.

SFMTA reserves the right to verify any or all statements received in any proposal and to conduct reference checks, whether or not particular references were included in the proposal.

V. SCHEDULE

Potential proposers are strongly recommended to attend the pre-proposal conference which will be held on **July 1, 2009** at 10:00 a.m. at the San Francisco Municipal Transportation Agency, Third Floor Conference Room, 1 South Van Ness Avenue, San Francisco, CA. The meeting location is wheelchair accessible.

Representatives of the Contract Compliance Office will be present at the pre-proposal conference to answer questions regarding the SBE/Nondiscrimination Requirements. A written list of attendees will be available at the end of the meeting.

Any requests for information concerning the RFP must be in writing, whether submitted before or after the pre-proposal conference, and any substantive replies will be issued as written addenda to which will be posted on the Office of Contract Administration's website at www.sfgov.org/oca. Questions raised at the pre-proposal conference may be answered orally. If any substantive new information is provided in response to questions raised at the pre-proposal conference, it will also be memorialized in a written addendum to this RFP and will be posted on the Office of Contract Administration's website at www.sfgov.org/oca.

The planned timeline for award of a contract is:

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Request for Proposals Release Date	June 18, 2009
Pre-Proposal Conference	July 1, 2009, 10:00 a.m.
Deadline for Questions	July 16, 2009 5:00 p.m.
Deadline for Receipt of Proposals	August 14, 2009 4:00 p.m.
Approval by SFMTA	October 2009
Approval by Board of Supervisors	December 2009

VI. TERMS & CONDITIONS FOR RECEIPT OF PROPOSALS

A. Contract Award

SFMTA will commence contract negotiations with the highest-ranked proposer. The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, including compensation, which may be subject to further negotiation and approvals. If a satisfactory contract cannot be negotiated in a reasonable time, the SFMTA, in its sole discretion, may terminate negotiations with the highest ranked proposer and begin contract negotiations with the next highest ranked proposer.

No proposal may be accepted and no contract may be awarded until such time as (a) the Executive Director/CEO of the San Francisco Municipal Transportation Agency recommends the Agreement for award and (b) the SFMTA Board of Directors adopts a resolution approving the Agreement. The final contract must also be approved by the San Francisco Board of Supervisors.

B. Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify SFMTA, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other errors in the RFP. Any such notification should be directed to SFMTA promptly after discovery, but in no event later than 10 business days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

C. Questions Regarding RFP

Questions regarding this RFP should be addressed in writing to:

Attn Mikhael Hart
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 3rd Floor
San Francisco, California 94103-1267

Email: mikhael.hart@sfmta.com

Any requests for information concerning the RFP, whether submitted before or after the pre-proposal conference, must be in writing, and any substantive replies will be issued as written

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addenda to which will be posted on the Office of Contract and Administration's website at www.sfgov.org/oca. No questions or requests for interpretation will be accepted after **5:00 p.m. on July 16, 2009**.

D. Objections to RFP Terms

Should a proposer object on any ground to any provision or legal requirement set forth in this RFP, the proposer must, not more than 10 calendar days after the RFP is issued, provide written notice to the SFMTA setting forth with specificity the grounds for the objection. The failure of a proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

E. Addenda to RFP

SFMTA may modify the RFP prior to the proposal due date by issuing written addenda. Addenda will be posted on the Office of Contract and Administration's website at www.sfgov.org/oca. The proposer shall be responsible for checking the website to ensure that its proposal reflects any and all addenda issued by SFMTA prior to the proposal due date, regardless of when the proposal is submitted. Therefore, SFMTA recommends that prior to submitting a proposal, proposers check the Office of Contract and Administration's website to determine that proposer has received all addenda. For information, call Mr. Mikhael Hart at 415-701-4429.

F. Revisions to Proposal

A proposer may revise a proposal at the proposer's own discretion at any time before the deadline for submission of proposals. The proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.

In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any proposer.

At any time during the proposal evaluation process, SFMTA may require a proposer to provide oral or written clarification of its proposal. SFMTA reserves the right to make an award without further clarification of proposals received.

G. Term of Proposal

Submission of a proposal signifies that the proposer's offer remains open for one year from the proposal due date and that the offer is genuine and not the result of collusion or any other anti-competitive activity.

H. Errors and Omissions in Proposal

Failure by the SFMTA to object to an error, omission, or deviation in the proposal will in no way modify the RFP or excuse the proposer from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

I. Resource Conservation

All documents submitted in response to this RFP must be on recycled paper and printed on double-sided pages to the maximum extent possible unless otherwise required herein.

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J. Proposers' Obligations Under the Campaign Reform Ordinance

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves. If a proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (i) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (ii) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

- (a) **Criminal.** Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
- (b) **Civil.** Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
- (c) **Administrative.** Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, proposers should contact the San Francisco Ethics Commission

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at (415) 581-2300.

K. Communications Prior to Contract Award

It is the policy of the SFMTA that only employees identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the contractor selection is finally approved by the SFMTA Board of Directors and, if required, by the San Francisco Board of Supervisors. All firms and subcontractor(s) responding to this RFP are hereby notified that they may not contact any SFMTA staff member, other than a person with whom contact is expressly authorized by this RFP (Mikhael Hart), for the purpose of influencing the contractor selection process or the award of the contract from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and, if required, by the San Francisco Board of Supervisors. This prohibition does not apply to communications with SFMTA staff members regarding normal City business not regarding or related to this RFP.

All firms and subcontractor(s) responding to this RFP are hereby notified that any written communications sent to one or more members of the SFMTA Board of Directors concerning a pending contract solicitation shall be distributed by the SFMTA to all members of the SFMTA Board of Directors and the designated staff contact person(s) identified in the RFP.

Except as expressly authorized in the RFP, where any person representing a Proposer or potential Proposer contacts any SFMTA staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the SFMTA Board of Directors, and, if required, by the San Francisco Board of Supervisors, the Proposer or potential Proposer shall be disqualified from the selection process. However, a person who represents a Proposer or potential Proposer may contact City elected officials and may contact the Executive Director/CEO of the SFMTA if s/he is unable to reach the designated staff contact person(s) identified in the RFP or wishes to raise concerns about the competitive solicitation.

Additionally, the firms and subcontractor(s) responding to this RFP will not provide any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any SFMTA staff member from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of SFMTA and if required, by the San Francisco Board of Supervisors.

All lobbyists or any agents representing the interests of proposing prime contractors and subcontractor(s) shall also be subject to the same prohibitions.

An executed Attestation of Compliance (**Exhibit 31**) certifying compliance with this section of the RFP will be required to be submitted signed by all firms and named subcontractor(s) as part of the response to the this RFP. Any proposal that does not include the executed Attestation of Compliance as required by this section will be deemed non-responsive and will not be evaluated. Any Proposer who violates the representations made in such Attestation of Compliance, directly or through an agent, lobbyist or subcontractor will be

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disqualified from the selection process.

L. Certification Regarding Lobbying

All prospective proposers are required to complete and submit along with their proposals, the certification form in **Exhibit 32** regarding lobbying. The same certification shall be obtained, and submitted along with the proposal, from all lower tier participants (sub consultants, suppliers, etc.) with work greater than \$100,000.

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

This contract is a 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 signing their Proposal, proposers certify that they are not excluded or disqualified from contracting as defined in 49 CFR 29.940 and 29.945.

If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to SFMTA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer.

N. San Francisco Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the 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's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits 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.

O. Public Access to Meetings and Records

If a Proposer is a non-profit entity that 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, the Proposer must comply with the reporting requirements of that Chapter. The Proposer must include in its Proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer's meetings and records, and (2) a summary of all complaints concerning the Proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Proposer's Chapter 12L submission shall be grounds for rejection of the proposal and/or

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termination of any subsequent Agreement reached on the basis of the proposal.

P. Reservation of Rights by the City

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right, at any time, to:

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;
4. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
5. Procure any materials, equipment or services specified in this RFP by any other means; or
6. Determine that no project will be pursued.

Q. No Waiver

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a proposer to observe any provision of this RFP.

R. Financial Responsibility

The SFMTA accepts no financial responsibility for any costs incurred by a firm in responding to this RFP. Submissions in response to the RFP will become the property of the City and may be used by the City in any way deemed appropriate.

S. Protest Procedures

The procedure for filing a protest is described in **Exhibit 33**.

VII. CITY CONTRACT REQUIREMENTS

A. Form of Contract

The successful proposer will be required to enter into a contract on terms substantially similar to the sample contract included as **Exhibit 7**. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsements, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another firm and may proceed against the original firm selected for damages.

B. Nondiscrimination in Contracts And Benefits

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The successful proposer will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the HRC's website at www.sfhrc.org.

C. Minimum Compensation Ordinance (MCO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see §43 of the attached Agreement for Professional Services.

For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

All SF Access and Group Van contractors shall pay SFMTA-funded paratransit drivers a minimum wage as required by the City's Minimum Compensation Ordinance for the first 90 days of service and/or completion of the driver training requirements, whichever comes first. Currently the hourly wage required by the Minimum Compensation Ordinance is \$11.54 (\$11.03 per hour for non-profit entities). After that period, paratransit provider subcontractors shall pay SFMTA-funded SF Access drivers not less than \$14.80 per hour and Group Van drivers not less than \$12.97 per hour. These minimum wages shall increase on a yearly basis based on cost of living adjustments received by the contractors. All cost of living adjustments received by subcontractors shall be passed on to all SFMTA-funded paratransit drivers with at least a proportional wage adjustment.

D. First Source Hiring Program (FSHP)

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at www.sfgov.org/moed/fs hp.htm and from the First Source Hiring Administrator, (415) 401-4960.

E. Labor Code Sections 1070 *et. seq.* See Exhibit 34.

1. **Bid Submittal Requirements.** Under Labor Code Sections 1070, *et seq.*, proposers shall declare as part of their proposer whether or not they will retain the employees of

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prior service contractors for a period of not less than 90 days. A "service contract" means any contract, the principal purpose of which is to provide public transit services through the use of service employees. In the context of the Paratransit Broker Contract, this requirement would apply to all employees of the Existing Broker except those executive, administrative or professional employees who are exempt from the payment of overtime compensation under Section 515 of the Labor Code.

2. **Preference.** The SFMTA will award a 10 percent preference to any proposer who agrees to retain the employees of the prior contract or subcontractor. The preference will be added to the total number of points attained by the proposer during the evaluation process.

3. **Information.** Potential proposers (other than the Existing Broker) who require information about the number of employees who are performing services under the service contracts, including the wage rates, benefits and job classifications of such employees, shall request such information from the SFMTA by July 20, 2009 . SFMTA will furnish the information to bona fide proposers (those potential proposers who SFMTA determines may meet the minimum qualifications to submit a proposal) by July 30, 2009.

F. Conflicts of Interest

The successful proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including 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. The successful proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful proposer that the City has selected the proposer.

G. Statements of Economic Interest

Contractor's employees/subcontractors may be required to file Statements of Economic Interest annually under Government Code Section 87300 if, pursuant to a contract with the City, the individual makes certain governmental decisions; serves in a staff capacity and participates in making certain governmental decisions; or serves in a staff capacity and performs the same or substantially the same duties a regular City employee who would be required to file a Statement of Economic Interest.

H. Small Business Enterprise (SBE)/Non-Discrimination Requirements

The following information is provided to assist with the preparation of proposals. Please see **Exhibit 28** for a description of SFMTA's SBE Program, along with all forms required for submittal of proposals and for use by the Consultant.

1. Policy

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SFMTA is committed to a Small Business Enterprise (SBE) Program (“SBE Program”) for the participation of SBEs in contracting opportunities in accordance with the federal regulations in 49 CFR Part 26, issued March 4, 1999, as amended from time to time (the “Regulations”). The Regulations are incorporated into this SBE Program as though fully set forth herein. It is the intention of the SFMTA to create a level playing field on which SBEs can compete fairly for contracts and subcontracts relating to the procurement and professional services activities of the SFMTA.

2. Questions

Questions concerning SBE/Non-Discrimination Requirements may be addressed to:

Mr. André P. Boursse, Director
SFMTA Contract Compliance Office
One South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103
Telephone: (415) 701-4443

Attn: Naomi Steinway, Contract Compliance Officer
Telephone: (415) 701-4363

3. Non-Discrimination in Employment

SFMTA will evaluate the proposer's response to the Questionnaire on Recruitment, Hiring, And Training Practices (SFMTA SBE Form No. 3) to determine whether the proposer is in compliance with the Nondiscrimination Requirements.

Should SFMTA deem it necessary, the SFMTA will seek a written commitment from the proposer to use good faith efforts to provide equal employment opportunities during the term of the contract. One measure of such a commitment would be comparing utilization of women and minorities with the relevant labor market in order to improve parity between the composition of the proposer's workforce and the available labor market. The proposer may be required to provide the SFMTA with the relevant data regarding its labor market.

4. SBE Goal

The Contract Compliance Office has established an SBE participation goal of twenty percent (20%) of the total Administrative Expenses proposed for this contract. Small business firms may qualify for this program by enrollment in either the State of California's Small Business Program, the California Unified Certification Program (“Federal” DBE program), or the City and County of San Francisco's LBE program. Under 49 CFR Sections 26.3 and 26.51, and in response to the Federal Transit Administration's ("FTA") March 23, 2006, publication of the Department of Transportation's ("DOT") guidance concerning the federal Disadvantaged Business Enterprise (“DBE”) program that applies to grant recipients within the Ninth Circuit, the SFMTA, a recipient of federal financial assistance from the FTA, is required to implement race-neutral means of facilitating DBE participation. The SFMTA's SBE Program is in accordance with DOT's guidance that, absent a disparity study, the SFMTA must meet its overall annual DBE goal using race-neutral means. This Program applies to the following types of SFMTA contracts that are funded, in whole or in part, by DOT financial assistance: Construction – Building, Heavy; Construction – Dredging and Surface Cleanup; Construction

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(specialty trades); Electrical Contractors; General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering Services; Surveying and Mapping; Drafting (design services); Landscape Architecture; Building Inspection; Automotive Repair and Maintenance; Electronic and Precision Equipment Repair and Maintenance; Machinery and Equipment Rental (construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

To be determined responsive, a proposer must demonstrate in its submittal that it will meet this goal in the performance of this contract; or if it is unable to meet the goal, the proposer must submit documentation (SFMTA Form 2 – SBE Consultant/Subconsultant – Good Faith Efforts) with its proposal that it performed good faith efforts, prior to submission of the bid or proposal, to meet this goal. A proposer that is not responsive shall be ineligible for award of the contract.

Proposers may contact Ms. Naomi Steinway of the SFMTA Contract Compliance Office at (415) 701-4363 to discuss SBE/Non-Discrimination Requirements before submitting a proposal.

5. Nondiscrimination In Contract - Equal Benefits Ordinance

a. Chapter 12B and 12C of the Administrative Code are incorporated by reference as though fully set herein. chapter 12B and 12C prohibit discrimination by City contractors in employment, the use of property and the provision of employee benefits.

i. Please refer to **Exhibit 30** to find resources to assist with compliance with the Nondiscrimination in Contract/Equal Benefits Ordinance mandated by Chapter 12B of the San Francisco Administrative Code.

ii. The successful proposer must agree to abide by the following standard contract provisions regarding Chapter 12B and 12C. Documentation regarding Charter 12B and 12C compliance must be on file with or submitted to the Human Rights Commission (HRC). For further information, go www.sfhrc.org.

b. Nondiscrimination: Penalties

i. Contractor Shall Not Discriminate. In the performance of this contract, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex ,sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social or other establishments, or organizations operated by contractor.

ii. Subcontracts. Contractor shall incorporate by reference in all subcontractors the provision of Sections 12B.2(a), 12B.2(c) - 12B.2(k) and 12C.3 of the San Francisco Administrative Code, and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with obligations in this subsection shall constitute a material breach of the Agreement.

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iii. Nondiscrimination in Benefits. Contractor does not as of the date of the Agreement and will not during the term of this agreement, in any of its operations within the United States, discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

iv. Condition to Contract. As a condition to the Agreement, Contractor shall execute the “Nondiscrimination in Contracts and Benefits” form and secure the approval of the form by the San Francisco Human Rights Commission.

v. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated by reference and made a part of this agreement as thoughtfully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to the Agreement under Chapters 12B and 12C of the Administrative Code, including but not limited to remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 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 payment due Contractor.

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LIST OF EXHIBITS

1. PROGRAM HISTORY AND MILESTONES
2. RIDER'S GUIDE TO SF PARATRANSIT
3. SF PARATRANSIT PROGRAM RULES OF OPERATION
4. TRAPEZE SOFTWARE AGREEMENT
5. SF PARATRANSIT DEBIT CARD SYSTEM DESCRIPTION
6. SF PARATRANSIT PROGRAM ORGANIZATIONAL CHART
7. AGREEMENT FOR PROFESSIONAL SERVICE
8. SF ACCESS TRANSPORTATION AGREEMENT
9. VEHICLE LEASE AGREEMENTS (SIX AGREEMENTS TOTAL)
10. LIST OF CITY-OWNED VEHICLES
11. LIST OF CURRENT PARATRANSIT SERVICE PROVIDERS
12. SAMPLE MOU BETWEEN BROKER, VAN PROVIDERS AND SOCIAL SERVICE AGENCIES
13. SAMPLE GROUP VAN PROVIDER CONTRACT
14. PARATRANSIT MINIMUM REQUIREMENTS FOR TAXICAB COMPANY PARTICIPATION IN THE SF PARATRANSIT PROGRAM
15. INTER-COUNTY MEMORANDA OF UNDERSTANDING: GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT AND SFMTA; EAST BAY PARATRANSIT CONSORTIUM AND SFMTA
16. SHOP-N-ROLL ELIGIBILITY GUIDELINES AND REGISTRATION FORM
17. REGIONAL APPLICATION FOR ADA PARATRANSIT ELIGIBILITY
18. PARATRANSIT PLUS PROGRAM
19. LIST OF CURRENT VENDOR CONTRACTS AND LEASES THAT EXTEND BEYOND THE CURRENT PARATRANSIT BROKER'S CONTRACT TERM
20. ADT ALARM SERVICE AGREEMENT
21. E+M No. 1, LLC LEASE FOR BROKERS OFFICE AT 68 12TH STREET
22. CURRENT INVENTORY OF FURNISHINGS AND EQUIPMENT AT BROKERS OFFICE
23. CABCONNECT DEBIT CARD VENDOR CONTRACT
24. IN TAXI EQUIPMENT USE AGREEMENTS
25. JOB DESCRIPTION OF OUTSTATIONED STAFF
26. HELPING WHEELS FARE ASSISTANCE
27. MONTHLY PERFORMANCE INDICATOR REPORT
28. COST PROPOSAL WORKSHEET
29. SMALL BUSINESS ENTERPRISE PROGRAM FOR PROFESSIONAL AND TECHNICAL SERVICES;
SFMTA SBE FORMS:

PRE-AWARD FORMS:

- SFMTA SBE FORM 1 -- CONSULTANT/JOINT VENTURE PARTNER AND SUBCONSULTANT REPORT
- SFMTA SBE FORM 2 -- SBE CONSULTANT PARTICIPATION GOOD FAITH EFFORT
- SFMTA SBE FORM 2A- BIDDERS LIST
- SFMTA SBE FORM 2B- SBE CONSULTANT/JOINT VENTURE PARTNER/SUBCONSULTANT-GROSS REVENUE DECLARATION
- SFMTA SBE FORM 3 -- QUESTIONNAIRE ON RECRUITMENT, HIRING, AND TRAINING PRACTICES FOR CONSULTANTS
- SFMTA SBE FORM 4 -- SBE SUBCONSULTANT PARTICIPATION DECLARATION
- SFMTA SBE FORM 5 -- SMALL BUSINESS ENTERPRISE ACKNOWLEDGMENT DECLARATION

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San Francisco Municipal Transportation Agency
Request for Proposals for Paratransit Broker Services

- SFMTA SBE FORM 6-- AMENDMENT/MODIFICATION DECLARATION PROFESSIONAL SERVICES & CONSTRUCTION CONTRACTS
 - SFMTA SBE FORM 7-- CONSULTANT EXIT REPORT AND DECLARATION
 - SFMTA SBE FORM 8-- AMENDMENT/MODIFICATION DECLARATION PROFESSIONAL SERVICES & CONSTRUCTION CONTRACTS
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**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute a Memorandum of Understanding (“MOU”) between the SFMTA and the San Francisco Police Department (“SFPD”) that sets forth the obligations of each of the two agencies with respect to ensuring the presence of sworn police officers on the SFMTA’s transit vehicles and other property, the assignment of the Director of the SFMTA’s Security and Enforcement Division, the assignment of sworn officers to the SFPD’s Muni Response Team, certain administrative matters and interdepartmental work orders, enforcement of parking regulations and restrictions, and the SFPD’s Taxi Detail and taxi-related law enforcement.

SUMMARY:

- The SFPD is responsible for maintaining public safety in the City and County of San Francisco.
- SFMTA staff has negotiated a MOU with the SFPD which describes the obligations of each of the two agencies with respect to ensuring the presence of sworn police officers on the SFMTA’s transit vehicles and other property and facilities under SFMTA jurisdiction, the assignment of a senior ranking member of the SFPD to be the Director of the SFMTA’s Security and Enforcement Division, the assignment of sworn officers to the SFPD’s Muni Response Team, administrative matters concerning police services on or related to the public transportation system, interdepartmental work orders to defray the additional costs of enhancing police services for the functions managed by the SFMTA, enforcement of parking regulations and restrictions, and the SFPD’s Taxi Detail and taxi-related law enforcement.
- The accompanying Resolution authorizes the Executive Director/CEO to execute the MOU between the SFMTA and the SFPD.

ENCLOSURES:

1. Resolution
2. Proposed Memorandum of Understanding between the SFMTA and the SFPD

APPROVALS:

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

ADOPTED RESOLUTION

BE RETURNED TO Sonali Bose

ASSIGNED MTAB CALENDAR DATE: _____

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PURPOSE

This calendar item authorizes the Executive Director/CEO to execute a Memorandum of Understanding between the SFMTA and the San Francisco Police Department (“SFPD”) that sets forth the obligations of each of the two agencies with respect to ensuring the presence of sworn police officers on the SFMTA’s transit vehicles and other property and facilities under SFMTA jurisdiction, the assignment of a senior ranking member of the SFPD to be the Director of the SFMTA’s Security and Enforcement Division, the assignment of sworn officers to the SFPD’s Muni Response Team, administrative matters concerning police services on or related to the public transportation system, interdepartmental work orders to defray the additional costs of enhancing police services for the functions managed by the SFMTA, enforcement of parking regulations and restrictions, and the SFPD’s Taxi Detail and taxi-related law enforcement.

GOAL

This item will meet the following goals and objectives of 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.

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

DESCRIPTION

The San Francisco Police Department (“SFPD”) is responsible for maintaining public safety in the City and County of San Francisco. SFMTA staff has negotiated the attached Memorandum of Understanding (“MOU”) with the SFPD to formalize arrangements between the two agencies for police services designed to improve safety. The MOU describes the obligations of the SFMTA and the SFPD with respect to ensuring the presence of sworn police officers on the SFMTA’s transit vehicles and other property and facilities under SFMTA jurisdiction for the purposes of enhancing public safety, preventing crime, detecting criminal activity and assisting in the prosecution of offenses that occur on the SFMTA’s public transportation system.

The major provisions of the MOU are as follows:

Term and Termination. The MOU will have a term of five years; the start date will be retroactive to July 1, 2007 and the end date will be June 30, 2012. The MOU may be extended by mutual agreement for either one additional five-year period or five consecutive one-year periods. Either the SFMTA or the SFPD may unilaterally terminate the MOU by giving written notice to the other agency.

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Payments/Work Orders. The MOU provides for interdepartmental work orders to defray the additional costs of enhancing police services for the functions managed by the SFMTA. In particular, Appendix A to the MOU sets forth the work order amounts budgeted by the SFMTA for payment to the SFPD for the services described in the MOU. A summary of these amounts is set forth below:

Function	FY 2007-08 Budget	FY 2008-09 Budget	FY 2009-10 Budget
Third Street and MRT coverage	\$3,173,239	\$3,152,858	\$2,212,867+
Traffic Company	\$7,542,495	\$7,906,443	\$8,992,852
Night Parking and Garage Drive by Enforcement	\$405,000	\$424,962	\$299,630++
Taxi Detail	--	--	\$749,317
Total	\$11,121,134	\$11,484,263	\$12,254,666

+ Third Street coverage eliminated

++One-half year of Night Parking enforcement; Garage Drive by Enforcement eliminated

Director of Security and Enforcement Division. The SFMTA and the SFPD have agreed on terms for the assignment by the Chief of Police of a senior ranking member of the SFPD to be the Director of the SFMTA's Security and Enforcement Division. The Security and Enforcement Director's duties will include the development, implementation, management, and monitoring of the SFMTA's law enforcement, security, public safety and other programs and management of the employees, agents and contractors related to this function. The Security and Enforcement Director will remain a sworn member of the SFPD, but will be assigned full-time to the SFMTA and must devote at least 95% of working time to SFMTA matters. The Executive Director/CEO of the SFMTA and the Chief of Police must agree on the selection of the Security and Enforcement Director. The SFMTA will pay the salary and benefits of the Security and Enforcement Director. Either the SFMTA or the SFPD may unilaterally terminate this provision of the MOU by giving written notice to the other agency.

Muni Response Team. The MOU provides for the assignment of sworn officers to the SFPD's Muni Response Team, a unit created by the SFPD that is dedicated to law enforcement, security and related police services on and for the public transportation system. These services are intended to supplement existing general law enforcement services already provided by the SFPD to ensure public safety. During the term of the MOU, the SFPD will assign one supervising sergeant and 12 police officers to the Muni Response Team. The SFMTA will pay the salary and benefits of these police officers through interdepartmental work orders (see chart above and Appendix A to the MOU).

Administrative Matters. Terms related to policies, programs, procedures, management, prioritization of police activities, operational command and control, reporting, record keeping, budgeting, accounting, liability for claims and related administrative matters concerning the police services on or related to the public transportation system are included in the MOU. The

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reports will include crime statistics and analysis for the public transportation system. Police activities will include an inspection program for SFPD field officers for transit vehicles, Muni metro stations and SFMTA facilities and SFPD assistance with special events.

Night Enforcement. The MOU memorializes the agreement between the SFMTA and the SFPD regarding the SFPD's continued enforcement of parking regulations and restrictions, including responding to complaints of blocked driveways from 12 midnight until 6 a.m. The SFMTA will pay the actual costs of this night enforcement on an "average cost per call" basis until December 31, 2009 (see chart above and Appendix A to the MOU), at which time the SFMTA will assume responsibility for these duties and payments to the SFPD will cease.

Taxis. The agreement between the SFMTA and the SFPD relating to the SFPD's Taxi Detail and taxi-related law enforcement is also set forth in the MOU. Payments for these services will begin in fiscal year 2009-2010 (see chart above and Appendix A to the MOU). The SFMTA will endeavor, however, to undertake the administrative functions currently performed by the Taxi Detail, including processing lost property, new driver applications and public complaints.

Traffic Company. In addition, the MOU details the assignment of SFPD personnel to a company, known as the Traffic Company, whose primary function is traffic management and enforcement in the City and County of San Francisco. The Traffic Company will provide law enforcement services to support the SFMTA's public safety and policing priorities. These services are intended to supplement existing general law enforcement services already provided by the SFPD to ensure public safety. During the term of the MOU, the SFPD will assign one captain, four lieutenants, 12 sergeants and 85 police officers to the Traffic Division. The SFMTA will pay the salary and benefits of these police officers through interdepartmental work orders (see chart above and Appendix A to the MOU).

SPOT Program. Beginning in August, 2009, it is anticipated that SFMTA staff will assume responsibility for enforcement of the Safe Paths of Travel (SPOT) program. The SPOT program is intended to enforce rules and regulations for working in the public right-of-way. Under this program, the City requires a Special Traffic Permit in order to obstruct traffic on a street or sidewalk area of major traffic importance for construction, excavation, or other activity. The goal of the SPOT program is to ensure that all construction, excavation, or other activity occurring in the public right-of-way is performed in a safe and reasonable manner. The SPOT program was created in 2004 and has been overseen by the SFMTA's Department of Parking and Traffic. Since its inception, the SFPD has been charged with enforcement of the program on behalf of the SFMTA. The SFMTA will add three staff members in fiscal year 2009-2010 to handle the SPOT program. In fiscal year 2007-2008, the SFMTA paid approximately \$700,000 to the SFPD for these services.

ALTERNATIVES CONSIDERED

The alternative to entering into the MOU would be to continue informal arrangements with the SFPD that result in a lack of defined services to be provided by the SFPD to the SFMTA.

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FUNDING IMPACT

The MOU requires the SFMTA to pay for services provided by the SFPD. The budgeted amounts for these payments are set forth in the chart above and in Appendix A to the MOU.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The MOU will require the approval of the Police Commission.

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

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors adopt the resolution authorizing the Executive Director/CEO to execute the proposed Memorandum of Understanding between the SFMTA and the SFPD.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The San Francisco Police Department (“SFPD”) is responsible for maintaining public safety in the City and County of San Francisco; and

WHEREAS, SFMTA staff has negotiated an MOU with the SFPD which describes the obligations of each of the two agencies with respect to ensuring the presence of sworn police officers on the SFMTA’s transit vehicles and other property and facilities under SFMTA jurisdiction, the assignment of a senior ranking member of the SFPD to be the Director of the SFMTA’s Security and Enforcement Division, the assignment of sworn officers to the SFPD’s Muni Response Team, administrative matters concerning police services on or related to the public transportation system, interdepartmental work orders to defray the additional costs of enhancing police services for the functions managed by the SFMTA, enforcement of parking regulations and restrictions, and the SFPD’s Taxi Detail and taxi-related law enforcement; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute the Memorandum of Understanding between the SFMTA and the SFPD regarding the obligations of each of the two agencies with respect to ensuring the presence of sworn police officers on the SFMTA’s transit vehicles and other property and facilities under SFMTA jurisdiction, the assignment of a senior ranking member of the SFPD to be the Director of the SFMTA’s Security and Enforcement Division, the assignment of sworn officers to the SFPD’s Muni Response Team, administrative matters concerning police services on or related to the public transportation system, interdepartmental work orders to defray the additional costs of enhancing police services for the functions managed by the SFMTA, enforcement of parking regulations and restrictions, and the SFPD’s Taxi Detail and taxi-related law enforcement

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

MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding

Between the

San Francisco Municipal Transportation Agency

And

San Francisco Police Department

May 2009

SFMTA

Municipal Transportation Agency



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This Memorandum of Understanding (MOU) is entered into this _____ day of _____, 2009, between the San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco Police Department (SFPD).

Declaration

This memorandum of understanding memorializes the agreement between the SFMTA and SFPD to ensure a regular presence of sworn police officers on buses, light rail and other public transit vehicles, subway stations, transit shelters and other property and facilities under the jurisdiction of the SFMTA for the purposes of enhancing public safety, preventing crime, detecting criminal activity and assisting in the prosecution of offenses occurring on the Public Transit System. In furtherance of these purposes, this MOU addresses the assignment of a senior ranking member of the SFPD to be the Director of the Security and Enforcement Division of the SFMTA and the assignment of sworn officers to the SFPD's Muni Response Team. The MOU also includes policies, programs, procedures, management, prioritization of police activities, operational command and control, reporting, record keeping, budgeting, accounting, liability for claims and related administrative matters concerning the police services on or related to the Public Transit System; and, interdepartmental work orders to defray the additional costs of enhancing police services for the functions managed by the SFMTA.

This MOU also memorializes the agreement between the SFMTA and SFPD regarding: (1) the SFPD's enforcement of parking regulations and restrictions, including responding to complaints of blocked driveways, from 12 midnight until 6 a.m. until January 1, 2010, and (2) the SFPD's Taxi Detail and Taxi-related law enforcement.

Definitions

As used in this MOU, the following definitions shall apply:

"Approved Work Order Budget" means the annual budget for any subsequent Fiscal Year during the term of this MOU, for law enforcement, security and related police services of SFPD that are to be funded by the SFMTA through a work order or direct expenditure under this MOU, as approved by the Executive Director/CEO and SFMTA CFO.

"Chief of Police" means the Chief of Police of the San Francisco Police Department, or his or her authorized designee.

"City" means the City and County of San Francisco, a municipal corporation, and the San Francisco International Airport.

"Commanding Officer" means the sworn member of the San Francisco Police Department assigned by the Chief of Police to command the Traffic Company.

"Division of Taxis and Accessible Services" or "DTAS" shall mean the SFMTA division responsible for taxi regulation and communications with the Taxi Detail.

"Enforcement Plan" means the written plan to be agreed to by the parties for SFPD enforcement of laws and regulations related to the taxi industry.

"Executive Director/CEO" means the Executive Director/Chief Executive Officer of the San Francisco Municipal Transportation Agency (sometimes referred to as the Director of Transportation), or his or her authorized designee.

“Fiscal Year” means the annual period from July 1 through June 30.

“Initial Term” means the period July 1, 2007 through June 30, 2012.

"MOU" means this Memorandum of Understanding between the San Francisco Municipal Transportation Agency and San Francisco Police Department.

"MRT" means the Muni Response Team of the San Francisco Police Department.

"Night Parking Enforcement" means responses made by sworn SFPD officers between the hours of 12 midnight and 6 a.m. to complaints of blocked driveways and other illegally parked vehicles.

"Officer in Charge" means the sworn member of the San Francisco Police Department assigned by the Chief of Police to command a unit or team (i.e. Muni Response Team, Taxi Enforcement, Traffic Company platoon). This is usually a lieutenant, or sergeant.

“Paratransit Broker” means the SFMTA contractor that manages the SFMTA’s paratransit program that provides transportation to pre-qualified individuals based on disability.

“Permit Holder shall mean any person, business, firm, partnership, association or corporation which holds any permit issued or regulated by the SFMTA to drive, operate or cause to be operated any motor vehicle for hire or to operate any business that provides taxi service pursuant to Article 1100 of the San Francisco Transportation Code, and any agent of such Permit Holder including, but not limited to, any owner, manager, employee or lessee of said Permit Holder.

"Public Transit System" means the buses, light rail and other public transit vehicles, subway stations, transit shelters and other property and facilities under the jurisdiction or control of the San Francisco Municipal Transportation Agency or its agents.

"Security and Enforcement Division" means the Security and Enforcement Division of the San Francisco Municipal Transportation Agency, or successor division or unit of the SFMTA, having primary responsibility for parking enforcement, transit fare payment compliance, video surveillance, Muni Response Team coordination and support, homeland security initiatives, security of SFMTA facilities (including contract administration for security services), investigations, training, the San Francisco Municipal Transportation Assistance Program (SFMTAP), SFMTA's participation in the National Explosive Detection Canine Program Team (NEDCPT) and coordination of public transit security needs with local, state, regional and federal agencies (including but not limited to the Metropolitan Transportation Commission (MTC), Bay Area Rapid Transit District (BART), American Public Transit Association (APTA), S.F. Department of Emergency Management, Department of Justice California Anti-Terrorism Information Center (CATIC), Department of Homeland Security, Federal Transit Administration, California Public Utilities Commission, and Transportation Security Administration) or any subset of these that includes law enforcement functions performed by peace officers.

"Security and Enforcement Director" means the Director of Security and Enforcement Division for the San Francisco Municipal Transportation Agency, or person in any successor position, or his or her authorized designee or any other individual responsible for any aspect of security and enforcement functions in the SFMTA.

"SFMTA" means the Municipal Transportation Agency of the City and County of San Francisco.

"SFMTA CFO" means the Chief Financial Officer/Director of Finance of the SFMTA or any successor position, or his or her authorized designee.

"SFMTA COO" means the Chief Operating Officer/Director of Municipal Railway Operations of the SFMTA or any successor position, or his or her authorized designee.

"SFMTA CSO" means the Chief Safety Officer/Director of Transportation Safety of the SFMTA or any successor position, or his or her authorized designee.

"SFMTA Director of Parking and Traffic" means the Director of Parking & Traffic of the SFMTA or any successor position, or his or her authorized designee.

"SFPD" means the San Francisco Police Department of the City and County of San Francisco.

"SFPD CFO" means the Chief Financial Officer of the San Francisco Police Department or any successor position, or his or her authorized designee, or person in any successor position.

"Taxi Detail" means the SFPD staff assigned to coordinate with the SFMTA to address Taxi issues.

"Traffic Company" means the members of the SFPD specifically assigned to a company (division) whose primary function is traffic management and enforcement in the City and County of San Francisco.

Article I - General Provisions

1.1 Initial Term; Extension Option. Unless terminated sooner as provided in Section 1.2 or modified by written agreement of the SFPD and SFMTA signed by the Chief of Police and Executive Director/CEO, the initial term of this MOU shall be retroactive to July 1, 2007 and shall extend through June 30, 2012. The parties may extend the term of this MOU for either: (1) an additional five-year period commencing July 1, 2012 and ending June 30, 2017, which extension may be executed at any time during the Initial Term prior to January 1, 2012; or (2) up to five consecutive one-year periods, which extensions must be executed at least ninety (90) days prior to the end of a Fiscal Year for the subsequent Fiscal Year beginning with Fiscal Year 2013. Such extension(s) shall be in writing and signed by the Chief of Police and Executive Director/CEO.

1.2 Termination. Either the Chief of Police or the CEO/Executive Director may unilaterally terminate this MOU in writing to the other party. Termination of this MOU under this section shall be effective upon the date set forth in the written notice, which date shall be no earlier than ninety (90) calendar days from delivery of the notice to the other party.

1.3 Modification; Waiver; Extension. This Agreement may not be modified, the term extended, nor may compliance with any of its terms be waived, except by written instrument executed by the Chief of Police and Executive Director/CEO.

1.4 Acceptance of Supporting Documentation and Approvals. The acceptance of supporting documentation and approvals that are authorized or required under this MOU may not be unreasonably withheld.

1.5 Invoices and Work Orders; Compliance with City's Requirements. All invoices or other requests for draws upon work orders submitted by the SFPD under this MOU, and supporting documentation, must be in a form acceptable to the SFMTA CFO and must include a unique invoice number. All work orders under this MOU, supporting documentation, invoices and requests for draws upon such work orders shall comply with the City's rules, regulations and procedures for interdepartmental work orders.

1.6 Delegation of Authority. Any delegation of authority to act as the "authorized designee" of the Chief of Police, Commanding Officer, Executive Director/CEO, Security and Enforcement Director, SFMTA CFO or SFPD CFO, under this MOU, shall be in writing indicating the term of the delegation and executed by the principal on whose behalf the designee is authorized to act, and a copy thereof transmitted to the Chief of Police and the SFPD CFO, or to the Executive Director/CEO and SFMTA CFO, as appropriate. Any conditions or limitations on the authority delegated to the designee shall be set forth in the written delegation.

1.7 SFMTA's Payment Obligation. Except as otherwise provided herein, SFPD shall invoice SFMTA and SFMTA shall pay for only expenses authorized by this MOU and consistent with applicable law, and actually incurred by the SFPD. It is further agreed that SFPD will charge the SFMTA for direct services requested by the SFMTA Executive Director/CEO and provided to the SFMTA. This shall include the full cost of services including salaries, fringe benefits, and other related direct costs. The SFPD will charge the SFMTA for direct costs only.

1.8 Liability of SFMTA and SFPD. Notwithstanding any other provision of this MOU, any third party claim against the City for general, special, consequential, indirect, or incidental damages arising out of the conduct of a SFPD employee, officer, or staff member shall be considered a claim against the SFPD, and not the SFMTA, regardless of whether the SFPD employee, officer or staff member was performing work on behalf of the SFMTA under this MOU.

Further, the SFMTA assumes no liability for any loss, cost, damage, injury, liability, worker's compensation, disability or claim thereof for injury to, or death of, a SFPD employee, officer, or staff member except to the extent that it arises from the

SFMTA's sole negligence. In addition, the SFMTA assumes no liability for any loss, cost, damage, injury, liability or claims arising from the SFPD's use of facilities or equipment provided by the SFMTA except to the extent that it arises from the SFMTA's sole negligence.

Article II - SFMTA Security and Enforcement Division

2.1 Security and Enforcement Director; Assignment to SFMTA. The Chief of Police will assign a senior ranking member of the SFPD, to the SFMTA, acceptable to the Executive Director/CEO, to supervise all law enforcement functions covered by this MOU and, at the discretion of the Executive Director/CEO, to manage the SFMTA's Security and Enforcement Division. Except for temporary assignments under Section 2.7, any member of the SFPD assigned to be the Security and Enforcement Director shall hold the rank of Commander or higher.

2.2 Security and Enforcement Director; Responsibilities. The Security and Enforcement Director shall be responsible for the development, implementation, management, and monitoring of SFMTA's law enforcement programs, functions and activities and any other security or public safety functions the Executive Director/CEO may assign. The Security and Enforcement Director must spend at least 95% of his or her time working on SFMTA assignments. The Security and Enforcement Director shall be responsible for the management and supervision of SFMTA employees, agents and contractors related to such programs, functions and activities. With respect to the Executive Director/CEO's responsibilities as the appointing officer for the SFMTA, the Security and Enforcement Director shall exercise those powers comparable to those delegated to other Directors by the Executive Director/CEO. The SFMTA may reorganize the Security and Enforcement Division to add, remove or otherwise modify the law enforcement, security, public safety and other programs, functions and activities administered by the division. The Executive Director/CEO shall retain full discretion to assign additional responsibilities to the Security and Enforcement Director, and to assign to any person or reassign from the Security and Enforcement Director responsibility for any existing or future program, function or activity administered by the division, unless (1) by law it may be performed only by a "peace officer" as defined in Penal Code §§830.1 *et seq.*, or (2) under Charter §§4.127 or A8.343, it may be performed only by the Police Commission or Chief of Police.

2.3 Employment Status; Peace Officer Status. The Security and Enforcement Director will remain a sworn member of the SFPD, and will continue to be subject to all relevant rules, regulations, policies and procedures of the SFPD during his or her tenure as Security and Enforcement Director. The legal rights and duties relating to the Security and Enforcement Director's employment with the City as a sworn member of the SFPD will continue to be governed by the City's memorandum of understanding with the San Francisco Police Officers' Association and applicable law, including but not limited to the Public Safety Officers Procedural Bill of Rights Act (California Government Code §§3300 *et seq.*) and Chapter 4.5 of Title 3 of the California Penal Code. The Security and Enforcement Director will maintain in good standing his or her status as a peace officer as provided under California Penal Code §§830 *et seq.* and other applicable law.

2.4 Security and Enforcement Director to Serve At-Will of SFMTA and SFPD; Replacement of Security and Enforcement Director. The Security and Enforcement Director is a member of the SFPD command staff, appointed by the Chief

of Police, and assigned to the SFMTA to serve in the capacity of Security and Enforcement Director. The Chief of Police and the Executive Director/CEO shall mutually agree as to the selection of the Security and Enforcement Director. The Chief of Police after consultation with the Executive Director/CEO may move or change this assignment to better meet the needs of the SFPD. Absent exigent circumstances the Chief of Police will give notice to the Executive Director/CEO thirty (30) days prior to any such change so that a successor Security and Enforcement Director can be identified. If the Executive Director/CEO objects to the selection of the Security and Enforcement Director, the Executive Director/CEO may submit a written request to replace the Security and Enforcement Director to the SFPD and forward a copy to the Mayor's Office. The Chief of Police will assign a new Security and Enforcement Director acceptable to the SFMTA as soon as practicable, and no later than twenty (20) days after receipt of the written request from the Executive Director/CEO to replace the Security and Enforcement Director, or to fill a vacancy in the position. A request for replacement and the assignment of a new Security and Enforcement Director is a management prerogative of the SFMTA and shall not be deemed to be disciplinary action or an adverse employment decision for any purpose. The failure of the Chief of Police and Executive Director/CEO to agree on an individual to be assigned as Security and Enforcement Director for a period of sixty (60) days from receipt of the Executive Director's written request shall automatically terminate Article II of this MOU without affecting any other Article of this MOU unless mutually agreed to by the SFPD and SFMTA.

2.5 Security and Enforcement Director Under Command of Chief of Police. On a daily basis, the Security and Enforcement Director shall report to the respective SFMTA executive overseeing these responsibilities but shall remain under the command and supervision of the Chief of Police with respect to SFPD functions. The Security and Enforcement Director shall report to and take assignments from the Executive Director/CEO with respect to SFMTA functions. The SFMTA and Executive Director/CEO shall have no authority to discipline the Security and Enforcement Director, and shall promptly refer any complaints or concerns concerning the Security and Enforcement Director's performance or conduct to the Chief of Police.

2.6. Full-Time Assignment. The assignment of the Security and Enforcement Director shall be on a full-time basis.

2.7. Regular Work Schedule; Time Off; Temporary Replacement. The Security and Enforcement Director's regular work schedule shall be determined by the Executive Director/CEO, in consultation with the Chief of Police, to meet the needs of the assignment. The Security and Enforcement Director will report significant deviations from the regular work schedule to the SFPD Administration Bureau and to the SFMTA, in advance, if possible. The Security and Enforcement Director's use of discretionary time-off is subject to the prior approval of the Chief of Police, and advance written notice shall be provided to the Executive Director/CEO whenever practicable. At the request of the Executive Director/CEO, the Chief of Police will attempt to make available another senior ranking officer to assist with law enforcement matters. The SFMTA will work order to the SFPD funding to reimburse the SFPD for the direct costs of salary and benefits for the senior ranking officer upon receipt of documentation of such costs acceptable to the SFMTA CFO.

2.8. Equipment. The SFPD will provide the following equipment to the Security and Enforcement Director at no additional cost to the SFMTA: a vehicle, fuel, a Blackberry or other mobile communications device capable of sending and receiving

electronic mail, a cellular telephone, firearm, and such other equipment as is ordinarily provided to members of the SFPD command staff. The SFMTA may require the Security and Enforcement Director to carry additional equipment, the cost of which will be borne by the SFMTA and which must be returned to the SFMTA when requested, at the termination of this MOU, or upon the replacement of the Security and Enforcement Director. The Security and Enforcement Director will adhere to SFMTA's policies and procedures when using SFMTA equipment and will be responsible for maintaining the equipment in good working order.

2.9. Premium Pay Reimbursement. The SFMTA will reimburse the SFPD for any premium pay compensation required by the City's MOU with the San Francisco Police Officers' Association or applicable law in excess of the Security and Enforcement Director's regular pay, provided that such premium pay is attributable to services rendered within the course and scope of the Security and Enforcement Director's duties under this MOU. The SFPD will provide the SFMTA CFO with supporting documentation justifying the hours worked and the reasons for premium pay acceptable to the SFMTA CFO.

2.10. Work Order; Reimbursement for Security and Enforcement Director's Services in FY2006/2007, FY2007/2008 and Subsequent Fiscal Years. The SFMTA will work order to the SFPD funding to reimburse the SFPD for the direct costs of salary and benefits paid to the Security and Enforcement Director during the Fiscal Years indicated, upon receipt of documentation of such costs acceptable to the SFMTA CFO. This reimbursement will be for the actual personnel costs of the Security and Enforcement Director, consistent with payroll records, the Annual Salary Ordinance, and the provisions of the MOU between the SFPD and the San Francisco Police Officers' Association.

2.11 Supporting Documentation. The SFPD shall submit at intervals no less often than quarterly, accounting records, invoices, and documentation supporting reimbursement of SFPD for the direct costs of salary and benefits paid to the Security and Enforcement Director for services performed within the course and scope of this MOU, as may be reasonably required by, and are acceptable to, the SFMTA CFO. The requirements of Sections 1.5 and 7.5 of this MOU shall apply to the supporting documentation for the direct salary and benefits costs, and all other charges, relating to the assignment of the Security and Enforcement Director.

2.12 Office Space; Clerical Support; Travel and Incidental Expenses. The SFMTA will provide the Security and Enforcement Director with an office. The SFMTA shall provide the Security and Enforcement Director with clerical and administrative support the SFMTA, in its sole discretion, deems necessary for the Security and Enforcement Director to perform his or her duties under this MOU. The SFMTA will reimburse the Security and Enforcement Director for reasonable travel and incidental expenses consistent with the rules, regulations and procedures for travel and official business expense reimbursements established by the City, provided (i) the Security and Enforcement Director has received the prior approval of the Executive Director/CEO for such expenses, (ii) the Security and Enforcement Director submits supporting documentation of such expenses actually incurred acceptable to the SFMTA CFO and (iii) in compliance with the City's rules and regulations.

2.13 Quarterly Activity Reports. The Security and Enforcement Director will provide quarterly reports to the Chief of Police, the Executive Director/CEO, the SFMTA COO, and the SFMTA CSO summarizing the law enforcement activities that

relate to the Public Transit System. The quarterly reports shall include, but not necessarily be limited to, information on the date, time, duration, location and actions taken on incidents on the Public Transit System, to which SFPD officers responded or that were reported to the SFPD.

2.14 Termination for Convenience. For the convenience of the parties, and without cause or agreement of the other party, either the Chief of Police or the Executive Director/CEO may terminate Article II of this MOU and the assignment of a senior ranking member of the SFPD to the position of Security and Enforcement Director without affecting the other Articles of this MOU. The party terminating the assignment under this section shall give not less than thirty days written notice to the other party. Termination of the assignment pursuant to this section shall not affect the ability of the parties to terminate this MOU pursuant to Section 1.2 or to exercise any other right under this MOU, or to modify this MOU by mutual written agreement.

Article III - Augmentation of Police Services on Public Transit System

3.1 Assignment of Additional Sworn Officers to Augment Muni Response Team ("MRT"). In furtherance of the purposes identified in the Declaration, the SFPD has established the MRT dedicated to law enforcement, security and related police services on and for the Public Transit System. During the term of this MOU, the SFPD shall maintain the staffing levels for the MRT set forth below. The parties agree that the MRT and dedication of sworn officers to provide police services dedicated to the Public Transit System are additional law enforcement services requested by the SFMTA and supplement existing general law enforcement services already provided by the SFPD to ensure public safety.

The SFPD shall assign one (1) supervising sergeant and twelve (12) police officers to the MRT. Of the thirteen (13) total SFPD members assigned to the MRT:

- Four police officers shall be K-9 officers.
- One squad shall consist of a sergeant and eight officers.

3.2 Reimbursement of SFPD's Costs for MRT; Overtime and Premium Pay Reimbursement; Reimbursement of Other Costs. The SFMTA will reimburse the SFPD for the direct costs of salary and benefits at regular rates paid to the actual SFPD members assigned to the MRT for services rendered within the course and scope of this MOU. The SFMTA will reimburse the SFPD for any overtime or premium pay compensation required by the City's MOU with the San Francisco Police Officers' Association or applicable law in excess of regular pay, provided that such overtime or premium pay is attributable to services rendered within the course and scope of their duties under this MOU and such overtime or premium pay was either (1) in the opinion of the Commanding Officer necessary for the immediate protection of the Public Transit System or persons on the Public Transit System, or (2) authorized in writing by the Executive Director/CEO, SFMTA CFO or Security and Enforcement Director. The SFPD will provide the SFMTA with supporting documentation for the hours worked by MRT members and the reasons for overtime or premium pay, if any, acceptable to the SFMTA CFO. The SFMTA's reimbursement of SFPD's costs that are not direct personnel costs shall be made only as set forth in the Approved Work Order Budget, consistent with the procedures and fiscal provisions in Article IV of this MOU.

3.3 Work Order; Costs of Muni Response Team for FY2007/2008 and Subsequent Fiscal Years. The SFMTA will work order to the SFPD an amount set forth in Appendix A to reimburse the SFPD for the costs of the MRT during the Fiscal Years ending June 30, 2008 through June 30, 2009, and the amount set forth in the Approved

Work Order Budget for any subsequent Fiscal Year covered by this MOU. The SFPD will submit accounting records, invoices and documentation supporting reimbursement of such costs, at intervals no less often than quarterly, as may be reasonably required by, and are acceptable to, the SFMTA CFO, as listed in Appendix B, in a form acceptable to the SFMTA CFO. The requirements of Sections 1.5 and 7.5 of this MOU shall apply to all records, invoices and documentation supporting reimbursement of the SFPD's costs of the MRT required under this section. The data and documentation required by this section and shall be incorporated into the quarterly reports required by Section 4.10.

Article IV - Administration and Additional Responsibilities

4.1 Incident Information. The SFMTA COO will provide the SFPD with bi-weekly reports providing information and records regarding criminal activity, accidents, law enforcement, security, public safety and related incidents occurring in or on the Public Transit System. The SFPD will not disclose such information or records to third parties for non-law enforcement purposes without the SFMTA's prior consent unless the SFPD has a legal obligation to do so. The SFPD will notify SFMTA of the disclosure, and will do so in advance whenever possible.

4.2 Service Priorities. The SFMTA COO, SFMTA CSO, and SFMTA Director of Parking and Traffic, in conjunction with the SFPD, will develop public safety, law enforcement, security and policing priorities that specifically describe the additional law enforcement services and activities the SFMTA will require. The Commanding Officer or his/her designee will participate in developing these public safety and policing priorities.

4.3 Public Safety Outreach. The SFMTA will develop public safety outreach programs with the assistance of the SFPD. These programs will include on-board public safety advertisements, emergency procedures for both the public and the SFMTA, and development of audio/visual media for the press. The costs for any such program will be paid by the SFMTA.

4.4 Training Programs. The SFMTA will develop public safety, security, enforcement and other training programs for SFMTA personnel, including line inspectors and managers, with input and participation from SFPD.

4.5 Regular Staff Meetings. Appropriate personnel from the SFMTA, including the SFMTA COO, SFMTA CSO, and SFMTA Director of Parking and Traffic, and the SFPD shall hold regular staff meetings to address the additional SFPD services and activities under this MOU to further the purposes described in the Declaration.

4.6 K-9 Costs. The SFMTA shall reimburse the SFPD for costs incurred for the transportation, board and care for four K-9 police officers' dogs assigned to the SFMTA, including, but not limited to, appropriately equipped vehicles, food, veterinarian services, and kenneling from grant funds. If grant funds are no longer available, the SFMTA and SFPD will mutually negotiate the funding and continuation of the K-9 dogs. Sections 1.5 and 7.5 shall apply to supporting documentation for reimbursement of such K-9 costs, including any temporary redeployment of K-9 officers. There shall be a *pro rata* reduction of SFMTA's obligation to reimburse the SFPD for such K-9 costs for any temporary redeployment of K-9 officers. The SFMTA CFO shall be responsible for calculating any such reduction.

4.7 Command of MRT. The MRT shall be under the Officer-in-Charge. The Officer-in-Charge shall be under the command of and shall confer with and coordinate MRT activities with the Security and Enforcement Director. The MRT program shall be housed at the SFMTA's Security office, currently located at 875 Stevenson Street, Room 204 or any new location. The MRT shall provide a level of law enforcement services necessary to reduce criminal activity and ensure public safety and security on the Public Transit System as determined by the Security and Enforcement Director.

4.8 MRT to Support SFMTA Priorities; Redeployment. The MRT shall provide law enforcement services to support the SFMTA's public safety and policing priorities, including the SFMTA's proof of payment ("POP") program. The MRT shall respond to POP deployment requests, as needed, throughout the Public Transit System. The assignment of SFPD personnel to the MRT shall be determined by the Officer-in-Charge. In deploying SFPD personnel, the Officer-in-Charge may consider any law enforcement practices and information the Officer-in-Charge deems relevant. The Officer-in-Charge shall notify the Security and Enforcement Director of any redeployment of MRT personnel as soon as it is reasonably possible and shall indicate the hours of any such redeployment. The Officer-in-Charge shall confer with the Security and Enforcement Director on a bi-weekly basis, or more frequently if requested by the Security and Enforcement Director, regarding MRT activities and any anticipated redeployment of MRT personnel. If MRT personnel are redeployed, SFMTA will not be responsible for payment for services of the redeployed personnel during the period of any redeployment.

4.9 MRT; Planning; Weekly Activity Reports. The Officer-in-Charge shall develop plans and policies to address crime and other law enforcement issues related to the Public Transit System, which shall respond to information provided at program monitoring meetings. Upon request, the Officer-in-Charge shall provide the Security and Enforcement Director or his/her designee with daily schedules from the Captain's morning report for SFPD personnel assigned to the MRT. The Captain's morning report shall include the police officer's assignment, details and redeployment, if any. These reports will be shared with the SFMTA COO, SFMTA CSO, and SFMTA Director of Parking and Traffic at their request.

4.10. MRT; Quarterly Reports. The Officer-in-Charge will maintain statistics from the Captain's Morning Reports made by SFPD personnel assigned to the MRT. These statistics shall be summarized in quarterly reports prepared by the Officer-in-Charge and provided to the Executive Director/CEO, SFMTA CFO, SFMTA COO, SFMTA CSO, SFMTA Director of Parking and Traffic and Security and Enforcement Director by the 15th of April, July, October and January of each calendar year. The quarterly reports will also include the number, location, and type of incidents encountered and the action taken by MRT and other SFPD personnel. The quarterly reports, as listed in Appendix B, shall be in a form acceptable to the SFMTA CFO. The requirements of Section 7.5 of this MOU shall apply to the quarterly reports and all morning reports and other records, reports, and data (including records and data stored in electronic format) upon which the quarterly reports are based.

4.11 Assistance for Special Events. The Officer-in-Charge shall ensure that the MRT assists the SFMTA during all special events, including but not limited to New Year's Eve, July 4th, Halloween, and sporting events.

4.12 Agreements with Other Agencies. The SFMTA may enter into agreements with other City departments, governmental agencies or private firms deemed appropriate by the Executive Director/CEO for public safety and the security of the Public Transit System. SFMTA will consult with the SFPD regarding any agreements reasonably anticipated to impact the SFPD's delivery of police services to the SFMTA.

4.13 Use of SFMTA-Funded Equipment. The SFPD shall use all equipment funded by the SFMTA only for services related to the Public Transit System. SFPD will be responsible for the safety and condition of the equipment while in the possession of or issued to SFPD personnel. If any of the equipment is damaged or removed by SFPD personnel, the SFPD will be responsible for payment to SFMTA for replacement of the equipment. SFMTA may deduct such amounts from the work order for the current Fiscal Year or the following Fiscal Year.

4.14 Crime Analysis. SFPD will provide the SFMTA with Part I and Part II of its crime statistics and analysis for the Public Transit System. This report will be provided to the Executive Director/CEO, SFMTA COO, SFMTA CSO, and SFMTA Director of Parking and Traffic by the 15th business day of each month. The report, as listed in Appendix B, shall be in a form acceptable to the SFMTA CFO.

4.15. Bus Inspection Program. Officers assigned to the SFPD Field Operations Bureau will be responsible for conducting SFMTA vehicle inspections and patrols in and around SFMTA Muni Metro stations and in the vicinity of other SFMTA facilities. The SFPD Field Operations Bureau will be responsible for implementation of a revised Bus Inspection Plan ("BIP") that incorporates deployment of resources consistent with crime analysis which identifies specific crime patterns. The SFPD Field Operations Bureau, in consultation with the Security and Enforcement Director, SFMTA COO, and SFMTA CSO, will also coordinate effective deployment of SFPD resources resulting from community complaints and operator concerns. The SFPD Field Operations Bureau will be responsible for maintaining statistics for citywide bus inspections and bus inspections in each respective police district. SFPD district stations will be responsible for conducting plainclothes enforcement operations on specific SFMTA bus lines as deemed necessary by the District Commanding Officer, with input from the Security and Enforcement Director.

4.16 Training. The Officer-in-Charge shall provide individual and unit training for SFPD personnel assigned to the MRT, as well as supply SFPD personnel assigned to the MRT with all necessary equipment, support, and resources necessary to improve the quality, efficiency and productivity of the MRT.

4.17 Training; continued. SFPD personnel assigned to the MRT shall participate in training offered by the Security and Enforcement Director and SFMTA Security and Enforcement Division and/or the SFMTA COO and SFMTA CSO as directed by the Officer-in-Charge.

4.18 Equipment. The SFPD shall provide for all SFPD personnel assigned to the MRT the same equipment as provided to any other similar SFPD employee. The SFPD shall provide at least six (6) marked and two (2) unmarked vehicles for use by SFPD personnel assigned to the MRT.

4.19. Program Monitoring and Review. On a monthly basis, the Security and Enforcement Director, SFMTA COO, SFMTA CSO, SFMTA Director of Parking and

Traffic, MUNI Operations personnel, TWU Local 250-A officers, other appropriate SFMTA personnel, the Officer-in-Charge or his/her designee, and designated SFPD Field Operations Bureau personnel shall meet for the purpose of reviewing, discussing, and resolving any issues covered by this MOU. The meetings shall discuss crime patterns, deployment of SFPD personnel, and any other issues relevant to MRT operations. At the meetings, SFPD personnel will make recommendations to SFMTA personnel on ways to reduce incidence of criminal activity and improve public safety and security on the Public Transit System.

4.20. Program Monitoring and Review; continued. The Security and Enforcement Director, SFMTA COO, SFMTA CSO, and SFMTA Director of Parking and Traffic will bring any issues or concerns regarding MRT activities and effectiveness to the attention of the Officer-in-Charge in writing, including any performance-related matters regarding SFPD personnel assigned to the MRT. SFPD will review any request to replace personnel assigned to the MRT and provide a written response to the Security and Enforcement Director or Executive Director/CEO within thirty (30) working days of receipt of such request.

4.21. Program Monitoring and Review; continued. During the last quarter of each Fiscal Year, as part of the annual budget process, the Chief of Police shall meet with the Executive Director/CEO and such SFMTA executive staff as the Executive Director deems appropriate to discuss and resolve any issues regarding SFPD's law enforcement services provided under this MOU.

4.22 Transit System Safety and Security Maintenance of Effort. In order to ensure a safe and secure Public Transit System, SFPD District Captains shall provide ongoing law enforcement services on the Public Transit System as part of the Community Policing and BIP programs. SFPD police officers shall continue to respond to reports of crimes and other criminal activity on the Public Transit System. It shall be the responsibility of each SFPD District Captain to ensure reasonable compliance with this requirement and to report about the frequency of BIP program enforcement within his or her assigned district. In addition, SFPD District Captains shall report on BIP program enforcement as part of his or her regular status reports to community groups, the media, and other interested parties.

4.23 MRT Community Outreach. The Officer-in-Charge and the Security and Enforcement Director and other SFMTA Executive Staff will coordinate community outreach efforts for the MRT.

4.24 Police Academy Training. The Police Academy Officer-in-Charge shall develop information and materials to be provided to police officer recruits regarding law enforcement services provided by the SFPD to the SFMTA. The Security and Enforcement Director, SFMTA COO, SFMTA CSO, and SFMTA Director of Parking and Traffic shall review these documents and may provide comments and suggestions to the Police Academy Officer-in-Charge in writing.

4.25 Investigations. The SFPD is responsible for the investigation of all crimes and other law enforcement related matters that occur on the Public Transit System except those under the jurisdiction of and being investigated by the Federal Transit Administration or other federal law enforcement agency.

4.26 Investigations; Analysis. The Officer-in-Charge will analyze pertinent data on crimes and incidents occurring on the Public Transit System with the objective

of enhancing the effective deployment of SFPD personnel and reducing criminal activity.

4.27 Internal Investigations. The SFPD will assist SFMTA staff in conducting investigations of potential criminal activity by SFMTA employees. The SFPD shall be the lead agency in such investigations.

4.28 Magazine Facility. The SFPD, SFMTA, and TSA Canine will continue to coordinate the usage and maintenance of the magazine facility.

4.29 Transit Security Enhancement Program. Joint efforts shall be coordinated between the Transit Security Administration ("TSA"), SFPD, and SFMTA to deploy TSA personnel in transit facilities or on transit vehicles to provide enhanced security for the transit system. The Security and Enforcement Director or the SFMTA CSO shall request coordination of the Transit Security Enhancement Program operations thirty (30) days prior to a planned or anticipated event. The SFMTA shall cover the SFPD's costs of deployment, including overtime expenses for SFPD personnel assigned to liaison and supervise Transit Security Enhancement Program teams at the rate of one SFPD supervisor for each seven (7) person Transit Security Enhancement team if other MRT personnel are not available to be utilized. Each Transit Security Enhancement Program operation will be reviewed on a case by case basis to determine appropriate staff deployment.

Article V - Night Enforcement of Parking Regulations

5.1 Night Enforcement of Parking Regulations by SFPD. Due to the limited number of parking control officers scheduled to work at night, SFPD officers will respond between the hours of 12 midnight and 6 a.m. to complaints of blocked driveways and other violations of parking regulations for which the vehicle complained of, if parked in violation of applicable parking regulations, may be towed ("Night Parking Enforcement"). On December 31, 2009, the SFMTA will assume responsibility for enforcement of Night Parking Enforcement and SFPD enforcement will no longer be required. At that time, Article V will no longer remain in effect.

5.2 Reimbursement. The SFMTA will reimburse the SFPD for the costs of Night Parking Enforcement on an "average cost per call" basis as provided in this MOU. The SFPD will bill the SFMTA for the actual number of responses to complaints of blocked driveways and other illegal parking made during the relevant billing period.

5.3 Quarterly Billing Statements. Requests from the SFPD to the SFMTA for reimbursement of Night Parking Enforcement costs shall be set forth in quarterly billing statements supported by a written report that tallies the number of responses during the quarter covered by the statement and provides, at a minimum, the following information for each response for which SFPD requests reimbursement: date, time of dispatch, call type (Nos. 409, 586, 587 & 588), unit designation, location (by street address), disposition and such other information as the SFMTA CFO may reasonably request to justify SFPD's request for reimbursement. The billing statement and supporting report shall be in substantially the same form as the sample set forth in Appendix B.

5.4 Reimbursement Rate; Annual Cap on Total Reimbursement. The rate at which the SFMTA will reimburse the SFPD for the costs of Night Parking Enforcement will be the then prevailing hourly rate of pay for two Q4 police officers, including night differential and benefits costs, for 20 minutes per call response. The total reimbursement for all responses made during a Fiscal Year shall not exceed the amount in the Approved Work Order Budget and corresponding work order for such Fiscal Year regardless of the actual number of responses to calls made during the Fiscal Year. The SFPD will continue its Night Parking Enforcement efforts in the event the estimated costs in the Approved Work Order Budget and amount of the work order in any given Fiscal Year are insufficient to cover SFPD's costs for that year. The SFPD shall provide a breakdown of the hourly rate, night differential and benefits costs for Q4 officers as of the date of execution of this MOU, as listed in Appendix B, in a form acceptable to the SFMTA CFO. The SFPD will promptly notify the SFMTA CFO of any new or amended agreement with the San Francisco Police Officers Association that changes the pay rate for Q4 police officers from the rates set forth in the appendix.

5.5 Work Orders for Night Parking Enforcement Services. The SFMTA will work order to the SFPD the amount set forth in Appendix A to reimburse the SFPD for Night Parking Enforcement during the periods indicated, upon receipt of documentation of such costs acceptable to the SFMTA CFO:

- for the period between December 1, 2006 and June 30, 2007 (The SFMTA will be under no obligation and the SFPD will not request any additional amounts from SFMTA for such services rendered prior to December 1, 2006.)
- to reimburse SFPD for costs incurred for Night Parking Enforcement during the Fiscal Year ending June 30, 2008.
- the amount set forth in the Approved Work Order Budget to reimburse the SFPD for the costs of the Night Parking Enforcement during the Fiscal Year ending June 30, 2009.
- to reimburse the SFPD for costs incurred for Night Parking Enforcement from July 1, 2009 through December 31, 2009.

Article VI - Taxi Detail and Taxi-Related Law Enforcement

6.1 Scope and Priority of Enforcement. SFPD shall provide law enforcement services to address violations of the San Francisco Police Code, the San Francisco Transportation Code, and any other local, state or federal law applicable to the operation of motor vehicles in the City that is violated by any Permit Holder or by any person or entity illegally providing taxi service within the City, including prevention and detection of crimes, infractions, and San Francisco Transportation Code violations. The parties acknowledge and agree that during the 2009-2010 fiscal year, the SFMTA will endeavor to undertake the administrative functions currently performed by the Taxi Detail, including processing lost property, new driver applications and public complaints.

6.2 Enforcement Plan. After execution of this MOU, the SFMTA and the Chief of Police and the Director of DTAS shall prepare a written Enforcement Plan identifying enforcement tasks and priorities for the purpose of this Article VI and setting forth by percentage how enforcement time will be spent by individual personnel.

6.3 Enforcement Priorities. For the purpose of this Article VI, the SFPD's enforcement efforts shall be prioritized in accordance with a) the Enforcement Plan, and b) the needs identified by the Taxi Detail's Officer in Charge, in that order of precedence.

6.4 Fiscal Oversight. SFPD shall supervise and manage SFPD personnel in a cost-effective manner to provide enforcement of taxi-related laws and regulations in a manner that meets the SFMTA's law enforcement needs as identified by the Enforcement Plan and by the SFMTA through the Taxi Detail.

6.5 Assignment of Personnel to Taxi Detail. SFPD shall assign and the SFMTA shall provide funding for the Taxi Detail positions listed in this Section. SFPD shall notify SFMTA in writing of the names and ranks of assigned individuals prior to their assignment. The SFMTA may request in writing the removal of any assigned personnel for demonstrated performance problems or failure to comply with the Enforcement Plan or this MOU. Personnel assigned to the Taxi Detail shall include:

6.5.1 One quarter of a Lieutenant's position to oversee the Taxi Detail and law enforcement activities by SFPD personnel not assigned to the Taxi Detail.

6.5.2 One Officer-in-Charge of at least the rank of sergeant.

6.5.3 At the SFMTA's option, one police officer in Q2 through Q4 rank and scheduled to work a weekday business hour shift that meets the needs of both the SFMTA and SFPD and is consistent with the terms of the MOU between the SFPD and POA.

6.5.4 One civilian office clerk.

6.5.5 In the event that personnel assigned to the Taxi Detail leave the SFPD or are reassigned or are unavailable for assignment for a period longer than two weeks, the SFPD shall make best efforts to fill vacant and unavailable positions within the Taxi Detail. Alternatively, the parties may mutually agree on a plan to convert the unspent Taxi Detail funds to overtime.

6.6 Command Structure and Communications Protocol.

6.6.1 To ensure clear and current communications, the Officer-in-Charge, through the chain of command, shall inform the SFMTA, in advance if possible, of any change in assignment lasting more than five business days. The SFMTA shall inform the Officer-in-Charge of any change in DTAS Director lasting more than five business days.

6.6.2 The Lieutenant-in-Charge shall meet regularly with SFMTA, on a mutually agreed upon schedule, to discuss past performance and future planning of taxi-related law enforcement operations conducted pursuant to this Article VI.

6.6.3 The Officer-in-Charge, through the chain of command, shall immediately notify SFMTA of any arrests referred to Taxi Detail, or any information related to any public safety risk within the taxi industry, or which is deemed newsworthy by the Officer-In-Charge.

6.6.4 The Taxi Detail Officer-in-Charge shall report to the Lieutenant-in-Charge. The Lieutenant-in-Charge shall report to the Security and Enforcement Director.

The Security and Enforcement Director will meet with the Lieutenant-in-Charge on a regular basis to discuss overall planning, training and enforcement activity. SFMTA taxi concerns will be the focus of these meetings.

The Lieutenant-in-Charge of the Taxi Detail will meet with the Taxi Detail Officer-in-Charge to ensure that the enforcement activity is sufficiently addressing the needs of the SFMTA. Strategies to address SFMTA taxi concerns will be discussed, planned and approved by the Lieutenant-in-Charge of the Taxi Detail.

Implementation of enforcement strategies will be performed and tracked by the Taxi Detail Officer-in-Charge. The daily operations and personnel assignments of the Taxi Detail shall be the responsibility of the Taxi Detail Officer-in-Charge.

6.7 Use of Non-Taxi Detail Personnel. SFPD will take reasonable steps to provide sufficient sworn and non-sworn personnel to provide for SFMTA enforcement needs as identified through mutual agreement by the SFMTA and the Officer-in-Charge, including but not limited to the following functions:

6.7.1 Active street patrols, including foot, mobile and undercover patrols.

6.7.2 Attending and presenting at administrative meetings and hearings, including those conducted by the SFMTA Board of Directors, Board of Appeals, and Paratransit Broker.

6.7.3 Communicating as needed with the Ground Transportation Unit at SFO and other divisions of the SFPD.

6.7.4 Processing and investigating public complaints through 311 and other sources.

6.7.5 Documenting enforcement activity and results on a form provided by the Taxi Detail and approved by the SFMTA.

6.8 Administrative Enforcement. SFPD and SFMTA will work together to ensure effective law enforcement efforts in areas including but not limited to non-criminal enforcement against unpermitted taxis and limousines and regulatory

requirements applicable to Permit Holders. SFPD may permit SFMTA personnel to accompany SFPD personnel during enforcement operations, subject to the discretion of the Lieutenant-in-Charge, an executed and approved ride-along liability waiver consistent with existing SFPD policy and procedures, and completion of any training required by the SFPD for such purpose.

6.9 Other Fiscal Issues. Any funding within the annual budget that is allocated to overtime or absences from the worksite shall be kept in a separate accounts identifying each type of time.

6.10 Required Reports.

SFPD shall provide the following reports at the intervals set forth below:

6.10.1 Monthly

6.10.1.1 Police Report Logs: List of police reports referred or assigned to the Taxi Detail, including citations, arrests, vehicle impounds and daily rebooking sheets.

6.10.1.2 Activity Report: Statistical summary of daily enforcement provided pursuant to this MOU, including rebooking statistics.

6.10.1.3 Until such time as the SFMTA notifies SFPD in writing that it is undertaking the processing of public complaints, the SFPD shall provide a monthly list of public complaints that were not received through the 3-1-1 system.

6.10.1.4 Until such time as the SFMTA notifies SFPD in writing that it is undertaking the processing of new driver applications, the SFPD shall provide a monthly accounting of fees collected.

6.10.2 Quarterly. Expenditure Report including records, invoices, and documentation supporting reimbursement of SFPD for the direct costs of salary and benefits paid to SFPD personnel for services performed within the course and scope and in compliance with the requirements of this MOU. The requirements of Sections 1.5 and 7.5 of this MOU shall apply to the supporting documentation for the direct salary and benefits costs, and all other charges, relating to the Taxi Detail and any law enforcement activity or administrative costs by SFPD personnel who are not assigned to the Taxi Detail.

6.10.3 Twice per calendar year (March and September)

6.10.3.1 Staffing plan/shift schedules

6.10.3.2 Prospective activity report. Expenditure Report including records, invoices, and documentation supporting reimbursement of SFPD for the direct costs of salary and benefits paid to SFPD personnel for services performed within the course and scope and in compliance with the requirements of this MOU. The requirements of Sections 1.5 and 7.5 of this MOU shall apply to the supporting documentation for the direct salary and benefits costs, and all other charges, relating to

the Taxi Detail and any law enforcement activity or administrative costs by SFPD personnel who are not assigned to the Taxi Detail.

SFPD shall provide the following reports at the intervals set forth below:

The Chief of Police and the SFMTA shall agree on an annual budget for all taxi law enforcement activities by both the Taxi Detail and other departmental personnel. The SFMTA retains final approval authority for the annual budget.

Article VII - Budget and Other Fiscal Issues

7.1 Annual Budget; Submission by SFPD and Response by SFMTA. The Chief of Police shall propose a prospective annual budget for all law enforcement, security and police support services to be provided by the SFPD under this MOU to the Executive Director/CEO and the SFMTA CFO by November 1st for the next Fiscal Year. The SFMTA will respond in writing by January 1st which line items in the propose annual budget for the next Fiscal Year are approved. The approved line items in the proposed annual budget shall become the Approved Work Order Budget for that Fiscal Year.

7.2. Annual Budget; Content. The proposed annual budget shall include salary related expenses such as overtime and premium pay and non-salary related expenses such as contracts, materials and supplies, equipment, and services of other departments. The budget will include a narrative of why the SFPD believes the SFMTA should be charged for overtime and premium pay. There shall be a separate budget for each Article in this MOU, Articles II through Article VI and Article VIII.

7.3 Direct Purchase of Goods and Services by SFMTA. The SFMTA will be responsible for the direct purchase and payment of the non-salary related goods and services contained in the Approved Work Order Budget.

7.4 SFPD Expenditures Not Included in Approved Work Order Budget. The SFMTA will not reimburse SFPD for expenditures not included in the Approved Work Order Budget unless SFMTA has received a written request from SFPD and written approval has been obtained from the SFMTA CFO and Executive Director/CEO. Invoices or other requests from SFPD for reimbursement of non-personnel costs not included in the Approved Work Order Budget must be approved by the SFMTA CFO prior to being submitted to the SFMTA's Accounting Department for payment. Billings for personnel costs not included in the Approved Work Order Budget must be approved by the SFMTA CFO prior being submitted to SFMTA's Accounting Department for payment.

7.5 Accounting Records. The SFPD shall maintain accurate accounting records for all work order or other expenditures for which the SFPD will request reimbursement from the SFMTA under this MOU. The SFPD CFO shall provide copies of all accounting records required under this MOU to the SFMTA CFO with each work order billing statement or other request for reimbursement submitted to the SFMTA for payment. Accounting records shall be submitted on a monthly, quarterly and annual basis, as requested, to the Security and Enforcement Director and the SFMTA CFO. Reports relating to reimbursable salary expenditures will include the police officer's name or badge number and the hours worked. Such reports will also

identify all direct expenses, overtime costs, and overhead, such as training and administrative expenses, and redeployed hours in separate line items. SFPD records will be made available to the SFMTA CFO for auditing purposes and will be retained for a minimum of three years, or such longer period as may be required by law, the terms of any applicable state or federal grant, or the SFPD's records retention policy.

7.6 Audit and Inspection of Records. SFPD agrees to maintain and make available to the SFMTA accurate books and accounting records relating to its work under this MOU. SFPD will permit the SFMTA or its designee 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 MOU. SFPD shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this MOU or until after final audit has been resolved, whichever is later.

Article VIII - SFPD Traffic Company

8.1 Assignment of SFPD Traffic Company Officers to Address Surface Transportation Traffic Issues. In furtherance of the purposes identified in the Declaration, the SFPD has assigned Traffic Company personnel dedicated to enforce traffic laws and related police services for the SFMTA. During the term of this MOU, the SFPD shall use its best efforts to maintain the staffing levels for the Traffic Company set forth below. The parties agree that the Traffic Company and dedication of sworn officers to provide police services dedicated to the SFMTA are additional law enforcement services requested by the SFMTA and supplement existing general law enforcement services already provided by the SFPD to ensure public safety.

The SFPD shall assign one (1) Captain (4) Lieutenants (12) Sergeants and (85) Officers.

8.2 Reimbursement of SFPD's Costs for Traffic Company Overtime and Premium Pay Reimbursement; Reimbursement of Other Costs. The SFMTA will reimburse the SFPD for the direct costs of salary and benefits at regular rates paid to the SFPD members assigned to the Traffic Company and any associated administrative overhead costs for services rendered within the course and scope of this MOU. The SFMTA will reimburse the SFPD for any overtime or premium pay compensation required by the City's MOU with the San Francisco Police Officers' Association or applicable law in excess of regular pay. The SFPD will provide the SFMTA with supporting documentation for the hours worked by Traffic Company members, the reasons for any overtime or premium pay, and a breakdown by line-item for administrative overhead costs, as listed in Appendix B, in a form acceptable to the SFMTA CFO. The SFMTA's reimbursement of SFPD's costs that are not direct personnel costs shall be made only as set forth in the Approved Work Order Budget, consistent with the procedures and fiscal provisions in this MOU.

8.3 Work Order; Costs of Traffic Company for FY2009/2010 and Subsequent Fiscal Years. The SFMTA will work order to the SFPD an amount set forth in Appendix A to reimburse the SFPD for the costs of the Traffic Company during the

Fiscal Year ending June 30, 2010, and the amount set forth in the Approved Work Order Budget for any subsequent Fiscal Year covered by this MOU. The SFPD will submit accounting records, invoices and documentation supporting reimbursement of such costs, at intervals no less often than quarterly. The requirements of Sections 1.5 and 7.5 of this MOU shall apply to all records, invoices and documentation supporting reimbursement of the SFPD's costs of the Traffic Company required under this section.

8.4 Service Priorities. The SFMTA, in conjunction with the SFPD, will develop traffic law enforcement and policing priorities that specifically describe the additional law enforcement services and activities the SFMTA will require. The Traffic Company Commanding Officer or his/her designee will participate in developing these traffic enforcement and policing priorities.

8.5 Regular Staff Meetings. Appropriate personnel from the SFMTA, including the SFMTA COO, SFMTA CSO, and Director of Parking and Traffic, and the SFPD shall hold regular staff meetings to address the additional SFPD services and activities under this MOU to further the purposes described in the Declaration.

8.6 Command of Traffic Company. The Traffic Company shall be under the command of the Commanding Officer. The Commanding Officer shall be under the command of the Security and Enforcement Director. When directed to participate in special events, planned and unplanned, the Commanding Officer shall report to the Field Operations Bureau chain of command to execute his or her role in the respective operations order or to fulfill directives as received for a critical incident. The Traffic Company shall be housed at the Hall of Justice currently located at 850 Bryant Street or any new location. The Traffic Company shall provide a level of law enforcement services necessary to ensure a safe flow of traffic that will increase public safety of the Transit System as determined by the SFMTA.

8.7 Traffic Company to Support SFMTA Priorities; Redeployment. The Traffic Company shall provide law enforcement services to support the SFMTA's public safety and policing priorities for the Public Transit System. In deploying SFPD personnel, the Commanding Officer may consider any law enforcement practices and information the Commanding Officer deems relevant. The Commanding Officer shall notify the Security and Enforcement Director of any redeployment of the Traffic Company personnel as soon as it is reasonably possible and shall indicate the hours of such redeployment. The Commanding Officer shall confer with the Security and Enforcement Director, the SFMTA COO, SFMTA CSO, and SFMTA Director of Parking and Traffic on a frequent basis regarding Traffic Company activities and any anticipated redeployment of Traffic Company personnel.

8.8 Training. SFPD personnel assigned to the Traffic Company shall participate in training offered by the Security and Enforcement Director and the SFMTA Security and Enforcement Division as directed by the Commanding Officer.

Appendix A

Work order Amounts for FY 2008 -2010

Index Code Title	Div	Subobj	Subobject Title	Purpose	FY 2007-08 Budget	FY 2008-09 Budget	FY 2009-10 Budget
OFFICE OF SECURITY PROGRAMS	SS	081PS	GF-POLICE SECURITY (AAO)	Third Street and MRT Coverage	3,173,239	3,152,858	2,212,867 (Third Street coverage eliminated)
PARK DIV IN PRKNG FUND/NON PROJ	PK	081PS	GF-POLICE SECURITY (AAO)	Traffic Division	7,542,495	7,906,443	8,992,852
PARK DIV IN PRKNG FUND/NON PROJ	PK	081PS	GF- POLICE SECURITY (AAO)	Night Parking and Garage Drive by Enforcement	405,000	424,962	299,630 (One-half year of Night Parking enforcement; Garage Drive by enforcement eliminated)
TAXI CAB ENFORCEMENT - EXP	AA	081PX	GF-POLICE NON-SECU	Taxi Detail			749,317
Total					11,121,134	11,484,263	12,254,666

Appendix B

Reports

The following documents will be provided by the SFPD to the SFMTA no later than the date of final approval of the MOU and are subject to the approval of the SFMTA CFO. Once approved by the SFMTA CFO, the approved documents will be provided to the SFMTA quarterly prior to payment of work order amounts by the SFMTA to the SFPD:

- 1) Accounting records, invoices and documentation supporting reimbursement of MRT costs, as described in Section 3.3.
- 2) MRT Quarterly Reports, as described in Section 4.10.
- 3) Crime analysis reports, as described in Section 4.14.
- 4) Night Parking Enforcement reimbursement rates, as described in Section 5.4.
- 5) Traffic Company documentation supporting work order payments, as described in Section 8.2.

SAN FRANCISCO

MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Taxis and Accessible Services

BRIEF DESCRIPTION:

Requesting the San Francisco Municipal Transportation Agency Board of Directors adopt amendments to Transportation Code, Division II, Article 1100 governing Motor Vehicles for Hire, which enacts the former Taxi Commission’s penalty schedule for regulatory violations; makes certain technical corrections to the regulations; requires the name of the Color Scheme or Medallion Holder on the registration of any vehicle owned by a Driver leasing the medallion; and prohibits Color Schemes from passing on credit card processing charges to drivers.

SUMMARY:

- The SFMTA Board adopted minimal procedural regulations on February 3, 2009, and adopted more comprehensive regulations on May 19, 2009 that will become effective on June 19, 2009.
- The former Taxi Commission adopted a penalty schedule for violation of Taxi Commission rules and regulations that remains in effect until superceded by a penalty schedule adopted by the SFMTA Board of Directors. This existing penalty schedule references now-defunct section numbers of the former Taxi Commission rules and regulations, and would become unenforceable on June 19 if not re-adopted by the SFMTA Board of Directors with corrected section numbers that reflect the new regulations.
- The Division of Taxis and Accessible Services’ (DTAS) enforcement staff require the ability to issue citations for regulatory violations with penalties in order to meet its responsibility for industry oversight.
- The amendments would also make certain technical corrections to the regulations; require the name of the Color Scheme or Medallion Holder on the registration of any vehicle owned by a Driver leasing the medallion; and prohibit Color Schemes from passing on credit card processing charges to drivers.

ENCLOSURES:

1. SFMTAB Resolution
2. Proposed amendment to Transportation Code, Division II, Article 1100.

APPROVALS:

DATE

DIRECTOR OF DIVISION	
PREPARING ITEM _____	<u>06/05/09</u>
FINANCE _____	_____
EXECUTIVE DIRECTOR/CEO _____	_____
SECRETARY _____	_____
ADOPTED RESOLUTION	
BE RETURNED TO <u>Chris Hayashi</u>	

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

To provide enforceable penalty amounts for violations of Motor Vehicle for Hire regulations; to make technical corrections to the regulations; to require title to a vehicle to be in the name of at least one Medallion Holder or Color Scheme; prohibiting Color Schemes from passing credit card merchant account processing charges on to Drivers; requiring Waybills used to prove compliance with the Full-Time Driving requirement to be from the vehicle affiliated with the Medallion unless the SFMTA has been notified of the breakdown of the vehicle in the mechanical breakdown logs required to be filed by Color Schemes.

GOAL

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

Objectives:

- 1.1 Improve safety and security across all modes of transportation

The ability to issue citations with monetary penalties will increase incentives for industry to ensure that all safety and service requirements are met.

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

Objectives:

- 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups
- 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits
- 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

The proposed penalty schedule supports the SFMTA's relationship with the taxi business community that it regulates, as well as its relationship with the customers of the taxi industry. When regulations are enforced with monetary penalties, businesses that play by the rules have a level playing field, and taxi customers are served by better quality of service and increased safety.

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

Objectives:

- 4.2 Ensure efficient and effective use of resources

The adoption of a penalty schedule will result in revenue to the agency from the assessment of fines, which can in turn be used to support enforcement costs.

DESCRIPTION¹

The SFMTA Board adopted minimal procedural regulations on February 3, 2009 in anticipation of the merger with the Taxi Commission, and adopted more comprehensive regulations on May 19, 2009 that will become effective on June 19, 2009. The February 3 resolution provided that any existing regulation would remain in effect until superceded by a regulation adopted by the SFMTA Board of Directors. The regulations adopted by the SFMTA Board to date have not included a penalty schedule for regulatory violations. In the interim and until the new regulations become effective, enforcement staff of the Division of Taxis and Accessible Services (DTAS) have been relying on the existing penalty schedule adopted by the former Taxi Commission.

However, the existing penalty schedule references now-defunct section numbers of the former Taxi Commission rules and regulations, and would become unenforceable on June 19 if not re-adopted by the SFMTA Board of Directors with corrected section numbers that reflect the new regulations. Staff recommends that the amounts of the penalties remain unchanged for the time being, as the purpose of this action is only to bring the existing penalty structure into the Transportation Code, and not to attempt to re-evaluate appropriate penalty amounts at this time.

DTAS enforcement staff require the ability to issue citations for regulatory violations with penalties in order to meet its responsibility for industry oversight.

These proposed amendments also add the following provisions:

- (1) Requiring that any vehicle purchased by a Driver for use pursuant to the long term lease of a Medallion also have the name of the Color Scheme or the Medallion Holder on the title of the vehicle. This is to prevent Medallion Holders and Color Schemes from passing all responsibility for the acquisition, maintenance and liability for the vehicle to a Driver with a long term lease.
- (2) Only permitting a Medallion Holder to use driving time in the vehicle affiliated with the Medallion to establish compliance with the Full-Time Driving requirement, unless the SFMTA has received notice of the mechanical breakdown of that vehicle as required in the Color Scheme's weekly maintenance log. This rule will be of substantial help to enforcement staff when auditing the compliance of Medallion Holders with the Full-Time Driving requirements.
- (3) Prohibiting Permit Holders from charging a Driver for credit card processing fees. With the implementation of the Paratransit Debit Card system, all cab companies will have credit card processing capacity, many for the first time. Staff recommends that Color Schemes be responsible for these fees, and that they be prohibited from passing the cost on to Drivers.

In addition, certain technical corrections need to be made to the regulations.

The City Attorney's Office has reviewed this item.

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

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ALTERNATIVES CONSIDERED

If a penalty schedule is not adopted, staff will not be able to issue monetary penalties because the citations to former Taxi Commission rules and regulations would not be applicable to the regulations recently adopted by the SFMTA Board.

FUNDING IMPACT

The adoption of a penalty schedule should produce some amount of revenue for the agency, which will vary in accordance with the SFMTA's enforcement capacity and the level of regulatory compliance by the industry.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

None.

RECOMMENDATION

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors adopt amendments to Transportation Code, Division II, Article 1100 governing Motor Vehicles for Hire to enact the former Taxi Commission's a penalty schedule for regulatory violations, making certain technical corrections to the regulations' section number references; requiring the name of the Color Scheme or Medallion Holder on the registration of any vehicle owned by a Driver leasing the medallion; and prohibiting Color Schemes from passing on credit card processing charges to drivers.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On February 3, 2009, the SFMTA Board adopted a resolution providing that following the merger with the Taxi Commission, any regulations of the former Taxi Commission that are not expressly superseded by SFMTA regulations remain in force; and,

WHEREAS, On May 19, 2009, the SFMTA Board adopted comprehensive Motor Vehicle for Hire regulations that become effective as of June 19, 2009; and

WHEREAS, The former Taxi Commission adopted a penalty schedule for regulatory violations that will become unenforceable when the SFMTA Board's new regulations take effect; and

WHEREAS, The Division of Taxis and Accessible Services requires the authority to issue citations with monetary penalties in order to provide for the availability, quality and safety of taxi service to the public; and

WHEREAS, Certain technical amendments to the regulations are required; now therefore be it,

RESOLVED, That the SFMTA Board of Directors adopt amendments to Transportation Code, Division II, Article 1100 governing Motor Vehicles for Hire, which enacts the former Taxi Commission's penalty schedule for regulatory violations; makes certain technical corrections to the regulations; requires the name of the Color Scheme or Medallion Holder on the registration of any vehicle owned by a Driver leasing the medallion; and prohibits Color Schemes from passing on credit card processing charges to drivers.

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