

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 - NO TURN ON RED (during NBLT PHASE ONLY) - Shrader Street, southbound, at Fell Street. (This turn restriction will be implemented in combination with a traffic signal modification to install an extinguishable NRT sign for southbound Shrader Street.) **PH 8/14/09 Requested by SFMTA**
- B. ESTABLISH - STOP SIGN - Benton Avenue at Andover Street, stopping the stem of this uncontrolled T-intersection; and Hattie Street at 18th Street, stopping the stem of this uncontrolled T-intersection. **PH 8/14/09 Requested by Residents**
- C. ESTABLISH - TOW-AWAY, NO PARKING ANYTIME - Phelan Avenue, east side, from Cloud Circle (north) to 108 feet northerly. **PH 8/14/09 Requested by City College of San Francisco-Police Department**
- D. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - Clay Street, north side, from 207 to 255 feet west of Stockton Street (48 foot zone for 6 feet wide bulb-out); Clay Street, south side, from Joice Street to 25 feet westerly; Washington Street, north side, from Stone Street to Trenton Street (58 foot zone for 6 feet wide bulb-out); and Washington Street, south side, from 153 feet east of Powell Street to 183 feet easterly (30 foot long zone). **PH 8/14/09 Requested by SFMTA**
- E. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - 15th Street, north side, from 18 feet east of Minna Street to 71 feet easterly (53-foot zone for 7 foot wide bulb-out); 15th Street, south side, from Capp Street to 21 feet westerly (20-foot zone for 6-foot wide bulb-out); 15th Street, south side, from Capp Street to 21 feet easterly (21-foot zone for 7-foot wide bulb-out); Capp Street, west side, from 15th Street to 25 feet southerly (25-foot zone for 10-foot wide bulb-out); and Capp Street, east side, from 15th Street to 37 feet southerly (37-foot zone for 6-foot wide bulb-out). **PH 8/14/09 Requested by SFMTA**

- F. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - Balboa Street, south side, from 37th Avenue to 60 feet westerly (60-foot zone for 6-foot wide bulb-out). **PH 8/14/09 Requested by DPW**
- G. ESTABLISH - RIGHT TURN ONLY - Essex Street, northbound at Folsom Street. **PH 8/14/09 Requested by SFMTA**
- H. ESTABLISH - NO LEFT TURN - Essex Street, southbound at Harrison Street; and Folsom Street, westbound at Main Street. **PH 8/14/09 Requested by SFMTA**
- I. ESTABLISH - BUS STOP - Folsom Street, south side, between Beale Street and Fremont Street; and Folsom Street, north side, between 1st Street and Essex Street. **PH 8/14/09 Requested by SFMTA**
- J. REVOKE - METERED MOTORCYCLE PARKING - Folsom Street, south side, from Beale Street to 165 feet easterly (removes 47 motorcycle spaces). **PH 8/14/09 Requested by SFMTA**
- K. ESTABLISH - BUS STOP, 3:00 PM TO 7:00 PM, MONDAY THROUGH FRIDAY - Fremont Street, northbound, between Folsom Street and Harrison Street. **PH 8/14/09 Requested by SFMTA**
- L. ESTABLISH - NO RIGHT TURN EXCEPT BUSES - Howard Street, eastbound at Main Street. **PH 8/14/09 Requested by SFMTA**
- M. ESTABLISH - NO LEFT TURN EXCEPT BUSES - Harrison Street, eastbound at Essex Street. **PH 8/14/09 Requested by SFMTA**
- N. ESTABLISH - NO RIGHT TURN - Harrison Street, westbound at Essex Street. **PH 8/14/09 Requested by SFMTA**
- O. REVOKE - BUS STOP - Main Street, east side, from Howard Street to 140 feet southerly (140-foot zone for Golden Gate Transit). **PH 8/14/09 Requested by SFMTA**
- P. ESTABLISH - METERED MOTORCYCLE PARKING - Main Street, east side, from Howard Street to 140 feet southerly (establishes 39 motorcycle spaces). **PH 8/14/09 Requested by SFMTA**
- Q. ESTABLISH - BLUE ZONE AND ESTABLISH - RED ZONE – 500 Buena Vista Avenue West, east side, across from Upper Terrace [22-foot blue zone and a 25-foot red (fire access) zone, exact locations to be determined when construction is complete]. **PH 8/21/09 Requested by DPW**
- R. REVOKE – BLUE ZONE – 2222 Broadway Street, north side, from 180 feet to 200 feet west of Webster Street (20-foot zone). **PH 8/21/09 Requested by Sacred Heart School**
- S. ESTABLISH – BLUE ZONE – 2222 Broadway Street, north side, from 13 feet westerly of the East Property Line to 5 feet easterly of the East Property Line of 2288 Broadway Street (18-foot zone); and 2222 Broadway Street, north side, from 126 feet to 151 feet east of Fillmore Street (25-foot zone). **PH 8/21/09 Requested by Sacred Heart School**

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 - NO TURN ON RED (during NBLT PHASE ONLY) - Shrader Street, southbound, at Fell Street. (This turn restriction will be implemented in combination with a traffic signal modification to install an extinguishable NRT sign for southbound Shrader Street.)
- B. ESTABLISH - STOP SIGN - Benton Avenue at Andover Street, stopping the stem of this uncontrolled T-intersection; and Hattie Street at 18th Street, stopping the stem of this uncontrolled T-intersection.
- C. ESTABLISH - TOW-AWAY, NO PARKING ANYTIME - Phelan Avenue, east side, from Cloud Circle (north) to 108 feet northerly.
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- E. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - 15th Street, north side, from 18 feet east of Minna Street to 71 feet easterly (53-foot zone for 7 foot wide bulb-out); 15th Street, south side, from Capp Street to 21 feet westerly (20-foot zone for 6-foot wide bulb-out); 15th Street, south side, from Capp Street to 21 feet easterly (21-foot zone for 7-foot wide bulb-out); Capp Street, west side, from 15th Street to 25 feet southerly (25-foot zone for 10-foot wide bulb-out); and Capp Street, east side, from 15th Street to 37 feet southerly (37-foot zone for 6-foot wide bulb-out).
- F. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - Balboa Street, south side, from 37th Avenue to 60 feet westerly (60-foot zone for 6-foot wide bulb-out).
- G. ESTABLISH - RIGHT TURN ONLY - Essex Street, northbound at Folsom Street.
- H. ESTABLISH - NO LEFT TURN - Essex Street, southbound at Harrison Street; and Folsom Street, westbound at Main Street.
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- R. REVOKE – BLUE ZONE – 2222 Broadway Street, north side, from 180 feet to 200 feet west of Webster Street (20-foot zone).
- S. ESTABLISH – BLUE ZONE – 2222 Broadway Street, north side, from 13 feet westerly of the East Property Line to 5 feet easterly of the East Property Line of 2288 Broadway Street (18-foot zone); and 2222 Broadway Street, north side, from 126 feet to 151 feet east of Fillmore Street (25-foot zone).

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors, upon recommendation of the Executive Director/CEO and the Director of 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

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency (1) to acknowledge and adhere to procedures and conditions set forth by the Metropolitan Transportation Commission for allocation of Regional Measure 2 (RM-2) funds; and (2) to accept and expend \$2,351,818 of RM-2 funds (1) to install and procure new Automatic Fare Collection equipment that will integrate with TransLink® and (2) to provide associated support services.

SUMMARY:

- On March 2, 2004, Bay Area voters passed Regional Measure 2 (RM-2), raising the toll on the seven State-owned toll bridges in the San Francisco Bay Area by \$1.00, effective July 1, 2004. Under the Regional Traffic Relief Plan, this extra dollar provides transit operating assistance and funding to specified capital projects within the region that reduce congestion or make improvements to travel in the toll bridge corridors.
- The RM-2 program provides funding for the TransLink® program, specifically to integrate the TransLink® system with transit operators' fare collection equipment and expansion of the system to new transit services such as ferries.
- The San Francisco Municipal Transportation Agency (SFMTA) has applied for \$2,351,818 in RM-2 funds to engage in tasks necessary to complete the rollout of TransLink®, as well as coordinate and assist in the procurement of ticket vending machine and faregates.
- As the transportation planning, coordinating and financing agency of the nine-county Bay Area, the Metropolitan Transportation Commission (MTC) allocates RM-2 funds. MTC has adopted procedures and conditions that must be acknowledged and adhered to by recipients of RM-2 funds.
- This action authorizes the SFMTA, through its Executive Director/CEO (or his designee), to acknowledge and adhere to the procedures and conditions established by the MTC in regard to the allocation of RM-2 funds as detailed in the attached resolution. Also, this action authorizes the SFMTA to accept and expend the allocation of \$2,351,818 in RM-2 funds to install and procure new Automatic Fare Collection equipment that will integrate with TransLink®.

ENCLOSURES:

1. SFMTAB Resolution
2. Application: Initial Project Report and Cash Flow Plan
3. Opinion of Legal Counsel for Application

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

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

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

The SFMTA Board approval of this resolution would authorize the SFMTA to approve and adhere to procedures and conditions set forth by the MTC in regard to the SFMTA receiving an allocation of RM-2 funds. Also, SFMTA Board approval of this resolution would authorize the SFMTA, through its Executive Director/CEO, to accept and expend \$2,351,818 of RM-2 funds (1) to install and procure new Automatic Fare Collection equipment that will integrate with TransLink® and (2) to provide associated support services, for the purposes and amount included in the project application.

GOAL

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

- Goal 1 – Customer Focus: To provide safe, accessible, reliable, clean and environmentally sustainable service.

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

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

Objective 4.1 – Increase revenue by 20% or more by 2012 from improving collections and identifying new sources.

DESCRIPTION

On March 2, 2004, voters in San Francisco, Alameda, Contra Costa, Marin, San Mateo, Santa Clara and Solano Counties cumulatively passed Regional Measure 2 (RM-2), which will raise an estimated \$125 million each year to implement the Regional Traffic Relief Plan. The Regional Traffic Relief Plan will provide transit operating assistance and funding for specified capital projects within the region that reduce congestion or make improvements to travel in the toll bridge corridors. Funding for the Regional Traffic Relief Plan derives from a \$1.00 increase, effective July 1, 2004, in tolls on the region's seven State-owned toll bridges. As the transportation planning, coordinating and financing agency of the nine-county Bay Area, the Metropolitan Transportation Commission (MTC) allocates RM-2 funds.

The RM-2 program provides funding for the TransLink® program, including funds to integrate the TransLink® system with transit operators' fare collection equipment, Phase 2 enhancements, and expansion of the system to new transit services such as ferries and express buses. The SFMTA has applied for \$2,351,818 to install and procure new Automatic Fare Collection equipment that will integrate with TransLink® and to provide associated support services, for the purposes and amount included in the project application.

In lieu of a separate funding agreement, MTC expects the SFMTA, through its governing board, to certify that the agency acknowledges and will adhere to the following conditions with respect to the project:

- compliance with provisions of MTC's RM-2 Policy Guidance (MTC Resolution No. 3636);
- consistency with the Regional Transportation Plan;
- SFMTA has taken into consideration the time necessary to obtain applicable environmental clearance and permitting approval for the project in requesting RM-2 funding;
- the RM-2 phase of the project is fully funded based on programmed and planned funding allocations, and results in an operable and useable segment;
- the enclosed Initial Project Report (IPR), which is the SFMTA's application document to MTC that describes the project and includes a detailed financial plan, has been approved by the SFMTA;
- approval of the cash flow plan for the project;
- SFMTA has adequate staffing resources to complete the project within the schedule set forth in the IPR;
- the project and purpose for which RM-2 funds are being requested are in compliance with applicable environmental requirements and regulations;
- the City and County of San Francisco, through the SFMTA, indemnifies and holds harmless MTC and its representatives against all claims, demands, liability, losses and expenses in connection with the allocation of RM-2 funds;
- any revenues or profits from any non-governmental use of property shall be used for public transportation services for which the project was initially approved;
- assets purchased with RM-2 funds shall be used for public transportation uses as intended; and
- the SFMTA will post signs at construction sites as applicable stating that the project is funded with RM-2 funds.

In conjunction with the IPR, which must be submitted to the MTC, also attached is the required Opinion of Counsel for the project, which states that (1) the SFMTA is an eligible implementing agency of projects in the RM-2 Regional Traffic Relief Plan; (2) the SFMTA is authorized to submit an allocation request for RM-2 funding; (3) no legal impediment exists that would preclude the SFMTA from making allocation requests for RM-2 funding; and (4) no pending or threatened litigation exists that might adversely affect the project or the ability of the SFMTA to carry out the project.

ALTERNATIVES CONSIDERED

Not applicable.

FUNDING IMPACT

The capital funds for this project are from:

Automatic Fare Collection Equipment Funding Plan

Funding Source	Total
Federal Funding	
Section 5307CA-90-Y245	\$1,149,057
Section 5309-FG CA-03-0673-01	\$1,745,386
Section 5307 CA-90-Y348	\$2,044,907
Section 5309-FG CA-03-0708	\$4,181,593
Section 5309-FG CA-05-0200	\$2,882,375
Section 5307 CA-90-Y624	\$700,000
Section 5309-FG (2009)	\$7,500,000
Section 5309-FG (2010)	\$7,500,000
ARRA Economic Stimulus Funding (2009)	\$11,000,000
Subtotal Federal Funds	\$38,703,318
Local Funding	
AB 664 MTAB Res. 05-217	\$511,227
MTF Operating Funds	\$48,000
FY07/08 I-Bond (PTMISEA)	\$1,000,000
RM-2 (request)	\$2,351,818
RM-2 (previously awarded)	\$380,000
Prop K - Phase 1 EP16 (2010)	\$3,060,000
Prop K - Phase 1 EP22 (2010)	\$62,048
Subtotal Local Funds	\$7,413,093
Total	\$46,116,411

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

RECOMMENDATION

The SFMTA Board approval of this resolution would authorize the SFMTA to approve and adhere to procedures and conditions set forth by the MTC in regard to the SFMTA receiving an allocation of RM-2 funds. Also, the SFMTA Board approval of this resolution would authorize the SFMTA, through its Executive Director/CEO, to accept and expend \$2,351,818 of RM-2 funds (1) to install and procure new Automatic Fare Collection equipment that will integrate with TransLink® and (2) to provide associated support services, for the purposes and amount included in the project application.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SB 916 (Chapter 715, Statutes 2004), commonly referred to as Regional Measure 2 (RM-2), identified projects eligible to receive funding under the Regional Traffic Relief Plan; and

WHEREAS, The Metropolitan Transportation Commission (MTC) is responsible for funding projects eligible for RM-2 funds, pursuant to Streets and Highways Code Section 30914(c) and (d); and

WHEREAS, The MTC has established a process whereby eligible transportation project sponsors may submit allocation requests for RM-2 funding; and

WHEREAS, Allocations to MTC must be submitted consistent with procedures and conditions as outlined in RM-2 Policy and Procedures; and

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) is an eligible implementing agency of transportation project(s) in the RM-2 Regional Traffic Relief Plan; and

WHEREAS, The TransLink® Program is eligible for consideration in the Regional Traffic Relief Plan of RM-2, as identified in California Streets and Highway Code Section 30914(c) and 30914.5(e); and

WHEREAS, The RM-2 allocation request, contained in the Initial Project Report (IPR) submitted for the project and incorporated by reference herein as though set forth at length, lists the project, purpose, schedule, budget, expenditure and cash flow plan for which the SFMTA is requesting that the MTC allocate RM-2 funds; and

WHEREAS, The application for RM-2 funds includes the certification by legal counsel of SFMTA of assurances required for the allocation of funds by the MTC; and

WHEREAS, Under Charter Section 8A.102(b)12, the SFMTA has exclusive authority to apply for, accept and expend federal, state, or other grants for Agency purposes; now, therefore, be it

RESOLVED, That the SFMTA is authorized to accept and expend \$2,351,818 of RM-2 funds to install and procure new Automatic Fare Collection equipment that will integrate with TransLink® and provide associated support services, for the purposes and amount indicated in the project application submitted with this resolution; and, be it further

RESOLVED, That the SFMTA agrees to comply with the provisions of the MTC's RM-2 Policy Guidance (MTC Resolution No. 3636); and be it further

RESOLVED, That the SFMTA certifies that the project is consistent with the Regional

Transportation Plan (RTP); and be it further

RESOLVED, That the year of funding for any design, right-of-way and/or construction phases has taken into consideration the time necessary to obtain environmental clearance and permitting approval for the project; and be it further

RESOLVED, That the RM-2 phase or segment is fully funded, based on programmed and planned funding allocations, and will result in an operable and useable segment; and be it further

RESOLVED, That the SFMTA Board of Directors approves the IPR submitted with this resolution; and be it further

RESOLVED, That the SFMTA Board of Directors approves the cash flow plan submitted with this resolution; and be it further

RESOLVED, That the SFMTA has reviewed the project needs and has adequate staffing resources to deliver and complete the project within the schedule set forth in the IPR submitted with this resolution; and be it further

RESOLVED, That the SFMTA Board of Directors certifies that the project and purpose for which RM-2 funds are being requested is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), and with the State Environmental Impact Report Guidelines (14 California Code of Regulations Section 15000 et seq.) and, if relevant, the National Environmental Policy Act (NEPA), 42 USC Section 4-1 et. seq., and the applicable regulations thereunder; and be it further

RESOLVED, That the City and County of San Francisco, through the SFMTA, indemnifies and holds harmless the MTC, its Commissioners, representatives, agents, and employees from and against all claims, injury, suits, demands, liability, losses, damages, and expenses, whether direct or indirect (including any and all costs and expenses in connection therewith), incurred by reason of any act or failure to act of the SFMTA, its officers, employees or agents, or subcontractors or any of them in connection with its performance of services under this allocation of RM-2 funds. In addition to any other remedy authorized by law, so much of the funding due under this allocation of RM-2 funds, as shall reasonably be considered necessary by the MTC, may be retained until disposition has been made of any claim for damages; and be it further

RESOLVED, If any revenues or profits from any non-governmental use of property (or project) are collected, the SFMTA shall use those revenues or profits exclusively for the public transportation services for which the project(s) was initially approved, either for capital improvements or maintenance and operational costs; otherwise, the MTC is entitled to a proportionate share equal to the MTC's percentage participation in the project(s); and be it further

RESOLVED, That assets purchased with RM-2 funds, including facilities and equipment, shall be used for the public transportation uses intended, and should said facilities and equipment cease to be operated or maintained for their intended public transportation purposes for its useful life, that the MTC shall

be entitled to a present day value refund or credit (at the MTC's option) based on the MTC's share of the Fair Market Value of the said facilities and equipment at the time the public transportation uses ceased, which shall be paid back to the MTC in the same proportion that RM-2 funds were originally used; and be it further

RESOLVED, That, if applicable, the SFMTA shall post on both ends of the construction site(s) at least two signs visible to the public stating that the project is funded with RM-2 Toll Revenues; and be it further

RESOLVED, That the SFMTA Board of Directors delegates to the Executive Director/CEO (or his designee) the authority to make non-substantive changes or minor amendments to the IPR as he/she deems appropriate; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO (or his designee) to furnish whatever additional information may be requested by the MTC in connection with this request; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO (or his designee) to execute any and all agreements necessary to complete the transfer of funds; and be it further

RESOLVED, That a copy of this resolution shall be transmitted to the MTC in conjunction with the filing of the SFMTA application referenced herein.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Regional Measure 2

Initial Project Report (IPR)

Project Title:

Automatic Fare Collection Program

RM2 Project No.

18.6

Allocation History:

Allocation No.	MTC Approval Date	Amount	Phase
#1	9/28/07	\$90,000	Construction
#2	9/28/07	\$290,000	Design (Pass-through to MTC)

Total: \$380,000

Current Allocation Request:

IPR Revision Date	Amount Being Requested	Phases Requested
8/27/09	\$2,351,818	Construction

I. OVERALL PROJECT INFORMATION

A. Project Sponsor / Co-sponsor(s) / Implementing Agency

San Francisco Municipal Transportation Agency (SFMTA)

B. Project Description (please provide details)

No Project Graphics to be sent electronically with This Application.

Installed in 1980, the SFMTA's current fare collection equipment at its nine Muni Metro Subway stations have exceeded their economic useful life and are technically obsolete. In addition, these fare gates are not able to handle the multi-operator TransLink® passes developed by the Metropolitan Transportation Commission (MTC). The SFMTA is requesting RM-2 grant funds to procure new Automatic Fare Collection equipment and support services that will integrate with the TransLink® fare collection system.

The project is composed of the following elements: procuring and installing approximately 98 faregates and 40 ticket vending machines; installing 15 agent control terminals to control new faregates; modifying existing SFMTA smartcard readers to read a new limited-use smartcard ticket, and making modifications to subway station agent booths and telecommunications infrastructure.

Funding will be used to support all aspects of the project, including procuring ticket vending machines; integrating the ticket vending machines with the new regional TransLink® Smartcard system; site preparation and infrastructure installation; procuring new faregates; and implementing the central data collection system.

The SFMTA recently entered into a Memorandum of Understanding (MOU) with the MTC for MTC to procure and install the new fare collection equipment and provide support services for the SFMTA to integrate with the TransLink® fare collection system. The MOU with MTC results in substantial cost savings over the SFMTA issuing a new procurement for fare collection equipment and will shorten the timeline for delivery and installation of the equipment. The MTC will complete the above work by negotiating a change order to its existing TransLink® contract with Cubic Transportation Systems, Inc. Pursuant to the MOU, the SFMTA will assist with project management and construction and management of site preparation.

C. Project Purpose

This project will provide the following significant benefits:

- completes the SFMTA's rollout and implementation of the TransLink® smartcard program,
- improves the customer's regional transportation experience,
- ensures that the customer has ready access to functioning faregates and ticket vending machines,
- helps SFMTA meet its strategic goals of improving customer accessibility,

- leverages technology to improve service and efficiency,
- reduces costs associated with maintenance and repair,
- allows the SFMTA to conform to industry standards by eliminating cash-handling at subway faregates, and
- ensures the SFMTA's faregates are ADA-compliant.

D. Impediments to Project Completion

The SFMTA anticipates no impediments to project completion.

E. Operability

The SFMTA has appropriated \$2,491,688 for TransLink® in the FY 2009-2010 budget. Furthermore, the MTC has allocated \$2,327,504 in regional funding to offset SFMTA TransLink® operating fees, and \$23,917 of this amount has been expended as of April 2009.

II. PROJECT PHASE DESCRIPTION and STATUS

F. Environmental –

Does NEPA Apply: No

This project is categorically exempt as the purchase and installation of the fare collection equipment is located within the transit facility, with no significant impacts off site.

G. Design –

Detail design is 95% complete.

H. Right-of-Way Activities / Acquisition –

Not applicable.

I. Construction / Vehicle Acquisition -

Pursuant to the MOU between MTC and the SFMTA, the MTC will be responsible for procuring the automatic fare collection equipment, including fare gates, vending machines, back end/network and data access terminals, agency training services, and as-needed equipment, operations and maintenance support through its existing TransLink® contract with Cubic Transportation Systems. The SFMTA will assist with project management and construction and management of site preparation.

III. PROJECT BUDGET

J. Project Budget (Escalated to year of expenditure)

Phase	Total Amount - Escalated - (Thousands)
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	\$625
Design - Plans, Specifications and Estimates (PS&E)	\$6,801
Right-of-Way Activities /Acquisition (R/W)	-
Construction / Rolling Stock Acquisition (CON)	\$38,690
Total Project Budget (in thousands)	\$46,116

K. Project Budget (De-escalated to current year)

Phase	Total Amount - De-escalated - (Thousands)
Environmental Studies & Preliminary Eng (ENV / PE / PA&ED)	\$625
Design - Plans, Specifications and Estimates (PS&E)	\$6,801
Right-of-Way Activities /Acquisition (R/W)	-
Construction / Rolling Stock Acquisition (CON)	\$38,690
Total Project Budget (in thousands)	\$46,116

IV. OVERALL PROJECT SCHEDULE

	Planned Start Date	Planned Completion Date
Environmental Studies, Preliminary Eng. (ENV / PE / PA&ED)	12/13/04	10/31/08
Final Design - Plans, Specs. & Estimates (PS&E)	11/01/08	9/31/09
Right-of-Way Activities /Acquisition (R/W)	-	-
Construction (Begin – Open for Use) / Acquisition / Operating Service (CON)	10/1/09	3/31/12

V. ALLOCATION REQUEST INFORMATION

L. Detailed Description of Allocation Request

Amount being requested (in escalated dollars)	\$2,351,818
Project Phases being requested	Construction
Are there other fund sources involved in this phase?	Yes
Date of anticipated Implementing Agency Board approval the RM2 IPR Resolution for the allocation being requested	September 15, 2009
Month/year being requested for MTC Commission approval of allocation	October 2009

M. Status of Previous Allocations (if any)

The SFMTA received two previous allocations in September 2007:

- \$90,000 to coordinate MTA staff activities related to procurement of faregates and ticket vending machines.
- \$290,000 as pass-through funds to MTC for consultant services to facilitate TransLink® rollout and procurement of faregates and ticket vending machines.

N. Workplan

Workplan in Alternate Format Enclosed – No.

TASK NO.	Description	Deliverables	Preliminary Completion Date
1	Final Design Review	Final Design for AFC System	Fall 2009
2	Pilot/Test Installation	Test Installation at Pilot Station	Summer 2010
3	Complete Subway Installations	Installations Complete/Beneficial Use	Fall 2010
4	Complete System Acceptance	System has met all performance requiremts for Agency Acceptance	2011/2012

O. Impediments to Allocation Implementation

The SFMTA anticipates no impediments to project completion.

VI. RM-2 FUNDING INFORMATION

P. RM-2 Funding Expenditures for funds being allocated

The companion Microsoft Excel Project Funding Spreadsheet to this IPR is included.

Next Anticipated RM-2 Funding Allocation Request

VII. GOVERNING BOARD ACTION

Governing Board Resolution to be provided on or before: September 17, 2009

VIII. CONTACT / PREPARATION INFORMATION

Contact for Applicant's Agency

Name: Henry Kim

Phone: (415) 701-4307

Title: Project Manager

E-mail: henry.kim@sfmta.com

Address: 1 South Van Ness Avenue, 3rd Floor, San Francisco, CA 94103

Information on Person Preparing IPR

Name: Leda Young

Phone: (415) 701-4336

Title: Principal Grants Analyst

E-mail: leda.young@sfmta.com

Address: 1 South Van Ness Avenue, 8th Floor, San Francisco, CA 94103

Applicant Agency's Accounting Contact

Name: Fernando Urbano

Phone: (415) 701-4501

Title: Grants Accounting Manager

E-mail: fernando.urbano@sfmta.com

Address: 1 South Van Ness Avenue, 8th Floor, San Francisco, CA 94103

RM-2 Initial Project Report

TOTAL PROJECT FUNDING PLAN

(Amounts Escalated in Thousands)

Project Title:	Automatic Fare Collection Program	Project ID:	18.6
Agency:	San Francisco Municipal Transportation Agency	Plan Date:	8/27/2009
TOTAL PROJECT: COMMITTED + UNCOMMITTED+TO BE DETERMINED			

Fund Source	Phase	Prior	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future Committed	TOTAL
COMMITTED FUNDING PLAN (PROGRAMMED, ALLOCATED, APPROVED FUNDING)															
ARRA 5307 Federal Funds	CON						11,000								11,000
RM-2	PS&E/CON					90		2,352							2,442
RM-2	ENV/PS&E					290									290
5307 Federal Funds	CON		1,149	2,045		700									3,894
5309 Federal Funds	ENV/PS&E/CON		1,745	4,182	2,882		7,500	7,500							23,809
AB 664 Funds	ENV/PS&E/CON			511											511
I-Bonds	CON					1,000									1,000
Prop K	CON							3,122							3,122
MTF Operating Funds	ENV/PS&E		48												48
UNCOMMITTED FUNDING PLAN (NON-PROGRAMMED/ALLOCATED, BUT PLANNED FUNDING)															
FUNDING SOURCE STILL TO BE DETERMINED (LIST POTENTIAL SOURCES THAT WILL LIKELY BE PURSUED)															
Fund Source	Phase	Prior	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future Committed	TOTAL
TOTAL PROJECT: COMMITTED + UNCOMMITTED + TBD FUNDING TOTAL															
Total			2,942	6,738	2,882	2,080	18,500	12,974							46,116

Comments:

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Enter all funding for the project – both Committed and Uncommitted. Enter amounts in thousands and escalated to the year of funding

Eligible Phases: ENV (or PA&ED), PS&E, R/W or CON. For planning activates use ENV. For Vehicles, Equipment or Operating use CON. OK to use CT R/W SUP or CT CON SUP for Caltrans support, but not necessary (optional).

DEFINED SEGMENT FUNDING PLAN

(Amounts Escalated in Thousands)

Project Title:	Automatic Fare Collection Program	Project ID:	18.6
Agency:	San Francisco Municipal Transportation Agency	Plan Date:	08/27/09
RM-2 DELIVERABLE SEGMENT - Fully Funded Phase or Segment of Total Project			

Fund Source	Phase	Prior	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future Committed	TOTAL
Fund Source	Phase	Prior	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future Committed	TOTAL
RM-2 SEGMENT FUNDING TOTAL															
Total															

Comments:

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(Complete this spreadsheet only if RM-2 funds are dedicated to deliver a specific phase or deliverable segment of the overall total project)

Enter funds on the RM-2 Deliverable Phase or Segment, ONLY if the RM-2 Phase or Segment is different from the overall total project. The RM-2 Segment must be Fully Funded and result in an operable or useable segment.

Enter only funds **Committed** to the RM-2 Funded Segment and only if different from Total Project. Enter amounts in thousands and escalated to the year of funding. DO NOT enter uncommitted funding - The RM-2 Phase or Segment must be fully funded.

Eligible Phases: ENV (or PA&ED), PS&E, R/W or CON. For planning activates use ENV. For Vehicles, Equipment or Operating use CON. OK to use CT R/W SUP or CT CON SUP for Caltrans support, but not necessary (optional).

EXPENDITURES TO-DATE BY PHASE AND FUND SOURCES

Phase	Fund Source	Date of Last Expenditure	Amount Expended to date (Thousands)	Available Balance Remaining (Thousands)
ENV / PA&ED/PS&E	RM-2		380	0
	5309 Federal Funds		740	1000
	AB664 Funds		137	403
	MTF Operating		48	0
R/W				
CON / Operating	RM-2, Federal Funds, Prop K, I-Bonds			43407
Total to date (in thousands)			1305	44810

Comments:

Includes funds that have not yet been awarded, but are programmed.

As required by RM-2 Legislation, provide funds expended to date for the total project. Provide both expenditure by Fund Source and Expenditure by Phase, with the date of the last expenditure, and any available balance remaining to be expended.

Project ID: 18.6
Date: 8/27/2009

RM-2 FUNDING CASH FLOW PLAN For Allocation
(RM-2 Allocation Funding Only)
(Amounts Escalated in Thousands)

Project Title:	Automatic Fare Collection Program	Project ID:	18.6
Agency:	San Francisco Municipal Transportation Agency	Plan Date:	08/27/09
RM-2 CASH FLOW PLAN			

RM-2 Expenditures		2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Future	TOTAL
RM-2						290	2,442							2,732
RM-2 CASH FLOW PLAN TOTAL														
Total						290	2,442							2,732

Comments:

Provide the expected RM-2 expenditures – by phase and year. (This is the amount of the allocation needed for that fiscal year to cover expenditures through June 30th of that fiscal year).

Enter RM-2 amounts in thousands and escalated to the year of funding. The total amount cannot exceed the amount identified in the RM-2 legislation.

Eligible Phases: ENV (or PA&ED), PS&E, R/W or CON. For planning activities use ENV. For Vehicles, Equipment or Operating use CON. OK to use CT R/W SUP or CT CON SUP for Caltrans support, but not necessary (optional).

Estimated Budget Plan

Please complete this form based the proposed allocation for your project. The scope should be consistent with the funding you are requesting the MTC allocate. Projects with complementary fund sources, should list the estimated cost of the entire work scope. Note that this information may not only represent the RM2 funding. A separate EBP needs to be completed for each allocation request or each phase of such request.

TITLE OF PROJECT Automatic Fare Collection Program	RM2 Legislation ID: 18.6
NAME AND ADDRESS OF IMPLEMENTING AGENCY San Francisco Municipal Transportation Agency 1 South Van Ness Avenue San Francisco, CA 94103	

DETAIL DESCRIPTION	ESTIMATED HOURS	BASE RATE	TOTAL ESTIMATED COST (Dollars)
1. DIRECT LABOR of Implementing and Support Agency			
Project Management	7175	70	502,250
Project Engineering and Construction Support	15708	60	942,480
Construction Management	12146	60	728,760
MTA O&M Construction Support	2272	70	159,040
TOTAL DIRECT LABOR			2,332,530

2. DIRECT BENEFITS (Specify)	Benefit Rate	X BASE	Total
	45%	2,332,530	
TOTAL BENEFIT			1,049,639

3. DIRECT CAPITAL COSTS (include construction, right-of-way, or vehicle acquisition)	Unit (if applicable)	Cost per Unit (\$)	Total
Equipment Procurement (e.g. faregates and TVMs)			26,000,000
Equipment and O&M Options (e.g. vendor O&M support)			3,838,900
Site Preparation (e.g. electrical and telecommunications infrastructure)			3,250,000
TOTAL DIRECT CAPITAL COSTS			33,088,900

4. CONSULTANTS (Identify purpose and or consultant)	Unit (if applicable)	Cost per Unit (\$)	Total
Booz Allen (Consortium SME)			1,690,000
MTC Contract Administration and Support			1,560,125
BART Support and Construction Management			1,332,625
Marketing and Distribution (TBD)			1,300,000
TransLink Support Services			380,000
TOTAL CONSULTANTS			6,262,750

5. INDIRECT COSTS (Specify - explain costs, if any)	Overhead Rate	X BASE + Benefits	Total
Reimbursable Overhead, capped at 50%	50%	3,382,169	1,691,084
MTA Overhead Costs – 50% Remaining Balance	50%	3,382,169	1,691,084
TOTAL OTHER DIRECT COSTS			3,382,169
6. TOTAL ESTIMATED COST			46,115,987

Comments:

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Date:

8/27/2009

August 27, 2009

Metropolitan Transportation Commission
Joseph P. Bort MetroCenter
101 Eighth Street
Oakland, CA 94607-4700

Re: Eligibility for Regional Measure 2 funds

To Whom It May Concern:

This communication will serve as the requisite opinion of counsel in connection with the allocation to the Municipal Transportation Agency for funding from Regional Measure 2 Regional Traffic Relief Plan made available pursuant to Streets and Highways Code Section 30914(c) and 30914.5(e) to install and procure new Automatic Fare Collection equipment that will integrate with TransLink® and to provide associated support services.

1. The Municipal Transportation Agency is an eligible implementing agency for the Regional Measure 2 funding.
2. The Municipal Transportation Agency is authorized to submit an allocation request for Regional Measure 2 funding to engage in tasks necessary to install and procure new Automatic Fare Collection equipment that will integrate with TransLink® and to provide associated support services.
3. I have reviewed the pertinent state laws and I am of the opinion that there is no legal impediment to the Municipal Transportation Agency making an application for Regional Measure 2 funds. Furthermore, as a result of my examinations, I find that there is no pending or threatened litigation that might in any way adversely affect the proposed project, or the ability of the Municipal Transportation Agency to carry out such project.

Very truly yours,

DENNIS J. HERRERA
City Attorney

Robin M. Reitzes
Deputy City Attorney

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Requesting authorization to award San Francisco Municipal Transportation Agency Contract CS-155-1, Professional Architectural and Engineering Services for the Final Design and Construction of the Central Subway Project – Design Package #1 Utilities Relocation and Tunnel Design to PB/Telamon, a joint venture of Parsons Brinckerhoff and Telamon Engineering Consultants, Inc. for an amount not to exceed \$6,500,000 for a term not to exceed five years with an option to extend the term an additional four years.

SUMMARY:

- The selected consultant will provide necessary professional Architectural and Engineering Services required for Design Package #1 to complete Central Subway Utilities Relocation and Central Subway Tunnel Designs.
- SFMTA Board of Directors adopted Resolution No. 09-055 on April 7, 2009 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP), evaluate proposals, select the highest ranking proposal, and to negotiate a contract for Contract No. CS-155, Professional Architectural and Engineering Services for the Final Design and Construction Phases of Central Subway.
- SFMTA advertised the RFP on April 10, 2009 and completed the contract negotiations with the highest ranked firm in September 2009.
- The base contract for Final Design Package #1 for the final design of the tunnels and utilities relocation, construction support and other related services within the initial five year term is \$5,795,000.
- Options to provide additional services have been negotiated to an amount not to exceed \$705,000.

ENCLOSURES:

1. SFMTA Board of Directors Resolution
2. Project Budget & Financial Plan
3. List of Subcontractors
4. Contract

APPROVALS:

DATE:

DEPUTY OF DIVISION

PREPARING ITEM: _____

FINANCE (IF APPLICABLE): _____

EXECUTIVE DIRECTOR/CEO: _____

SECRETARY: _____

ADOPTED RESOLUTION TO BE

RETURNED TO: Gigi Pabros

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

Requesting authorization to award San Francisco Municipal Transportation Agency Contract CS-155-1, Professional Architectural and Engineering Services for the Final Design and Construction of the Central Subway Project – Design Package #1 Utilities Relocation and Tunnel Design to PB/ Telamon, a joint venture of Parsons Brinckerhoff and Telamon Engineering Consultants, Inc. for an amount not to exceed \$6,500,000 for a term not to exceed five years with an option to extend the term an additional four years.

GOAL

Contract No. CS-155-1 will help further 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 1.3 Reduce emissions as required by SFMTA Clean Air Plan

Objective 1.4 Improve accessibility across transit service

Objective 1.5 Increase percentage of trip using more sustainable modes

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

Objective 2.2 Ensure efficient transit connectivity and span of service

Objective 2.4 Reduce congestion through major corridors

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

Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups

Objective 3.2 Pursue internal and external customer satisfaction through proactive outreach and heightened communication conduits

Objective 3.3 Provide a working environment that fosters a high standard of performance, recognition for contributions, innovations, mutual respect and a healthy quality of life

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

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

Objective 4.2 Ensure efficient and effective use of resources

DESCRIPTION

Background:

San Francisco Municipal Transportation Agency's (SFMTA) Third Street Light Rail Transit (LRT) Project is the most significant capital investment in generations for the seventh largest transit system in the nation. Phase 1 of the 6.9-mile two-phase project, began revenue service in

PAGE 3.

April 2007, restoring light rail service to the heavily transit-dependent Third Street corridor in eastern San Francisco for the first time in 50 years.

The Central Subway Project, Phase 2 of the Third Street Light Rail Transit Project, will provide rail service to the Financial District and Chinatown, the most densely developed areas of San Francisco. The new light rail line will serve regional destinations, such as Union Square, Moscone Convention Center, Yerba Buena, and AT&T Park, as well as connect directly to BART and Caltrain, the Bay Area's two largest regional-commuter rail services.

The primary purpose of the Third Street LRT Project is to accommodate existing and future transit ridership in the corridor with greater reliability, comfort and speed. By 2030, the San Francisco Planning Department projects a 26% percent increase in overall corridor population and a 61% percent increase in corridor employment. These increases are greater than the increases anticipated for the City as a whole. The Central Subway will serve both the mobility needs of existing land uses (with 56,000 riders projected for 2016) and future development (with 78,000 riders projected for 2030).

The Third Street LRT Project will significantly improve travel times, reducing a current 46-minute bus trip between the southern terminus in Visitacion Valley and the northern terminus in Chinatown by 15 minutes to a more reasonable 31-minute LRT ride. For riders using only the Central Subway portion of the project, travel times will be reduced to less than half of current travel times, from a 20-minute bus ride to a 7-minute subway ride between the Caltrain terminal and Chinatown. The Central Subway will allow transit to bypass the congestion faced by traffic and buses on city streets.

Critical populations will be well served by the project, bringing improved service to low-income, minority and no-car households, decreasing travel time and improving reliability. Over half of the benefits for those who use the Central Subway are expected to accrue to low-income people, who comprise 19% of the total households along the Third Street alignment. The 2000 census shows that 54% of the households along the entire corridor do not have access to a vehicle, and within the Central Subway portion of the alignment, 68% of the households are transit-dependent.

The Central Subway Project is the second phase of the Third Street Light Rail Project. Both phases of the project were initially evaluated under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), in an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) that was certified in 1998. On January 19, 1999, the Public Transportation Commission approved Resolution No. 99-009, which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the 1998 FEIS/FEIR and Mitigation Monitoring Report. The Federal Transit Administration (FTA) issued a Record of Decision (ROD) for the Initial Operating Segment (IOS) of the Project (the Third Street LRT Phase 1) on March 16, 1999, under the National Environmental Protection Act (NEPA), and authorized the SFMTA to enter into final design for the initial operating segment (IOS) in the early half of 2000. Revenue operation of Phase 1 of the Third Street Light Rail, extending from Bayshore Boulevard to Fourth and King Streets, began in April 2007.

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SFMTA Board of Directors adopted Resolution No. 02-144 on November 19, 2002, which authorized the Director of Transportation to execute Contract No. CS-138 with the joint venture of Parsons Brinckerhoff Quade & Douglas and PGH Wong for professional engineering and other support services for the Central Subway segment of the Project ("PB/Wong Agreement"), in an amount not to exceed \$29,800,000. The Board of Supervisors adopted Resolution No. 03-58 on January 27, 2003, which authorized the Director of Transportation to execute the PB/Wong Agreement. The PB/Wong Agreement included services to prepare a SEIS/SEIR for the Project.

On June 7, 2005, the SFMTA Board of Directors adopted Resolution No. 05-087 on June 7, 2005, which selected the Fourth/Stockton option as the Locally Preferred Alternative (LPA) to be carried forward in the SEIS/SEIR. The intent of the SEIS/SEIR was to update environmental conditions in the Central Subway study area and to evaluate alternatives to the project, including an enhancement to the alignment discussed in the EIS/EIR (Alternative 2) and the Fourth/Stockton Alignment, LPA (Alternative 3A). A Notice of Preparation was issued in June 2005 and a public scoping meeting was held.

In response to comments received during the public scoping process and preliminary cost estimates prepared for the project, SFMTA made refinements to the Fourth/Stockton Alignment and identifies a Fourth/Stockton, Modified LPA (Alternative 3B) for evaluation in the SEIS/SEIR.

The Draft Supplemental EIS/EIR was issued on October 17, 2007, for a 55-day public review period. During the public comment period, a series of three publicized community meetings were held in the Chinatown, Union Square and South of Market areas to provide information to the public about the Draft SEIS/SEIR released for public review. These informational meetings were well attended and the public was provided with opportunities to view renderings and talk with project staff about the Project and the environmental process. The San Francisco Planning Department conducted a public hearing on the Supplemental EIS/EIR on November 15, 2007.

The public comment period was closed on December 10, 2007. SFMTA received 39 comment letters, and 23 people, representing 20 organizations, provided comments at the Planning Commission public hearing held on November 15, 2007. At the public hearing, 19 speakers expressed support for the project and one expressed opposition to the project. Of those responding during the public comment period, five (including the Recreation and Parks Department) expressed support specifically for Alternative 3B.

On February 19, 2008, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 08-029, selecting the Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street, as the Locally Preferred Alternative, authorizing the Executive Director/CEO to carry forward this selection in the Final SEIS/SEIR.

The San Francisco Planning Commission adopted Motion No. M-17668 on August 7, 2008 certifying completion of the Central Subway Final SEIR. The Planning Commission certified the SEIR as accurate, adequate and objective, reflecting the independent judgment of the Planning Commission.

PAGE 5.

On August 19, 2008, the SFMTA Board of Directors, adopted Resolution No. 08-150 adopting Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street and a construction variant to extend the tunnel another 2,000 feet north of Jackson Street, the CEQA Findings and Statement of Overriding Considerations for the SEIS/SEIR and the Mitigation Monitoring and Reporting Plan.

Environmental appeals were filed and heard by the Board of Supervisors on September 16, 2008. The Board of Supervisors voted unanimously to uphold the Environmental findings.

The Notice of Determination was filed on September 18, 2008 and the 30-day legal challenge period has expired without any legal challenges being filed. The notice for the Final SEIR appeared in the Federal Register on October 3, 2008 and the 30-day waiting period has elapsed. The FTA issued the Record of Decision announcing the completion of the Central Subway environmental process on November 16, 2008.

The Federal Transit Administration (FTA), the FTA Project Oversight Consultant (PMOC) and the SFMTA have jointly participated in four risk assessment workshops that resulted in the conformation of the Project schedule and budget, and provided for additional schedule and budget contingency.

Current Status:

The Central Subway design consists of a short portion of in-street surface light rail in the southern portion of the system before transitioning into subway operation for most of the alignment. Twin bore tunnels are proposed for the subway with three subway stations serving the Moscone/Yerba Buena, Union Square/Market Street and Chinatown areas. The Union Square/Market Street Station will interconnect with the existing BART/Muni Powell Street Station. A deep tunneling approach using tunnel boring machines (TBMs) is proposed to reduce surface disruption during construction, to create a more direct alignment, and to shorten the construction period. The Central Subway tunnels will pass under the existing BART/Muni Market Street subway tunnels with the rail over 100 feet below the ground surface. Most of the alignment will be located under existing street right-of-way with limited required underground easements. The stations will have center-platforms with passenger end-loading and are designed to accommodate high-floor two-car trains. Whenever feasible, off-street properties have been identified for the primary station access with transit oriented development opportunities at the Moscone/Yerba Buena and Chinatown Stations.

Construction methods consist of TBM construction of the running tunnels, which will pass through differing geological formations, including bay mud, alluvium, Colma formation, and Franciscan bedrock. Subway station construction methods will vary. The Moscone/Yerba Buena Station will be constructed using traditional top-down cut-and-cover construction. The Union Square/Market Street Station is located in a very constricted area and will most likely be constructed using a combination of cut and cover and mined sequential excavation methods. Chinatown Station, also in a very constricted area, will be constructed using mined sequential excavation.

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The project has completed the preliminary engineering work and is anticipating FTA approval to enter into Final Design in October 2009. Construction is scheduled to begin in 2010. The start of revenue operation is scheduled for 2018.

Purpose and Scope of Contract:

The anticipated complexity of the Central Subway, including tunneling and/or cut-and-cover construction, in proximity to sensitive urban structures and facilities, poses significant coordination, management, design and construction challenges to the city. The city does not have the specialized expertise or staff resources to perform all design services necessary for a project of this size and intricacy. Given the substantial capital investment in the Central Subway and the target project completion schedule of 2018, it is in the best interest of the agency to engage a qualified design consultant with specific experience and expertise in transit, tunneling, architectural, engineering, and other professional services for the execution of the Central Subway phase of the Third Street LRT Project.

The purpose of this contract is to secure engineering and other services during design and construction. Consultant's services will include, but are not limited to, the following:

- overall design management
- prepare and implement an overall Final Design strategic execution plan;
- verify/validate existing preliminary engineering design
- verify cost and schedule for each construction contract;
- complete the final design for the tunnels and utility relocation;
- prepare construction contract documents for
 - utility relocation contracts
 - tunneling contract
- furnish professional engineering services as necessary to complete final design
- provide engineering support during construction;
- provide as-needed geotechnical engineering support during construction;
- review and respond to technical submittal from contractors;
- review and respond to proposed changes;
- perform field visits and observations to verify design compliance and/or assist in resolving issues;
- witness and approve factory testing of manufactured equipment and materials;
- update design drawings as a result of responses to request for information, submittals and changes;
- assemble operations and maintenance manuals;
- prepare conformed plans and specifications upon contract completion
- establish and implement a quality control program with procedures and oversight in performing the services to complete the final design;

The contract provides for an initial term of five years for engineering services as described above. The SFMTA may elect to extend the contract for a second term of up to four years for continued engineering and construction support services.

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For this contract, the prime consultant, the consultant's key personnel and all architectural/engineering sub-consultants will be precluded from participating in any subsequent RFPs for project controls, construction and procurement services for the Central Subway Project.

Selection Process:

SFMTA Board of Directors adopted Resolution No. 09-055 on April 7, 2009 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP), receive and evaluate proposals, select the highest ranking proposal, and negotiate a contract for Contract No. CS-155, Professional Architectural and Engineering Services for the Final Design and Construction Phases of Central Subway.

The RFP was advertised on April 10, 2009. SFMTA received substantial input from the community on the RFP after it was issued. Upon a thorough analysis of the required services and in order to maximize SBE participation, the RFP was later revised through RFP addenda to allow for three separate contracts. The required services were divided into three separate design packages and proposers were invited to propose on each package independently. The three design packages were Design Package #1 – Utilities Relocation and Tunnel Design, Design Package #2 – Stations Design, and Design Package #3 – Systems. Two pre-proposal conferences were held on April 28, 2009 and June 11, 2009. On July 21, 2009, four proposers submitted a total of five proposals for the three design packages. One proposal was received PB/Telamon, a joint venture of Parsons Brinckerhoff and Telamon for Design Package #1 – Utilities Relocation and Tunnel Design contract. The proposal was evaluated by a technical selection committee comprised of members from various SFMTA divisions, other City Departments and BART. PB/Telamon was selected as the qualified proposer for Design Package #1.

Negotiations with PB/Telamon have been underway since August 21, 2009. The negotiations have focused on ensuring that the SFMTA and City are obtaining high quality and cost-effective engineering services that will help ensure that the public receives a quality transit system, on time and within budget. The consultant team had provided a proposed budget that responded to their understanding of the level of effort necessary to satisfy the scope provided by SFMTA. The negotiations have focused on clarifying scope of work and determining reasonable compensation.

As a result of these negotiations, SFMTA management concludes that the award of the contract to PB/Telamon for Design Package #1 will support SFMTA goals and objectives in the delivery of the Central Subway Project by: maintaining customer focus, fostering a high standard of performance and quality, and ensuring efficient and effective use of public resources.

SFMTA successfully negotiated a contract with the Consultant in September 2009 for a total amount of \$6,500,000. The base contract for Final Design Package #1 (final design of the tunnels and utilities relocation) and construction support services within the initial five year term is \$5,795,000. Options to provide additional related services have been negotiated to an amount not to exceed \$705,000.

The work breakdown (hours and Year of Expenditure (YOE) Cost) is as follows:

Task #	Title	Base Hours	Base YOE Cost \$	Option Hours	Options YOE Cost \$
1.0	Program Management and Control	3,880	427,032	1,080	118,865
2.0	Design and Project Integration	1,090	171,725	40	6,302
3.0	Geotechnical Investigations	2,640	451,996	0	0
4.0	Surveying and Right-Of-Way	1,310	194,668	0	0
5.0	Traffic Engineering	0	0	480	61,938
6.0	Utility Design Coordination	1,306	143,635	0	0
7.0	Drainage	80	9,535	0	0
8.0	Permits	0	0	200	55,911
9.0	Contract Specifications	2,422	384,657	0	0
10.0	Cost Estimate and Scheduling	680	135,125	0	0
11.0	Quality Control	780	161,732	180	37,323
12.0	Drawings and Documents	12,501	1,514,762	2,060	249,613
13.0	Construction Packaging and Schedules	400	58,937	0	0
14.0	Outreach Support	200	23,000	0	0
15.0	Bid Support Services	528	93,878	230	40,894
16.0	Design Services During Construction	8,378	1,257,146	300	45,016
Direct Labor Costs:		36,195	\$5,027,829	4,570	\$615,860
Fixed Fees			\$502,783		\$61,586
Other Direct Costs (Reimbursable Expenses)			\$264,388		\$27,553
Total:		36,195	\$5,795,000	4,570	\$705,000

Optional professional services identified under this agreement include planning, community outreach, construction support and management, systems project integration start-up, testing and commissioning.

All work to be performed and authorized by the SFMTA will be certified by the Controllers' Office prior to the issuance of the notice to proceed.

Optional work has been established to provide professional engineering and construction management support services for the duration of the Central Subway Program delivery. Optional services beyond the scope identified during the Phase 1 base list of services shall be authorized upon the approval of the Executive Director/CEO.

A list of Sub-consultants performing work under this contract is represented in Enclosure 3.

A copy of the Consultant Agreement including Exhibit A, Scope of Services, is attached as Enclosure 4. Other exhibits are not attached hereto but are available at the SFMTA Board Secretary's office for review.

The Contract Compliance Office has determined that PB/Telamon will meet the 30% SBE participation goal established for this contract.

PAGE 9.

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

ALTERNATIVES CONSIDERED

The City does not have the specialized expertise or staff resources to perform all design services necessary for a project of the size and complexity of the Central Subway. Given the substantial capital investment in the Central Subway and the target project completion schedule of 2018, it is in the best interest of the SFMTA to engage a qualified consultant with specific experience and expertise in transit tunnel engineering, construction management, and other professional services for the execution of the Central Subway phase of the Third Street Project.

FUNDING IMPACT

Consultant services, under this contract, are funded from federal, state and local sources. The Project Budget & Financial Plan is set forth in Enclosure 2.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

This contract is subject to approval by the Civil Service Commission.

RECOMMENDATION

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Executive Director to execute Contract CS-155-1, Professional Architectural and Engineering Services for the Final Design and Construction of the Central Subway Project – Utilities Relocation and Tunnel Design, with PB/Telamon for an amount not to exceed \$6,500,000 for a term not to exceed five years with an option to extend the term for an additional four years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Final Environmental Impact Statement/Environment Impact Report (Final EIS/EIR) for the two-phase Third Street Light Rail Project (the "Project") was completed in November 1998; and,

WHEREAS, The Public Transportation Commission adopted Resolution No. 99-009 on January 19, 1999, which adopted the environmental findings pursuant to the California Environmental Quality Act (CEQA) for the Project, including mitigation measures as set forth in the Project's Final Environmental Impact Report and Mitigation Monitoring Report; and,

WHEREAS, Design and construction of the 1.75-mile Central Subway ("Central Subway Project") is Phase 2 of the Third Street Light Rail Transit Project; and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) Board of Directors adopted Resolution No 05-087 on November 19, 2002, which authorized the Director of Transportation to execute Contract No. CS-138 with Parsons Brinkerhoff Quade and Douglas and PGH Wong (PB/Wong) for Professional Engineering and other support services for the Central Subway; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No 02-144 on June 7, 2005, which selected the Fourth Street alignment as the Locally Preferred Alternative for the Central Subway Project, which alternative will be carried through the Supplemental Environmental Impact Statement/Environmental Impact Report ("SEIS/SEIR") and the federal New Starts Process; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No. 08-029 on February 19, 2008 selecting the Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street, as the Locally Preferred Alternative; and,

WHEREAS, The San Francisco Planning Commission adopted Motion No. M-17668 on August 7, 2008 certifying completion of the Central Subway Final Supplemental Environmental Impact Report; and,

WHEREAS, The SFMTA Board of Directors, adopted Resolution No. 08-150 on August 19, 2008 adopting Central Subway Project Alternative 3B, Fourth/Stockton Alignment with semi-exclusive surface rail operations on Fourth Street and a construction variant to extend the tunnel another 2,000 feet north of Jackson Street, the CEQA Findings and Statement of Overriding Considerations for the SEIS/SEIR and the Mitigation Monitoring and Reporting Plan; and,

WHEREAS, The SFMTA Board of Directors adopted Resolution No. 09-055 on April 7, 2009 authorizing the Executive Director/CEO to issue a Request for Proposal (RFP) for Contract

No.CS-155 for Professional Architectural and Engineering Services for the Final Design and Construction of the Central Subway Project, evaluate proposals, select the highest ranking proposal, and to negotiate a contract for Contract No. CS-155, Professional Architectural and Engineering Services for the Final Design and Construction Phases of Central Subway.

WHEREAS, The anticipated complexity of the Central Subway Project, in proximity to sensitive urban structures and facilities, poses significant design, coordination, and construction challenges to the City; and,

WHEREAS, The City does not have the specialized expertise or staff resources to design and manage a project of this size and intricacy; and,

WHEREAS, The SFMTA conducted a competitive selection process, and PB/Telamon was selected as the qualified proposer; and,

WHEREAS, Staff and Central Subway Partners have engaged in a detailed contract negotiation to determine the costs and resources necessary to provide the Central Subway Project comprehensive engineering, construction support and related services for tunneling and utilities relocation; and,

WHEREAS, Execution of the contract is contingent upon approval of the Civil Service Commission; and,

WHEREAS, The Contract will assist SFMTA in meeting the objectives of Goal No. 1 of the Strategic Plan -- to provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First policy; Goal No. 2 -- to improve transit reliability; Goal No. 3 --to improve economic vitality through improved regional transportation; and Goal No. 4 -- to ensure the efficient and effective use of resources; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute Contract CS-155-1, Architectural and Engineering services for the Final Design and Construction of the Central Subway Project – Utilities Relocation and Tunnel Design for an amount not to exceed \$6,500,000 for all base contract work with options, for a term not to exceed five years with an option to extend the term for an additional four years; options to be exercised by the Agency by the approval of the Executive Director/CEO.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

ENCLOSURE 2
THIRD STREET LIGHT RAIL PROJECT
CENTRAL SUBWAY

San Francisco Municipal Railway Contract No. CS-155-1

Cost	(\$Millions)
Conceptual and Preliminary Engineering	43.35
Program Management & Construction Management	158.60
Final Design	42.00
Construction Contracts	1014.69
Vehicles	29.09
Contingency	<u>172.47</u>
Total Central Subway Cost	\$ 1,578.30

Funding	(\$Millions)
Federal 5309 New Starts ¹	942.20
State RTIP Grant	88.00
CMAQ	6.23
State TCRP Grant	14.00
Proposition 1B-2006 MTC Share	100.00
Proposition 1B-MTA Share	100.00
Proposition Additional 1B-MTA Share	40.00
Proposition K Sales Tax Funds	123.98
Option Local and Regional Sources	<u>163.89</u>
Total Central Subway Funding	\$ 1,578.30

^{1.} New Starts funding to be determined

ENCLOSURE 3
THIRD STREET LIGHT RAIL PROJECT
CENTRAL SUBWAY
LIST OF SUBCONTRACTORS

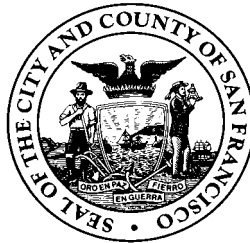
**PB/Telamon JV
CS-155**

	Base Services	Optional Services
PB Americas, Inc.	X	X
Telamon Engineering Consultants Inc.	X	X
AGS. Inc.	X	X
CHS Consulting Group		X
Cornerstone Transportation Consulting, Inc.	X	X
Fong Brothers Printing, Inc.	X	X
FW Associates, Inc		X
Hortscience	X	
Kendall Young Associates		X
MHC Engineers, Inc.		X
SC Solutions	X	
Simon & Associates	X	
Stevens & Associates	X	X
SOHA Engineers	X	
Sonoma State University	X	
Structus Consulting Engineers	X	
Trans Pacific Geotechnical Consultants, Inc.		X
Treadwell & Rollo	X	

CONTRACT FOR CENTRAL SUBWAY

FINAL DESIGN PACKAGE # 1

TUNNELS AND UTILITIES RELOCATION



**Agreement between the City and County of San Francisco
and
PB Telamon
for Architectural and Engineering Services
for the Final Design and Construction of the
the San Francisco Municipal Transportation Agency
Central Subway Project
(Third Street Light Rail Project, Phase 2)**

Contract No. CS-155-1

**Design Package #1
Tunnels and Utilities Relocation Final Design**

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Agreement between the City and County of San Francisco
and
PB Telamon, a Joint Venture between Parsons Brinkerhoff, Inc. and Telamon
Engineering Consultants, Inc.
for Architectural and Engineering the Final Design and Construction of
the San Francisco Municipal Transportation Agency
Central Subway Project (Third Street Light Rail Project, Phase 2)
Tunnels and Utilities Relocation

This Agreement, dated for convenience as _____, 2009, in the City and County of San Francisco, State of California, by and between: PB Telamon ("Consultant"), a joint venture between Parsons Brinkerhoff, Inc., contracting through its subsidiary PB Americas, a corporation with its principal place of business in New York (hereinafter PB), and Telamon Engineering Consultants, Inc., (hereinafter "Telamon") and the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency (hereinafter "SFMTA" or "City").

RECITALS

A. The SFMTA desires that the Consultant renders professional architectural and engineering and related services in connection with the design and construction of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project.

B. A Request for Proposals was issued on March 27, 2009 ("the RFP"), and the SFMTA selected Consultant as the highest qualified proposer pursuant to the RFP.

C. Consultant represents and warrants that it is qualified to perform and that it possesses the requisite experience and resources to render the services required by the SFMTA as set forth under this Contract.

D. The City and Consultant intend that this Agreement comply with the regulations of the Federal Transit Administration of the United States Department of Transportation ("FTA").

E. On _____, 2009, the SFMTA Board of Directors adopted Resolution No. _____, which authorized the Executive Director to execute this Agreement.

F. On _____, 2009 the San Francisco Board of Supervisors adopted Resolution No. _____ approving this Agreement.

G. Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number _____ on _____, 2009.

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

1. THE PROJECT.

1.1. General Description. The City does hereby engage the Consultant to perform, under the terms and conditions in this Agreement, professional services to complete Tunnels and Utilities Relocation design and related engineering, architectural, and construction support work for the Final Design of and related Construction Support Services for the Central Subway Project (the "Project"), which is Phase Two of the Third Street Light Rail Transit Project. The Project is fully described in the Request for Proposals ("RFP") dated March 27, 2009, the documents referenced therein and referenced in Appendix 10 of the RFP, and the addendums to the RFP. It is the responsibility of the Consultant to request, review and incorporate requirements for the Tunnels and Utilities Relocation design for the Project that may be established in such referenced documents.

As directed by the SFMTA, Consultant shall perform all work reasonably related and necessary to the final design of tunnels and utilities relocation for the Project and to support the construction of the Project, as determined by the SFMTA and as that work is described here and in the RFP. The Parties' failure to list a particular task or area of work within Attachment A does not mean that such work is Additional Work under Section 8 for which Consultant shall be entitled to additional compensation or is work that otherwise is excluded from the Consultant's responsibilities, to the extent that such unidentified task(s) or area(s) of work are referenced in the RFP, the Proposal or are reasonably related to architectural or engineering services necessary to complete the existing conceptual and preliminary designs for the Project and produce a complete set of Construction Documents sufficient for the City to seek construction bids to build the tunnels and utilities relocation portions of the Project.

1.2. Primary Responsibilities and Design Integration. Consultant's primary responsibilities shall be to perform and provide final design services for utility relocation and the tunnels for the Project. Consultant shall assist and follow the lead of the design firm assigned to Contract Package # 2 in coordinating design activities and integrating the final design of the stations to the tunnels. Consultant shall also assist and follow the lead of the design firm assigned to Design Package #3 (design integration for control systems and trackway design) in coordinating design activities and integrating the final design of the trackway, traction and control systems to the tunnels and the stations.

1.3. Term. This Agreement shall be in effect upon final approval by the Parties and shall continue for a period of Ten (10) Years from the date that the SFMTA first issues Notice to Proceed ("NTP") to the Consultant.

2. DEFINITIONS.

For all purposes of this Agreement, the terms listed below shall be given the meaning provided. The terms and abbreviations listed in the RFP are incorporated by reference as if fully out here.

2.1. Additional Services or Additional Work means work or services requested by the SFMTA that are outside the Scope of Services set out in this Agreement, included appendices, approved modifications to the Agreement, the RFP, and the Consultant's Proposal.

2.2. Agreement or Contract means this Agreement for Final Design architectural and Engineering Services and all referenced Attachments to this Agreement.

2.3. Annual Design Plan means a plan approved by the Parties for advancing the Work under the Agreement as described in Section 7.7 of the Agreement.

2.4. Architectural and Engineering Services means the design services necessary to produce Construction Drawings, Work Product and other design deliverables necessary for the construction of the Project or otherwise deemed necessary by the SFMTA.

2.5. Attachment means a document or set of documents incorporated by reference into this Agreement.

2.6. Award means authorization by resolution of the SFMTA Board of Directors for its staff to execute the Contract with the selected proposer, and approval of the Contract by the San Francisco Board of Supervisors.

2.7. Base Contract Services or Basic Services means the creation, design and provision of Work Product and work and services incidental thereto that are described or listed in Attachment A to this Agreement, the RFP and the Proposal.

2.8. Branch Office means a geographically distinct place of business or subsidiary office of a firm that has a key role on the project team.

2.9. City means the City and County of San Francisco.

2.10. Central Subway Project (CSP) or Project means the planning, design and construction of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project.

2.11. Configuration Management System means a system that manages the physical configurations and their supporting processes through documents, records and data. Such a system accommodates changes and perpetually documents how a physical system is configured. It also ensures that documents, records, and data remain concise and valid.

2.12. Construction Support Services means the services described in Section 3.10 of this Agreement and other services commonly provided in the construction industry in the San Francisco Bay Area to assist the owner and construction contractor in interpreting and implementing the design for the construction of the intended project.

2.13. Contract Documents or Construction Documents mean the Work Product produced by the Consultant necessary for the SFMTA to issue a call for competitive bids to construct the CSP, which shall include but is not limited to designs, working drawings, specifications, general conditions and special and/or supplementary general conditions, information for bidders, accepted bid proposals and addenda developed to set forth in detail all aspects of the design, function, and construction of the Project.

2.14. Contract Bid Package means a set of Construction Documents for construction of a portion of the Project, as those portions are listed in Section 6.1.1 of this Agreement.

2.15. Construction Management means the daily management of the construction and quality control of the Project, including but not limited to oversight and coordination of contractors to ensure that the Project is constructed in conformance with design specifications and requirements.

2.16. Consultant means PB Telamon, a joint venture between Parsons Brinkerhoff, Inc., contracting through its subsidiary PB Americas, a New York Corporation with offices located at 303 Second Street, Suite 700 North, San Francisco, CA 94107 and Telamon Engineering Consultants, Inc., located at 855 Folsom Street, Unit 142, San Francisco, CA 94107

2.17. Contract Compliance Office (CCO) means the SFMTA office that administers compliance with federal regulations governing Disadvantaged Business Enterprises/Equal Employment and Non-Discrimination Programs, in addition to the Small Business Enterprise Program, and the City's Human Rights Commission's Local Business Enterprise/Non-Discrimination Program. The Contract Compliance reference number for this RFP is CCO No. 08-993.

2.18. Controller means the Controller for the City and County of San Francisco.

2.19. Cost-plus-Fixed-Fee means a method compensating Consultant for Work performed under the Agreement by which the SFMTA reimburses Consultant its costs for performing the Work and also pays a Fixed Fee as compensation for having performed the Work.

2.20. Days means working days of the City and County of San Francisco (unless otherwise indicated). The use of the term "days," "working days" or "business days" shall be synonymous.

2.21. Discipline means the area of primary technical capabilities of Key Personnel, as evidenced by academic degrees, professional registration, certification, and/or extensive experience.

2.22. Executive Director/CEO means the Executive Director/CEO of the SFMTA, also known as the City's Director of Transportation.

2.23. Effective Date means the date that the SFMTA informs Consultant in writing that the Agency has received all necessary approvals for this Agreement and the Controller has certified funds for this Agreement.

2.24. Federal Transit Administration (FTA) means an operating agency of the U.S. Department of Transportation, which is a funding agency of the CSP.

2.25. Field Office Overhead Rate means the audited rate of compensation that the City shall pay Consultant as a multiplier of salary costs to compensate Consultant for administrative support of its employees who work out of offices supplied by the SFMTA.

2.26. Final Design means the architectural and engineering services and related Work to be performed by Consultant under this Agreement.

2.27. Fixed Budget Limit means the construction cost values referenced in Section 6.1.1 of this Agreement that are established in the cost estimates set out in the Project document titled "2008 Capital Cost Estimates," dated 12-31-08, rev.0i, Project Doc. No. 03914.

2.28. Fixed Fee means the fee paid to Consultant that is Consultant's profits and shall also cover any costs or expenses borne by Consultant that are not otherwise compensable under this Agreement.

2.29. Home Office Overhead Rate means the audited rate of compensation that the City shall pay Consultant as a multiplier of salary costs to compensate Consultant for administrative support of its employees who work out of offices supplied by the Consultant.

2.30. Key Team Members or Key Personnel means those participants on the Project who are instrumental to the success of Project or otherwise contribute in a substantive, measurable way to the Project's development. Key Team Members may be Consultant personnel or City personnel. Consultant's Key Team Members are listed in Section 12.2.

2.31. Lump Sum means a method of compensating Consultant for Work under the Agreement that is a payment of an all-inclusive prefixed amount of compensation agreed by the Parties for discrete tasks or other Work specified in a Task Order or Annual Design Plan.

2.32. Milestone(s) means a description of Work to be accomplished by date(s) certain, set out in a Task Order or Annual Design Plan.

2.33. Monthly Progress Report means the monthly report submitted by Consultant to the SFMTA addressing Consultant's progress on Annual Design Plans and Task Orders, the status of the CSP, an update of the Project schedule, and report on current CSP funding and budget status and issues.

2.34. Notice to Proceed (NTP) means a letter from the SFMTA advising the Consultant of the day when Work is to commence on the Project or a phase of the Project.

2.35. OCC means an Operations Control Center.

2.36. Overhead means the costs incurred by Consultant in supporting its Work on the Project, as that term is used in applicable provisions of the FAR, cited in this Agreement, and as commonly used in the construction industry for federally funded public works projects.

2.37. Party means an entity bound by this Agreement.

2.38. Parties mean all entities bound by this Agreement.

2.39. PM/CM means the Project Management/Construction Management consultant, Central Subway Partners, a joint venture of AECOM and EPC Consultants that is responsible for Program Management for the Project

2.40. Program or Project means the Third Street Light Rail Project, Phase 2, Central Subway.

2.41. Program Management means the daily management of the CSP by the PM/CM, including but not limited to coordination of design consultants, quality controls, financial management, funding coordination, budget and cost controls, scheduling, safety management, quality assurance management, and interagency coordination, and other related duties as may be assigned by the SFMTA.

2.42. Program Officer (PO) means the SFMTA Senior Director of Transportation Planning and Development or other such executive as may be appointed by the City's Director of Transportation (SFMTA Executive Director/CEO) responsible for the executive oversight of the CSP, the administration of the Contract, and all contractual actions and Contract interpretation.

2.43. Program Manager (PM) means the SFMTA Manager responsible for overseeing daily management of the CSP, administration of this Agreement, and monitoring of the Consultant in its performance of the Agreement, including review and approval of Work Product and invoices, review and approval of all contractual actions and Contract interpretation.

2.44. Progress Payment Form means the form stating Work performed that Consultant shall submit with a request for payment or other invoice.

2.45. Proposal means the Consultant's written response to the RFP submitted to the SFMTA on or about July 21, 2009.

2.46. Reimbursable Expense means an expenditure by the Consultant that the City shall reimburse to the extent that such expenditure is necessary for the Project and meets all applicable requirements of this Agreement.

2.47. Request for Proposals (RFP) means the Request for Proposals for Final Design Architectural and Engineering and Construction Support Services, issued by the SFMTA on or about April 7, 2009.

2.48. Request for Services means a request from the SFMTA to Consultant to perform Additional Work.

2.49. Salary Burden means the full cost of payroll taxes and employee benefits, such as health and dental care insurance, vacation, leave, retirement and pension that are provided to employees in addition to wages.

2.50. San Francisco Bay Area means the area within the nine Bay Area counties as currently defined by the Association of Bay Area Governments ("ABAG"), which are Alameda County, Contra Costa County, Marin County, Napa County, San Francisco County, San Mateo County, Santa Clara County, Solano County, and Sonoma County.

2.51. San Francisco Municipal Transportation Agency ("SFMTA" or "Agency") means the agency of the City that is created by Section 8A of the Charter of the City and County of San Francisco that operates the City's public transit service, the Municipal Railway ("Muni").

2.52. Scope of Services or Work means the services, tasks, and deliverables that the Consultant will provide to the SFMTA under this Agreement, including Base Contract Work and Optional Services, pursuant to Annual Design Plan(s) and/or Task Order(s).

2.53. Small Business Enterprise or SBE means a for-profit, small business concern with a three (3) year average gross revenue not exceeding Twelve Million Dollars (\$12,000,000) and is certified under any of the following programs: the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program ("Federal DBE Program").

2.54. Subprime Consultant means a second tier subconsultant firm under contract to the Consultant to provide services to the CSP.

2.55. Subconsultant means a subconsultant firm under contract with a Subprime Consultant (a third tier subcontractor) to provide services to the CSP. When the terms "subconsultant" or "subconsultants" are not capitalized, those terms shall generally refer to a Subprime Consultant and/or a Subconsultant, either individually or collectively, as the case may be.

2.56. Task Order means a written directive from the SFMTA to perform specified Additional Work

2.57. Tunnel(s) means the twin bore tunnel to be designed under this Agreement to service the new Central Subway as that Tunnel is described in the RFP, the Project EIR documents, and the Project preliminary design documents prepared by PB Wong.

2.58. Utilities Relocation means the work necessary to remove and reinstall public and private utilities from the public right of way and other areas that would conflict with or otherwise impede the construction of the Project or any portion of the Project.

2.59. Work Product means all designs, drawings, schematics, specifications, reports, studies, presentations, data, specifications, design criteria, graphs, schedules, photographs, videos, recordings, pictures, memoranda, letters, computer-generated data, calculations, estimates, summaries and such other information and materials as may have been created, prepared, developed, accumulated, generated or kept by the Consultant, the Subprime Consultants or Subconsultants, in connection with the Work performed under this Agreement, whether approved, completed or in process. Work Product does not include any or records or documents pertaining solely to the operation of Consultant's business that are not otherwise subject to audit under this Agreement.

2.60. Work Proposal means a detailed description of Work to be included in an Annual Design Plan or Task Order prepared by the Consultant in response to a Request for Services from the SFMTA.

3. CONSULTANT'S BASIC SERVICES.

3.1. Inclusive Services. Consultant shall perform as Basic Services all customary and necessary architectural, engineering and other consulting services necessary to complete the design of the Tunnels and Utilities Relocation for the Project, produce the Construction Documents for Tunnels and Utilities Relocation, and support the construction of those portions of the Project. Consultant shall commence the Basic Services by reviewing the environmental, conceptual and preliminary design documents referenced in Appendix 10 of the RFP. Consultant shall confirm the validity of said design work and shall incorporate and build upon that work in its own Work Product. Consultant's Basic Services are further described in the Scope of Services set out in Attachment A to this Agreement. Basic Services includes but is not limited to the following:

3.1.1. All work required to comply with local, State and federal codes, regulations and standards, as interpreted by local, State or federal agencies, as such codes, regulations and standards may be amended during the Term of this Agreement.

3.1.2. All work related to addressing review comments and/or incorporating appropriate review comments into deliverable documents.

3.1.3. Consult with authorized employees, agents and/or representatives and consultants of the City relative to the programming, design, bidding, award and construction of the project.

3.1.4. Provide consultation and advice to the City as to the necessity and manner of providing or obtaining services necessary to complete the design and construction of the Project.

3.1.5. Review program requirements and existing design documents and advise the SFMTA whether such design documents are sufficient for purposes of Final Design and whether additional data is necessary before the Consultant can proceed.

3.1.6. Contract for or employ the Consultant's employees and the Consultant's consultants as may be necessary or required including, but not limited to, mechanical, civil, electrical, plumbing, structural, signal and control systems engineers; cost estimator; landscape Consultant; and other special designers and services as may be necessary for fire protection, life safety, acoustical, audio/visual, lighting, specifications, signaling and control, tunneling, dewatering, traction power, security, computer infrastructure, parking and traffic control studies for designated impacted areas, and disabled access; and others as may be necessary for complete design of the Project; all parties shall be licensed by the State of California if so required. The Consultant shall submit for approval by the City any changes in the subconsultants listed in Attachment B. The addition of subconsultants for unforeseen specialty services shall require a modification under this Agreement.

3.2. Subconsultants. Consultant shall engage at its sole expense all engineers, architects, cost estimators, experts and other subconsultants as may be required for the proper performance of the Agreement, as provided in Section 9 (Subcontracting).

3.3. Quality Assurance. The Consultant shall establish and maintain a Quality Assurance Plan, subject to the approval of the SFMTA, setting forth the Consultant's policy for quality assurance and procedures for implementing that policy. Consultant's Quality Assurance Plan must apply to all of Consultant's employees, Subprime Consultants and Subconsultants performing work on the Project, and must provide written procedures for the performance of all Project activities, and provide sufficient information to the SFMTA's Program Manager and Consultant's senior managers to allow them to effectively supervise the Project. The procedures shall provide for sufficient documentation to allow review and audit by the SFMTA or its designees. The Consultant shall submit two copies of its Quality Assurance Plan to the Program Manager for SFMTA review within 30 calendar days of NTP.

3.4. Code Compliance.

3.4.1. The Consultant shall comply with requirements of all applicable codes, regulations, and current written interpretation thereof published and in effect during the Consultant's services.

3.4.2. The Consultant shall be deemed to have had notice of any applicable law or regulation announced or enacted at the time of the Effective Date, even though such law or regulation did not take effect or become operative until some date after the Effective Date. In the event of changes in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Consultant and which result in a substantive change to the Construction Documents, the Consultant shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes. The Consultant shall be responsible, however, to identify, analyze and report to the SFMTA pending changes to codes and regulations that would reasonably be expected to affect the design of the Project, including pending changes to the California building codes and San Francisco Building Code and other amendments.

3.4.3. The Consultant shall, immediately upon becoming aware of any such imposition or change of requirement, provide SFMTA with full and detailed particulars of the changes required in the equipment and of costs involved therein, or shall be deemed to have waived any rights under this Section. In the event any governmental requirements are removed, relaxed or changed in any way after the Effective Date so as to make the Consultant's performance less expensive, or less difficult, then SFMTA shall have the option either to require the Consultant to perform pursuant to the more rigorous requirements or to receive a reduction in the price of the equipment affected for all savings in direct costs which may be realized by the Consultant by reason of such change and appropriate adjustments in deductions for overhead and profit made so as to reflect actual savings made by the Consultant. SFMTA shall give the Consultant notice of SFMTA's determination, and anticipated savings.

3.5. Coordination of Design Team. The Consultant shall coordinate its work with the work of all of its Subprime Consultants and Subconsultants and that of City personnel to produce comprehensive, complete, coordinated, and accurate drawings and specifications for all elements of the Project.

3.6. Reports. Consultant 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.

3.7. Coordination with City Departments and Personnel, Other Public Agencies.

3.7.1. SFMTA and Project Consultants. The Consultant shall coordinate, meet regularly and work with the SFMTA, Program Manager, and other assigned City staff or consultants, to keep the design progressing in accordance with the Design Plan.

3.7.2. City Agencies. As directed by the SFMTA, the Consultant shall coordinate, meet and work with and make presentations to other City agencies and personnel. Such departments include, but are not limited to the Art Commission, the Department of Planning, the Department of Public Works, the San Francisco Public Utilities Commission, the Department of Building Inspection, the Fire Department, and the Department of Recreation and Parks, and City Administrator's Office (S.F. Convention Facilities) for the purposes of providing said agencies information about the Project and assisting the SFMTA in obtaining permits, licenses and other approvals required for the Project.

3.7.3. Other Agencies. As directed by the SFMTA, the Consultant shall coordinate, meet, work with and make presentations to outside agencies and personnel necessary to determine relevant requirements, develop designs that conform to those requirements, obtain required review and approvals of the designs. Such agencies include the California Public Utilities Commission, the Bay Area Rapid Transit Authority, the State Fire Marshall, and any other State or federal agency that has regulatory authority over the Project or that has a proprietary interest.

3.7.4. Funding Agencies. As directed by the SFMTA, the Consultant shall cooperate, meet with and make presentations to the FTA, the FTA's Project Management Oversight consultant, the San Francisco County Transportation Authority, and the Metropolitan Transportation Commission ("MTC").

3.7.5. Community Representatives and Property Owners. As directed by the SFMTA, Consultant shall meet with and make presentations to representatives of communities and property owners along the alignment that may be affected by the Project.

3.7.6. Art Commission: The Consultant shall coordinate, meet and work with City departments and personnel necessary to determine relevant City requirements, develop designs, incorporate artwork under the San Francisco

Public Art Program, and review and obtain required City approvals of the designs. Artwork commissioned by the City that is to be incorporated in the Project as an integral building or site element may require coordination with the design and structure of the building or site. Involvement by the Consultant to assist in the selection of artwork by the San Francisco Art Commission and services by the Consultant to coordinate the design and structure of the building or site to accommodate the installation of such artwork shall be a part of Basic Services. As directed by the City, the Consultant shall coordinate and work with any representatives the City may designate in the selection of artists for the Project to incorporate requirements for the chosen artwork into the design for the Project. The Consultant shall make presentations to and/or attend meetings as necessary for the Civic Design Committee and the Visual Arts Committee of the San Francisco Art Commission. Substantial changes required of the Consultant to incorporate requirements for the chosen artwork into the Project after the completion and acceptance of the Design Development documents shall be Additional Services under this Agreement.

3.7.7. Open Design. In the performance of this Agreement, the Consultant shall, to the extent practicable, provide for maximum use of structures, machines, products, materials, construction methods, and equipment that are readily available through competitive procurement, or through standard or proven production techniques, methods, and processes. Unless Consultant presents evidence justifying the use of a sole source and seeks prior written approval from the SFMTA, Consultant shall not produce a design or specification for the Project that would require the use of structures, forms, machines, products, materials, construction methods, equipment, or processes that the Consultant knows to be patented or that would be restrictive or written in such a manner as to contain proprietary, exclusionary, or discriminatory requirements other than those based upon performance, unless such requirements are necessary to test or demonstrate a specific thing, or to provide for necessary interchangeability of parts and equipment. When one or more brand names or trade names of comparable quality or utility are listed, they must be followed by the words "or approved equal."

3.7.8. Correction of Errors. Upon notice from SFMTA, the Consultant shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in such plans, designs, drawings, specifications, reports, and other services; and, in the event of any deficiencies in such plans, designs drawings, specifications, reports, or other services resulting from the Consultant's professional negligence or from the professional negligence of the Consultant, Subprime Consultants and Subconsultants, whether or not said deficiencies have been brought to the attention of SFMTA, the Consultant shall indemnify and reimburse SFMTA for the cost of the corrective remedial work (including, without limitation, design, demolition, and construction) necessary to correct any such deficiencies and the consequences of such deficiencies caused by said professional negligence.

3.7.9. Furnishings, Furniture, and Equipment Not Affixed. In addition to the design Project elements specifically described herein as included in the Construction Bid Packages, the Consultant shall provide design and coordination services to accommodate furnishings, furniture, and equipment not

affixed ("FF+E"), as appropriate to the program. Services associated with the actual procurement and installation of FF+E shall be Additional Services.

3.7.10. Information and Data. The Consultant shall request in writing any information and data it will require from the Agency for its work. The Consultant shall identify the timing and priority for which this information and data will be required in its request for that information. Consultant shall plan its work to allow adequate time for the City to provide the requested information. .

3.7.11. Use Of Computer Technology For Design and Coordination of Drawings. The Consultant may use CADD or similar technology in developing the design for the Project. The cost of any software, hardware, clerical work, or services related to CADD support shall be included in the Basic Services fee. Additionally, the SFMTA and the Consultant will implement a multi-dimensional Building Information Modeling ("BIM") system, the scope and extent of which shall be determined jointly by the SFMTA and the Consultant. Consultant shall be responsible for entering the existing conceptual and preliminary design documents and Consultant's Work Product into the BIM. Services associated with the development and population of a BIM system for modeling and clash detection during design shall be included in the Basic Services fee. If the SFMTA elects to further refine the BIM system as a facilities management tool beyond design and construction of the Project, such work would be considered an Additional Service.

3.8. Authorization for Bid and Construction Support Services. The services described below as Bid Support Services in Section 3.9 and Construction Support Services in Section 3.10 are to be performed only on the written authorization of the SFMTA Program Manager. While the SFMTA intends to authorize the Consultant to provide those services, the SFMTA shall do so only when (a) sufficient funds for such services have been appropriated in accordance with the budget and fiscal provisions of the City, and (b) the SFMTA in its sole discretion, without waiving any rights, has found that the Consultant has adequately performed its prior services under this Agreement.

3.9. Bid Support Services. Upon solicitation of bids by the City, the Consultant shall:

3.9.1. Participate in and assist the City with pre-bid conferences.

3.9.2. Prepare responses to bidders' questions, interpret Construction Documents, evaluate requests for substitutions and prepare addenda for approved substitutions and clarifications, and assist the City as required in responding to bidders' questions.

3.9.3. Provide the City with originals of all addenda to be issued.

3.9.4. Assist the City with review and evaluation of bids submitted, and recommendation for award of construction contract.

3.9.5. Perform necessary redesign services as may be required under Section 6.1 (Fixed Budget Limit of Project Construction Cost).

3.9.6. Upon award of a construction contract consolidate a set of Construction Documents with all addenda, accepted or rejected alternates, incorporated into appropriate specification sections or drawing sheets. From this set, provide the City with a conformed "for construction" Drawing Set and Project Manual including specifications.

3.10. Construction Support Services Upon award of a construction contract to a general contractor ("Contractor") by the City for any of the Construction Packages, and upon written NTP from the City to the Consultant to proceed with Construction Support Services, the Consultant shall provide said services as set forth below:

3.10.1. Provide an updated color schedule, samples of textures and finishes of all materials to be used in the project for review and approval of the City.

3.10.2. Update checklists of all special inspection and testing, equipment startups, submittals, warranties, guarantees, maintenance and operation manuals, spare parts and all other close-out documents that will be required of the Consultant's Project Manager or Contractor. Determine the acceptability of each item during the course of construction and provide a final status report of all items by the end of construction.

3.10.3. Interpret the Contract Documents and furnish original and one copy of all documents in CADD-produced reproducible form of all clarification drawings and other documentation prepared by the Consultant for issue by the City.

3.10.4. Review requests for information (RFIs), submittals, mock-ups, substitutions, and change requests properly prepared by and received from the Contractor within the time specified in the Contract Documents, and make appropriate recommendations with supporting documentation and data to the City. Any proposed substitutions or revisions shall consider priority of need to keep the construction work on schedule and minimize construction work progress delay. The construction specifications will be prepared to require the construction Contractor to prepare all necessary design documentation to support its substitutions or value engineering proposals.

3.10.5. If deemed appropriate by the City, the Consultant shall on the City's behalf prepare, reproduce and distribute supplementary drawings and specifications in response to RFIs, or as otherwise required to clarify the design intent of the Construction Documents, or to document construction change directives by the City.

3.10.6. In preparing a response to a RFI, Consultant will obtain the input of Consultant's or subconsultant's personnel who prepared or were responsible for overseeing the preparation of the design document or specification that is the subject of the RFI. Consultant and subconsultant personnel still employed but reassigned to other projects must be available and will respond to an RFI within 48 hours of receipt of the RFI.

3.10.7. The Consultant will assist the Program Manager with preparation of drawings, specifications and other documents that may be necessary for the Program Manager to prepare change orders and construction change directives for City approval and execution in accordance with the Contract Documents. The City will prepare and effect any required contract modifications and change orders.

3.10.8. The Program Manager will categorize all RFIs and change orders by cause, as follows, of the RFI or change order, and so advise the Consultant. This will assist the City in tracking the amount and percentage of additional costs incurred attributable to, for example, Owner requests, Consultant errors, Consultant omissions, hidden obstructions, unforeseen conditions, Contractor errors, other Contractor-generated conditions, and new regulatory mandates. The Consultant shall indicate in writing its concurrence or objection with the Program Manager's categorization and shall recommend for City consideration any change to the category assigned.

3.10.9. Make all revisions and changes to the Contract Documents and prepare additional appropriate documents as directed by the City to correct the Consultant's errors, conflicts or omissions at no additional cost to the City.

3.10.10. The Consultant and its subconsultants shall make visits to the project site as appropriate to the stage of construction or as otherwise agreed by the City and the Consultant to (a) become generally familiar with and to keep the City informed about the progress and quality of the portion of the work completed; (b) to endeavor to guard the City against defects and deficiencies in the work; and, (c) to determine in general if the work is being performed in a manner indicating that the work when fully completed, will be in accordance with the Contract Documents. These visits are not to be construed to require supervision or inspection, and the Consultant shall not be required to make exhaustive or continuous on-site observations of the work. The Consultant shall prepare a written report of each and every site visit, and shall advise and report to the City in writing of any deviations from the Contract Documents, non-conforming items or issues of concern observed during such visits.

3.10.11. The Consultant shall attend project meetings throughout the construction phase as requested by the City. The Consultant shall require that its subconsultants make such visits and attend project meetings when appropriate to observe the progress of work designed or specified by them. It is understood that the City Program Manager will be responsible for providing day-to-day field inspection services and shall cooperate and coordinate with the Consultant in matters pertaining to the Consultant's work. The Consultant and its subconsultants shall coordinate and cooperate with the Program Manager to time its visits jointly to observe and discuss the Contractor's field work and installation to reduce duplication of work by both the Program Manager and Consultant.

3.10.12. Additionally, the Consultant, as part of Basic Services, will assign at least one senior responsible member of its design team to be available full time at the site for the duration of construction until substantial completion, unless otherwise authorized or directed by the City. This staff member shall be authorized to represent and render decisions on behalf of the Consultant in all

design and construction coordination matters, and shall be charged with representing the design team in responding to questions and clarifications needed on site to minimize disruption to construction. When assigned member(s) are temporarily unavailable for any reason (such as vacations or extended illness), the Consultant shall advise the City and assign an alternate, similarly capable and authorized individual. If the stage of construction requires additional full- or part-time employees on site, then the Consultant shall provide the same with no increase to the Fixed Fee unless the work is considered Additional Work. If other consultants representing specialty services are required to perform similar on-site services for periods agreed-to between the Consultant and the City, it is the Consultant's responsibility to coordinate the availability of other consultants and schedule such on-site services as necessary for the timely progress of the work.

3.10.13. The Consultant shall provide Construction Support, which includes but is not limited to interpretation of the Contract Documents and advising the City and the PM/CM of all decisions rendered. Interpretations by the Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in written or graphic form. Consultant's personnel who performed the design work about which a Contractor issues a Request For Information ("RFI") shall respond to the RFI.

3.10.14. The Consultant acknowledges that a construction contract will be awarded based on the lowest responsive bid by a responsible bidder for the construction of the Tunnels and the construction of the Utilities Relocation; that there is no certainty that the successful bidder will cooperate willingly with the Contract Documents; and that the level of administrative difficulties faced by the Consultant during the construction phase may vary substantially. Accordingly, the Consultant agrees that it shall not seek additional compensation for administrative difficulties the Consultant may encounter with the Contractor on the Project, unless the City in its sole discretion determines that the Contractor's performance constitutes a substantial/cardinal breach of the construction contract that would legally permit the City to terminate the construction contract for default should the City so desire.

3.10.15. The Consultant shall review and advise the City when requested on claims, disputes and other matters in question between Contractor and the City relating to the interpretation of the construction Contract Documents or proposed changes to the same.

3.10.16. Except as may otherwise be provided in the Contract Documents or when direct communications have been specifically authorized, the Consultant shall only communicate with the Contractor through the City. In no event shall the Consultant make any directive or communication to the construction contractor that will affect the means or methods, time, cost or quality of construction. Communications by and with the Consultant's consultants shall be through the Consultant.

3.10.17. The Consultant shall review with the Program Manager baseline schedule of values prepared by the construction contractor to seek sufficient detail, such as by specification section, floor and space segmentation, to

evaluate effectively progress payment requests from the construction contractor and provide recommendations to the City.

3.10.18. Upon request by the SFMTA or where it appears necessary from Consultant's own observations, the Consultant shall consult with the PM/CM and the Program Manager as to the Contractor's level or percentage of completion of work, quality of work, and Contractor's adherence to the design and specifications.

3.10.19. The Consultant shall advise the City to reject work that the Consultant believes in good faith does not conform to the Contract Documents. Whenever the Consultant considers it necessary or advisable to implement the intent of the Contract Documents, the Consultant will advise the City to require additional inspection or testing of the work in accordance with the provisions of the Contract Documents, whether or not such work is fabricated, installed or completed.

3.10.20. The Consultant shall review proposed procedures and results of testing and special inspection procedures that are required by the construction Contract Documents, and report comments to the City. Review and advise the City on special testing and/or inspection that may arise due to field conditions or as requested by appropriate authorities. It is understood that separate contracts for testing and special inspection consultants, laboratories or agencies will be arranged by the City. Attend inspections with appropriate consultants when requested to do so by the City as a part of Additional Services.

3.10.21. The Consultant shall review and advise the City as to the approval of substitutions proposed by the construction contractor, including advice as to whether or not acceptance of the substitutions will require substantial revision to the Contract Documents. Additional costs incurred by the Consultant for substantial revision, as determined by the City, of documents to accommodate the substitutions or equals shall be compensated under Additional Services, if not due to the Consultant's errors or omissions.

3.10.22. The Consultant shall review and advise the City as to the approval of shop drawings, laboratory reports, samples, wiring and control diagrams, schedules and lists of materials and equipment, and other descriptive data pertaining to specified materials, equipment and storage thereof.

3.10.23. The Consultant shall review documents and materials that are required by the Contract Documents to be submitted for conformance with the design intent of the work and with the information given in or inferable from the Contract Documents. Such review shall be made by the Consultant upon receipt of submittals that have been dated, signed and approved by the construction contractor, except where otherwise directed by the City. The Consultant may note the exceptions taken or not taken, the corrections necessary, and the resubmittals required, and will return the documents or materials with such notations to the construction contractor as directed by the City. Review and action on an item that is a component of an assembly or system shall not necessarily apply to the entire assembly or system. In its agreement with the construction contractor, the City will include a provision (such as clause 4.2.7 for

AIA Document A201, 1987 edition) specifying that the Consultant's review of the construction contractor's submittals does not alter the construction contractor's responsibility for errors and omissions in such submittals; it is the Consultant's responsibility to check the Contract Documents prior to advertisement for Bids to ensure that said provision is included.

3.10.24. After compilation of the final punchlist by the construction contractor, the Consultant, in conjunction with the Program Manager will verify the final punchlist, recommend changes, participate in site visits to determine and track the status of the acceptability of all punchlist items, participate in the final review of the Project and advise the City as to the approval of work performed by construction contractor.

3.10.25. Assist the Program Manager and a commissioning agent, if retained by the City, in arranging for building and or facility commissioning, start-up and testing, adjusting and balancing and the coordination of operational testing and proper functioning of all installed equipment, and any building commissioning that may be required related to applications by the City for LEED (Leadership in Energy and Environmental Design) certification. Submit a statement to the City as to the proper functioning of all items of equipment prior to the release of final payment to the construction contractor.

3.10.26. The Consultant shall at all times have access to the construction sites and the work performed thereon.

3.10.27. The Consultant shall have authority to make interpretations and decisions in matters relating to appearance and aesthetic or artistic effects where they do not conflict with any design element previously approved by the City and where such decisions are consistent with the intent of the Contract Documents; provided the City shall retain the authority to make the final interpretations and decisions. Whenever interpreting or making decisions concerning an integrated artwork commissioned by the City, the Consultant must obtain City approval prior to making any such interpretation or decision. The Consultant shall be responsible for any additional construction costs arising out of any aesthetic change initiated by the Consultant after the commencement of construction, unless payment to the construction contractor for and notice to the Consultant to implement such changes have been specifically approved in writing by the City in advance of the Consultant making the changes to the construction documents.

3.10.28. The Consultant shall not have control or charge of and shall not be responsible for construction means, methods, techniques, scheduling, sequences or procedures, for safety precautions and programs in connection with construction of the Project; for the acts or omissions of the construction contractor, its subcontractors or any other persons performing any of the work on the Project (unless directly employed or retained by the Consultant); or for the failure of any of them to carry out the work on the Project in accordance with the Contract Documents.

3.10.29. The Consultant shall coordinate with all artists in the installation of artwork, either by the artists, contractors or separate installers that are to be

incorporated in the Project as an integral building or site element as a part of Additional Services.

3.10.30. The Consultant shall not have the authority to stop the work unless specific authorization has been granted in writing by the City.

3.10.31. All design-build systems recommended by the Consultant and submitted by the construction contractor shall be reviewed and approved by the Consultant in a timely manner for conformance with the intent of the design drawings and specifications.

3.10.32. The Consultant shall prepare record drawings showing changes and relations in the work made during construction based on marked-up prints, drawings and other data furnished by the construction contractor to the Consultant. The City understands and acknowledges that the Consultant must evaluate and verify the accuracy or completeness of information which will be furnished to the Consultant by other parties and required to be incorporated into the record drawings. The Consultant shall be responsible for any inaccuracies, errors, omissions, ambiguities, or conflicts that may be introduced into the record drawings to the extent due to the fault of the Consultant.

3.10.33. Warranty Services. The Consultant shall assist the City's maintenance and operation personnel in conducting warranty inspections during the warranty period following Final Completion as set forth below:

3.10.34. At the SFMTA's request, the Consultant shall observe and review the condition of completed work, and provide assistance to the City to develop a list of Corrective Warranty work and for completion for systems, components, equipment, and finishes that have failed to meet the specified performance criteria or the terms of specific product warranties during the warranty period following Final Completion.

3.10.35. The Final Warranty Inspection shall take place no earlier than the eleventh (11th) month following Final Completion and no later than the twelfth (12th) month following Final Completion.

3.10.36. In the event that systems, components, equipment, and finishes fail to meet the specified performance criteria or the terms of specific product warranties at any time prior to the Final Warranty Inspection, the Consultant shall observe and review the condition of completed work, and provide assistance to the City to develop a list of Corrective Warranty work and a schedule for completion.

3.11. Operations Control Center Design Consultant shall perform as Additional Services feasibility studies, conceptual and preliminary design engineering services, and any required environmental studies for the OCC. If directed by the SFMTA, Consultant shall provide the final design of the OCC as Additional Services.

4. DESIGN RESPONSIBILITY AND STANDARDS.

4.1. Responsibility for Design. In all work performed by Consultant, Subprime Consultants, and Subconsultants, the Consultant shall be responsible for the professional quality, technical adequacy and accuracy, timely completion and coordination of all design for the Project, including but not limited to Work Product, which includes but is not limited to plans, designs, drawings, specifications, cost estimates, reports, and other services prepared or performed by the Consultant, Subprime Consultants and Subconsultants under this Agreement. Consultant shall be responsible for the performance of the work of all architects, engineers, cost estimators, experts and subconsultants engaged by the Consultant, including maintenance of schedules, correlation and coordination of designs, and resolution of differences between them. As directed by the SFMTA, Consultant shall be responsible for reviewing, responding with comments (where Consultant finds defects or deficiencies), and recommending for construction design work on the Project performed by engineers and architects employed by the City. Consultant shall be responsible for coordinating and integrating work on the Project performed by engineers and architects employed by the City with Consultant's work, and incorporating the work of Consultant and City into the applicable Work Product or Construction Documents.

4.2. Standard of Performance. The Consultant shall perform its work to conform to highest professional standards applicable to the types of services and work provided hereunder as measured by professional engineering standards applicable in the San Francisco Bay Area. The remedies herein are nonexclusive, cumulative and in addition to any other remedy available to SFMTA under this Agreement or otherwise provided by law or in equity.

4.3. No Waiver. SFMTA's approval of any of the Work Product or services shall not in any way relieve the Consultant of responsibility for the technical adequacy or accuracy thereof. Neither SFMTA's review, approval, acceptance of, or payment for any of the services or Work Product shall be construed to operate as a waiver of any rights under this Agreement.

4.4. Expertise. Consultant represents that it, its employees, and its Subprime Consultants and Subconsultants possess the professional and technical expertise and experience necessary to perform the work required under this Agreement.

4.5. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Consultant, Subprime Consultants or Subconsultants. Consultant's personnel and subconsultants shall comply with the licensing requirements of the State of California in their respective Disciplines. Consultant shall comply with City's reasonable requests regarding assignment or reassignment of personnel, but Consultant must supervise all personnel, including those assigned or reassigned at City's request.

5. PROGRAM DIRECTION.

5.1. SFMTA Direction. Consultant shall perform all work under this Agreement under the direction of and to the satisfaction of the SFMTA's Program Officer and Program Manager. The work to be performed by Consultant under this Agreement shall be subject to the Program Direction of the SFMTA. As used in this

Agreement, the term "Program Direction" shall include but not be limited to the following:

5.1.1. Directions to Consultant, which shift work emphasis between tasks, require pursuit, redirection, modification or termination of certain activities, or otherwise provide information and program guidance to Consultant.

5.1.2. Review and, where required, approve, disapprove, accept or refuse submittals or other product prepared by Consultant in the performance of its services in accordance with the Design Schedule (described at Section 7.1, *infra*).

5.1.3. Assign or reassign staff to perform particular tasks.

5.1.4. Attend meetings at regular frequencies as determined by the Program Manager or as requested by Consultant to manage the day-to-day progress and requirements of the Project.

5.2. SFMTA Program Manager. Consultant shall direct any request for clarification or other communication concerning Program Direction first to the SFMTA's Central Subway Program Manager. In performing the services provided for in this Agreement, the SFMTA CSP Program Manager identified below shall be the Consultant's liaison with the SFMTA.

John Funghi
Central Subway Program Manager
San Francisco Municipal Transportation Agency
821 Howard Street
San Francisco, CA 94103
tel: 415-701-4299
fax: 415-701-5222

5.3. Evaluation of Consultant's Performance. The Consultant shall meet with SFMTA no less than a quarterly to evaluate Consultant's performance under the Contract with respect to the following:

5.3.1. Consultant's adherence to this Agreement

5.3.2. Quality of performance of Key Team Members and other staff assigned to the Project

5.3.3. Quality of performance of Subprime Consultants and Subconsultants

5.3.4. Management of authorized budget for each Task

5.3.5. Adherence to agreed schedule

5.3.6. Quality of deliverables

5.3.7. Monitoring, reporting and updating of progress of assigned work

5.3.8. Timeliness in resolving issues, including issues arising from performance evaluations

5.3.9. Working relationship between Consultant's team and other agencies

Should the Agency be dissatisfied with more than two of the above categories of Consultant performance in the same evaluation, Agency will render a negative evaluation on the Consultant's performance for that quarter. In such cases, the Consultant shall be required to formulate and deliver to the Agency within five (5) working days a corrective action and schedule plan to be followed by the Consultant with results reported to Agency monthly until the problem areas have been resolved or otherwise improved to the SFMTA's satisfaction.

6. PROGRAM BUDGET AND COST CONTROLS.

6.1. Fixed Budget Limit of Project Construction Cost. The Fixed Budget Limit, as set out below, represents the City's budget for bid and award of the construction contracts for the complete construction of the Project. The Fixed Budget Limit may not be changed unless such changes are documented and effected through the Project's Design Control Procedures as set out in the Project Management Plan.

6.1.1. The Fixed Budget Limits as of the Effective Date of this Agreement for each of the Construction Bid Packages are as follows:

Utility Contract 2	\$3,200,000
Tunneling	\$203,200,000
Total Fixed Budget Limit	\$206,400,000

The Fixed Budget Limit includes all of the costs of basic construction. The Fixed Budget Limit excludes construction contingencies and alternates, either additive or deductive, the cost of furniture, operating and office equipment, telephones and business networks, and the cost of artwork that is to be incorporated in the Project as an integral building or site element.

6.1.2. The Consultant is responsible for designing a comprehensive and complete Project that does not vary more than five percent (5.0%) of the Total Fixed Budget Limit for the Project and of the Fixed Budget Limit of each of the Construction Bid Packages, In the event that cost estimates prior to bidding or actual responsive bids received from the lowest responsible bidder indicate that the Construction Cost will exceed One Hundred Five Percent (105%) of any Fixed Budget Limit, the Consultant shall, at the request of the City and at no additional cost to the City: (a) revise the design and Construction Documents, plans and specifications and (b) assist the City with re-bidding of the Project, until the construction cost is within plus or minus five percent (+/-5%) of the Fixed Budget Limit, subject to the conditions listed in Sections 6.1.3 through 6.1.6:

6.1.3. The City, in its sole discretion, may modify the Fixed Budget Limit, or may apply additive or deductive alternates to the lowest responsive bid to meet the Fixed Budget Limit. The Consultant and the City will confer at all phases of design and before the design of any alternates. The Consultant shall design additive alternates with an estimated value of not less than seven and one-half percent (7.5%) and deductive alternates with an estimated value of not less than seven and one-half percent (7.5%) of the Fixed Budget Limit, with final determination by the City as to the scope of such alternates, which alternates shall be a part of the bid package, and the order in which the City would accept such alternates. The alternates shall be set out in the Construction Documents and clearly identified as optional work to be separately set out in contractors' bids.

6.1.4. In the event that redesign services are necessary after the City has received bids for construction of the Project, the City shall cooperate with the Consultant in approving design changes, including, if necessary, changes which reasonably affect the size and quality of the Project. The final decision as to what elements of the Project are redesigned shall rest solely with the City. The Consultant must complete any redesign within two (2) months of notification by the City of its intent to redesign.

6.1.5. In the event that redesign services are performed after the Consultant has received notification by the City to redesign and modify the Contract Documents, preparation of modified Construction Documents and preparation of a Final Consultant's Estimate of Construction Cost, and obtaining City approval of the final Construction Documents, shall be the limit of the Consultant's strict responsibility arising out of the establishment of the Fixed Budget Limit. This, however, shall in no way limit the Consultant's responsibility or the City's remedies in the event that the reason that the Fixed Budget Limit was exceeded was the result of the Consultant's negligent acts, errors or omissions.

6.1.6. Should the City accept a bid for a Construction Bid Package which exceeds the Fixed Budget Limit for that portion of the Project or for the overall Fixed Budget Limit for the Project, Consultant shall not receive a proportional increase in the Fixed Fee.. Fixed Budget Limits may be adjusted in the SFMTA's sole discretion based on changes in market conditions and rates as documented by changes in relevant indexes published in the Engineering News Record (ENR). Fixed Budget Limits also may be adjusted based on changes in Project scope, as quantified by the Central Subway Design Change Control Process.

6.2. Cost Estimating.

6.2.1. Within 60 days of the SFMTA's issuing NTP to Consultant, the Consultant shall review the existing conceptual and preliminary design documents for the Project and shall also review the Fixed Budget Limits for each Contract Bid Package, as listed in Section 6.1.1. Within 90 days of NTP, Consultant shall then prepare an independent Probable Opinion of Construction Cost ("Cost Estimate") for SFMTA approval. The Cost Estimate shall be prepared following ASTM UNIFORMAT II standards, broken down to

UNIFORMAT Level III, and shall reflect the estimated cost of each element of the Project. The Cost Estimate shall contain a quantity take-off and unit pricing, consistent with the level of design completion, together with a statement of assumptions regarding design contingencies and exclusions.

6.2.2. The Consultant shall update the Cost Estimate, changing the format to the CSI/MASTERFORMAT 2004, and according to the CSI 50 Division classifications at the following phases of design: 65 percent completion of Construction Documents, 90 percent completion of Construction Documents, and 100 percent (total) Construction Documents.

6.2.3. With each update to the Cost Estimate, Consultant shall consider all changes to estimated costs as cost trends, and the Consultant shall analyze such information to determine the cause of the cost change, reconcile its cost estimate with the contemporaneous cost estimates by the City and/or another consultant for the Project, and present the reconciled Cost Estimate to the City for approval according to the City cost change control procedure.

6.2.4. The Consultant shall prepare a new final Consultant's Estimate of Construction Cost based on the fully (100%) complete Construction Documents issued for bidding, and considering the Fixed Budget Limit for the Project.

6.3. City Cost Change Control Procedure.

6.3.1. The Consultant shall assist and cooperate with the City to control design or scope changes that would affect the cost of the Project during the Project design and construction. The Consultant shall comply with any cost change control procedure as may be established by the City or another consultant for the Project. The purposes of the procedure are:

- (a) To assure that the City requirements for the Project are met;
- (b) To assure that estimated construction costs are understood as the design is developed, and remain within the Project Fixed Budget Limit;
- (c) To assure that all proposed changes to the design properly analyze cost effects;
- (d) To avoid unnecessary re-design work by the Consultant; and
- (e) To avoid unnecessary additional costs to the City.

6.3.2. The Consultant shall fully inform the City of any proposed changes to the design recommended by the Consultant, or to the scope of the Project requested by the City or other stakeholders, that would affect the estimated (added or decreased) construction cost for the Project. The Consultant shall review with the City the benefits as well as costs of the proposed

changes, including the potential effect to City operating costs for the Project. The Consultant shall complete a Change Request Form provided by the City providing a summary of the proposed change, and attach such other analyses as may be appropriate for City consideration. Should the recommended change increase the estimated cost of the Project, the Consultant shall cooperate with the City to identify other changes to the Project that could reduce cost and offset the recommended increased cost, for approval by the City.

6.3.3. No change shall be incorporated into the design documents unless it has been first approved by the City by written approval of the Change Request Form.

6.3.4. The Consultant shall maintain a Change Log of all recommended, pending, approved and incorporated changes, and submit the Change Log to the SFMTA monthly throughout the design phases.

6.3.5. City approval of any change in the design shall not entitle the Consultant to a change in the Consultant's Fixed Fee, unless the scope of the Project changes and the SFMTA approves additional cost is in writing .

6.4. Task Budgets. During performance under this Agreement, the Consultant shall manage its work and that of its Subprime Consultants' and Subconsultants' so that all services are provided and performed in a cost-effective and efficient manner. Within each Annual Design Plan, a task budget shall be established for each task. The Consultant shall complete its work and services within said task budgets. The SFMTA will control the budget at the Project level, not at the work task level. The Consultant will have the authority to reallocate budget between work tasks as long as the overall project budget is not increased due to reallocation of budget between work tasks. Task budgets may be modified only upon authorization of Program Manager. Task budgets shall not be increased because of any unwarranted delays, conduct or costs attributable to the Consultant, but will be increased by SFMTA in the event of Additional Work within or affecting a task, because of unavoidable delay by any governmental action, or other conditions beyond the control of the Consultant that could not be reasonably anticipated.

6.5. Retention. The SFMTA shall retain Five Percent (5%) of every payment to Consultant as security of the faithful performance by the Consultant of all the conditions, covenants and requirements specified or provided in this Agreement. The City shall release amounts retained to Consultant as follows:

6.5.1. Upon SFMTA's acceptance of Utilities Relocation design work, SFMTA will release one-half of amounts retained from payments for said work. The SFMTA will release the remaining amounts held in retention for Utilities Relocation design work upon the SFMTA's acceptance of work as substantial construction completion.

6.5.2. Upon SFMTA's acceptance of Tunnels design work, SFMTA will release one-half of amounts retained from payments for said design work. The SFMTA will release the remaining amounts held in retention for Tunnels design work upon the SFMTA's acceptance of work as substantial construction completion.

6.5.3. Consultant shall track its work and invoices so that retention held for Utilities Relocation and Tunnels design, respectively, may be separately accounted. Consultant shall provide back-up documentation showing such accounting with any request for release of retention.

7. PROGRAM SCHEDULE.

7.1. Schedule of Services. Attached to this Agreement as Attachment M is a preliminary Design Schedule indicating the times and sequences assumed for the completion of all services required under this Agreement. Within fifteen (15) days after the SFMTA issues NTP to the Consultant, the Consultant shall submit for City approval a final progress Design Schedule. The progress Design Schedule shall be in the form of a progress Gantt (schedule bar) chart indicating phases, tasks, durations and times, and sequences of key activities and tasks, including City and other required reviews and approvals as related to the services in this Agreement, but excluding detailed construction schedules. Upon the SFMTA's approval of the Design Schedule, the Consultant shall adopt the Design Schedule as a baseline schedule, and on a monthly basis submit a progress schedule update to the Design Schedule indicating actual progress compared to the baseline schedule.

7.2. Time is of the Essence. Consultant agrees that time is of the essence with respect to the performance of all provisions of this Agreement and with respect to all Project schedules in which a definite time for performance by Consultant and Consultant's subconsultants is specified; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace period provided for in this Agreement. The Parties acknowledge that delay is one of the greatest causes of waste and increased expense in any construction project. Consultant shall act diligently in anticipating and performing its required tasks in a manner so as to not delay the prosecution of any services or work with respect to the Project.

7.3. Force Majeur. Notwithstanding anything in this Agreement, Consultant, including Consultant's subconsultants, shall not be responsible hereunder for any delay, default or non-performance of this Agreement, if and to the extent that such delay, default or nonperformance is due to an act of God, natural disaster, strike, national emergency, government action or other action or reason rendering Consultant's timely performance beyond its reasonable control. To the extent that Consultant becomes aware of such uncontrollable forces that could or will impact the SFMTA, Consultant shall use all reasonable effort to mitigate the harm or damages that the CSP might incur by such uncontrollable forces.

7.4. Extension of Time. If the Consultant has been delayed through no fault of its own, and as a result will be unable, in the opinion of the SFMTA, to complete performance fully and satisfactorily within the time provided in the Design Schedule, the Consultant, upon submission of evidence of the causes of the delay and an amended Design Schedule, may at the discretion of the SFMTA, be granted an extension of time for performance equal of the period the Consultant was actually and necessarily delayed.

7.5. Construction Support Services. The Parties estimate that the SFMTA will require and that Consultant shall provide Construction Support Services for 72 months following completion of the Construction Documents. Should the Consultant be required to perform Construction Support Services for a period beyond a total duration of 72 months, due to no fault of the Consultant, the Consultant shall be entitled to additional compensation, conditional upon Consultant's providing to the SFMTA complete and accurate documentation of all actual increased cost of performance of its services for that additional period. In the event that the construction is delayed beyond the scheduled completion date due to the fault of the Consultant, as determined by the City in its sole discretion, then the Consultant shall continue to provide Construction Support Services in accordance with this Agreement for the additional time delay attributed to the Consultant at no additional charge to the City. In such event, the City reserves all rights as against the Consultant. The Consultant may submit any disputed amounts as a claim.

7.6. Commencement and Completion of Project Work. After execution of this Agreement by SFMTA and the Consultant and the contract is certified by the City Controller's Office, SFMTA will issue a written Notice to Proceed on the Project or specific tasks thereof. Such notices to proceed will be provided for specific tasks identified as necessary to produce specified Work Product and shall set forth the date of commencement of the work, a description of the work to be performed, the schedule for the work authorized, and the budgets for such tasks.

7.7. Annual Design Plans. The Parties will meet no later than 10 days after the SFMTA issues NTP to the Consultant to agree on a Design Plan consistent with the Project milestone dates, which shall include a description of the work the and Work Product that the Consultant shall complete within one year from NTP and applicable Milestones and appropriate compensation for said Milestones. The Parties shall meet thereafter no later than 45 days before the anniversary of NTP to agree on a Design Plan for the following year. The purpose of Annual Design Plans is to allow the Consultant, the City, and other City consultants to coordinate and allocate resources and to assist the SFMTA in Project financial planning.

8. CHANGES IN SCOPE.

8.1. Work Revised at SFMTA Request. SFMTA may, at any time, by written order direct the Consultant to revise portions of the Work Product previously completed in a satisfactory manner, delete portions of the Project, or make other changes within the general scope of the services or work to be performed under this Agreement. If such changes cause an increase or decrease in the Consultant's cost of, or time required for, performance of any services under this Agreement, an equitable cost and/or completion time adjustment shall be made and this Agreement shall be modified or a Task Order issued in writing accordingly. The Consultant must assert any claim for adjustment under this Section in writing within thirty (30) days from the date of receipt by the Consultant of the notification of change or such claim shall be waived. The Consultant shall not perform any work or make any revisions to the Project Services or Scope of Work until SFMTA has provided written direction.

8.2. Proposal for Additional Work. SFMTA may, at any time, request that the Consultant perform Additional Work beyond the scope of the Scope of Work set out in this Agreement. If the SFMTA desires the Consultant to perform Additional Work, the SFMTA will submit to Consultant a request for services, to which the Consultant will respond within 30 days with a Proposal for Additional Work, as described below, which the parties will then negotiate. If the Consultant discovers any work to be otherwise out-of-scope and necessary to the Project, the Consultant shall submit to the SFMTA a proposal for the Additional Work, as described below

A proposal for Additional Work shall include:

8.2.1. A detailed description by task and subtask of the Additional Work to be performed and the means and methods that will be used to perform it;

8.2.2. Milestones for completion for each subtask and deliverables at each milestone for the Additional Work;

8.2.3. Personnel and the subconsultants to be assigned to each part of the Additional Work along with a brief justification as to why such personnel are qualified to perform the Additional Work;

8.2.4. A detailed cost estimate for each subtask of the Additional Work showing:

(a) Breakdown of estimated hours and direct salaries by individual for each activity required to complete all tasks and subtasks;

(b) Overhead, including Salary Burden costs;

(c) Estimated out-of-pocket expenses;

(d) Proposed additional Fixed Fee.

8.3. Proposal Review.

8.3.1. The SFMTA will review the proposal and determine whether the proposed work is Additional Work, and if so, then negotiate a final written description of services staff assignments, deliverables, schedule requirements, and budget for all tasks and subtasks included in the Annual Design Plan or Task Order.

8.3.2. Upon completion of negotiation, the City will direct the Consultant in writing to proceed with the Additional Work after obtaining appropriate City approvals, memorialized in a Task Order.

8.3.3. In the event that City and Consultant cannot reach agreement on the terms of any Task Order for Additional Work, City may either cancel the Task Order and have the work accomplished through other available sources, or City may direct the Consultant to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Consultant refuse to undertake a City-ordered task

that the Consultant is qualified to perform. The City and the Consultant shall continue to negotiate any outstanding terms under provisions of Section 26.12 (Resolution of Disputes) of this Agreement while the additional Task Order is being performed. The City shall not deny the Consultant reasonable compensation for Additional Work performed under an approved Task Order.

8.4. Request for Additional Work. If the Consultant considers any work or services to be outside the Scope of Services as established by this Agreement, the RFP and the Proposal, the Consultant shall notify the SFMTA's Program Manager, with copies to parties identified in Section 26.1(Notices to the Parties), in writing within five (5) working days of discovering such extra work or services to request authorization to perform the Additional Work. Neither Consultant nor any Subprime Consultant or Subconsultant shall be reimbursed for out-of-scope work performed without first obtaining approval of Program Manager in accordance with the procedures set forth below.

8.5. Approvals Required.

8.5.1. No services for which additional compensation will be charged under this Section or any other section of this Agreement by the Consultant shall be furnished without the prior written authorization of SFMTA specifying the changes to be made and the price to be charged per said change.

8.5.2. Before beginning Work on any task under an Annual Design Plan or Task Order, the Annual Design Plan or Task Order, including the scope of services, schedule requirements, and budget must be signed by both Parties' authorized representatives and the Program Manager must issue authorization to the Consultant to begin work.

8.6. Consultant at Risk. If the Consultant proceeds to do work that it perceives to be Additional Work without first obtaining City's written approval in accordance with the above procedures, regardless of the amount or value of the work, the City shall have no obligation to reimburse Consultant for the work thus performed. Eagerness to respond to the City's comments or concerns, expediency, schedule constraints will not be acceptable reasons to proceed with Additional Work without City's prior written approval.

8.7. Changes to Design Plan. The SFMTA may direct Consultant to make changes in the Annual Design Plan at any time in its sole discretion. The SFMTA, acting through the Program Manager, shall have the authority to direct Consultant to discontinue, perform further, or provide additional resources to the performance of any task or subtask included in an Annual Design Plan or Task Order and to direct Consultant to amend an Annual Design Plan to those ends.

8.8. Decrease in Scope. The SFMTA may reduce the Scope of Work of the Consultant at any time and for any reason upon written notice to the Consultant specifying the nature and extent of such reduction. In such event, the Consultant shall be duly compensated for work already performed, including the payment of all necessary costs due and payable under this Agreement prior to receipt of written notification of such reduction in scope. The SFMTA shall compensate Consultant as Additional Work for the Consultant's Revision of Work Product and other documents

necessitated by the SFMTA's reduction of Consultant's Scope of Work shall be Additional Work.

8.9. Change Through Fault Of Consultant.

8.9.1. In the event that any change is required in the Work Product, the Construction Bid Packages and any other plans, specifications, drawings or other documents because of a defect of design or non-constructability of design, or non-workability of details, or because of any other fault or error of the Consultant, no additional compensation shall be paid to the Consultant for making such changes.

8.9.2. In the event the SFMTA is required to pay to a construction contractor additional compensation or any compensation for additional work as a result of an error or omission by the Consultant that violates the applicable professional standard of care, the SFMTA may charge to the Consultant against any amount owing to Consultant any cost or expense that the SFMTA would not have sustained but for such error or omission.

9. SUBCONTRACTING.

9.1. Assignment of Work. Consultant is permitted to subcontract portions of the services it shall perform under this Agreement as provided in its Proposal and as approved by the SFMTA. Consultant may reassign work assigned to Subprime Consultants and Subconsultants as provided in its Proposal only with the prior written approval by the SFMTA. Consultant shall itself perform the work of a Subprime Consultant and of a Subconsultant for at least on Construction Bid Package, as provided in the Organization Chart attached to this Agreement as Attachment E. Execution of this Agreement shall constitute approval of the firms and individuals listed in Attachment B (Directory of Subconsultants), to this Agreement as subconsultants on this Project.

9.2. Responsibility. The Consultant shall be responsible for the professional standards, performance, and actions of all persons and firms performing subcontract work under this Agreement at any and all tiers, including but not limited to the Subprime Consultant and Subconsultant levels.

9.3. Substitutions of Subconsultants. Substitutions may be made for any subconsultants listed in Attachment B, "Directory of Subconsultants," for: (a) failure to perform to a reasonable level of professional competence; (b) inability to provide sufficient staff to meet the Project requirements and schedules; or (c) unwillingness to negotiate reasonable contract terms or compensation. Consultant may only substitute subconsultants with the prior written approval of the SFMTA Program Officer.

9.4. Prompt Payment of Subconsultants. Progress Payments. In accordance with SFMTA's SBE Program, no later than three (3) working days from the date of Consultant's receipt of progress payments by the City, the Consultant shall pay any subconsultants for work that has been satisfactorily performed by said subconsultants, unless the Consultant notifies the CCO in writing within (10) working days prior to receiving payment from the City that there is a bona fide dispute between

the Consultant and the subconsultant. Within ten (10) working days following receipt of payment from the City, Consultant shall provide City with a declaration under penalty of perjury that it has promptly paid such subconsultants for the work they have performed and stating the amounts paid. Failure to provide such evidence shall be cause for City to suspend future progress payments to Consultants.

9.5. Interest on Unpaid Amounts. If the Consultant does not pay its subconsultant as required under the above paragraphs, 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. This Section shall not impair or limit any remedies otherwise available to the Consultant or a subconsultant in the event of a dispute involving late payment or nonpayment by the Consultant or deficient subconsultant performance or nonperformance by the Consultant.

9.6. Retention. 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, Consultant 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. Within forty (40) days of satisfactory completion of all work required of the subconsultant, Consultant should release any retention withheld to the subconsultant.

9.7. Substitutions of SBE Firms. If Consultant wishes to substitute a Subprime Consultant or Subconsultant that is a SBE, the Consultant must make good faith efforts to use another SBE as a substitute. The Consultant shall notify SFMTA in writing of any request to substitute a SBE subconsultant (or supplier) and provide the SFMTA's CCO with any documentation requested to support the substitution. The CCO must approve the request in writing for the substitution to be valid.

9.8. Addition of Subconsultants. The City reserves the right to require Consultant to retain a subconsultant or subconsultants that possess specific expertise to provide services under this Agreement, if the City determines that the Consultant does not have specific expertise necessary for the timely and successful completion of the Project.

9.9. Subcontracts. Consultant shall fully inform all Subprime Consultants, and shall require each of its Subprime Consultants to warrant that it has fully informed each of its respective Subconsultants, of the terms and conditions of this Agreement. Consultant shall ensure that all services performed and material furnished and the manner by which those services and materials are provided shall conform to the requirements of this Agreement. The terms and conditions of Consultant's subcontracts shall conform to the requirements of this Agreement. Each of Consultant's Subprime Consultant contracts and a cost summary of each of those agreements shall be subject to review by the SFMTA prior to the Subprime Consultant proceeding with the work. Upon request, Consultant shall provide the SFMTA copies of any written agreements between a Subprime Consultant and a Subconsultant.

9.10. Activity Reports. The Consultant shall submit monthly reports with its monthly invoices for payment, describing all work completed by Consultant, Subprime

Consultants and Subconsultants during the preceding month and copies of all invoices relating thereto.

10. SMALL BUSINESS ENTERPRISE PROGRAM.

10.1. General. The SFMTA is committed to a Small Business Enterprise Program ("SBE Program") for the participation of SBEs in contracting opportunities. In addition, the Consultant must comply with all applicable federal regulations regarding Disadvantaged Business Enterprise (DBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations (49 C.F.R. Part 26), with respect to DBEs performing work under this Agreement. More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/library/admin/BPPM/ch7.html>.

10.2. Compliance with SBE Program. Consultant shall comply with the SBE provisions contained in the attached Attachment G, 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.

10.3. SBE Goal. The goal for SBE participation is Thirty Percent (30%) of the total dollar amount awarded for the services to be performed under this Agreement.

10.4. Non-Discrimination in Hiring. Pursuant to City and SFMTA policy, Consultant is encouraged to recruit actively minorities and women for its workforce and take other steps within the law, such as on-the-job training and education, to ensure non-discrimination in Consultant's employment practices.

11. WORK PRODUCT, DELIVERABLES AND SUBMITTALS.

11.1. Construction Documents Requirements.

Work Product shall be created and maintained as follows:

11.1.1. CADD drawings shall be provided in AutoCAD R2004 or more recent version, and corresponding pen files and image files, or other computer drawing and drafting software approved by the City.

11.1.2. Written documents, spread sheets and cost estimates on Microsoft Office Suite 2003 (Word and Excel)

11.1.3. Critical Path Method Schedules in Primavera Project Planner P6 Scheduling Software.

11.1.4. Audiovisual presentations in Microsoft PowerPoint 2003.

11.1.5. Image files in JPG, GIF, PIC, TIF and BMP formats. These images shall be made available on any storage format selected by the City.

11.1.6. Renderings in Adobe Photoshop 7.0 and 3D Studio VIZ, or other software approved by the City.

11.1.7. Presentation boards, mounted on 3/8-inch or 1/4-inch Gatorboard.

11.1.8. Architectural models shall be composed of painted Plexiglas, wood or other materials as requested as a part of Additional Services and as approved by the City and mounted on wooden base with optically clear Plexiglas panel covering suitable for public display.

11.2. Transmittal of Work Product. As directed by the SFMTA, and after completion of each task and subtask, the Consultant shall transmit to Agency all Work Product, including but not limited to originals, produced or accumulated in the course of its and the Subprime Consultants' and Subconsultants' work under this Agreement. The Consultant's Project Manager and Key Team Members shall thoroughly review and approve all Work Product in writing prior to transmitting the Work Product to the SFMTA. Consultant shall retain a copy of all Work Product for its records. Upon the termination of this Agreement, or prior to final payment, upon demand by the SFMTA, the Consultant shall surrender forthwith to the SFMTA all Work Product prepared, developed or kept by Consultant in connection with or as part of the Project. Any use of the Work Product by a party other than the City and its contractors and consultants is at the sole risk of the user.

11.3. Reproduction of Work Product. The Consultant shall arrange and provide for printing (or other required reproduction) of three master copies of all final designs; Consultant shall also deliver all Work Product in electronic format as determined by SFMTA.

11.4. Agency's Responsibilities Regarding Submittals. The Agency will review and comment on Consultant's submittals generally within four weeks of receipt or such other time as agreed by the SFMTA in the Design Schedule (described in Section 7.1, supra). The Agency and Consultant will establish a timetable of submittals and reviews during initial Project coordination meetings, which the Consultant shall include in the Annual Design Plan. The Agency's review and comments of Consultant submittals shall in no way relieve the Consultant of its independent responsibility to perform its own quality checks and review, nor shall any comment or review by the Agency relieve the Consultant of its independent responsibility to provide submittals and deliverables in full compliance with local, State and federal codes, regulations and standards.

12. CONSULTANT PERSONNEL.

12.1. Consultant's Project Manager. The Consultant agrees to commit and assign a senior Consultant or engineer as the Program Manager to direct Consultant's Work and to serve as the official contact and spokesperson on behalf of the Consultant in matters related to the Project for the Term of this Agreement. The Consultant's Project Manager shall have signature authority to bind Consultant. The Consultant's Project Manager must work in the Project office in San Francisco for Term of the

Agreement. The Consultant has identified Matthew E. Fowler, PE, as the Consultant's Project Manager.

12.2. Key Personnel. The Consultant agrees that Key Team Members shall be committed and assigned to work on the Project to the level required by SFMTA for the Term of the Agreement, and shall work at the Project office in San Francisco. The following persons are Key Team Members who have been committed and assigned by the Consultant to work on the Project to the level required by SFMTA for the Term of the Agreement:

<u>PB:</u> <ul style="list-style-type: none">• Matthew E. Fowler• Shing Owyang• Jimmy Thompson	<u>Telamon:</u> <ul style="list-style-type: none">• Mennor Chan• Fred Reynolds• Martin DeForge
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12.2.1. If one of the Key Personnel listed above is not assigned to serve as lead for Construction Support Services, then the SFMTA and PB shall identify the Consultant personnel to serve in that role, and that person shall also be considered Key Personnel.

12.2.2. All Key Team Members' sole assignment for the term of this Agreement shall be to complete the Final Design and provide support services for the construction of the Project, unless otherwise authorized by the SFMTA, which shall not arbitrarily withhold such authorization as long as the Project is not thereby delayed or otherwise harmed, the determination of which shall be in the SFMTA's sole discretion.

12.3. Departure Notice and Corrective Action Plan. Consultant shall advise SFMTA immediately any time a Key Team Member severs employment or otherwise deviates from his or her committed role or time on the Project. SFMTA will require Consultant to provide a corrective action plan to replace that Key Team Member. All candidates to replace a departing Key Team Member must have similar experience and expertise to the Key Team Member he or she would replace.

12.4. Substitutions of Key Team Members.

12.4.1. Substitutions of Key Team Members will not be allowed except for extenuating circumstances, such as death, illness or departure from the firm, or with the City's prior approval, which approval will not be arbitrarily withheld as long as such substitution will not delay or otherwise harm the Project, which shall be determined by the SFMTA in its sole discretion. If it is necessary to substitute a Key Team Member, the Consultant shall propose a replacement in writing to the Program Officer for approval.

12.4.2. The Consultant shall replace any Key Team Member departing from the Project or departing from his/her assigned role in the Project with an individual of comparable experience on a non-temporary basis within thirty (30) calendar days of the departure of the Key Team Member, unless the SFMTA's Program Manager grants an extension to that time limit in writing. Consultant's failure to replace a Key Team Member shall be cause for the City to suspend invoice payments.

12.4.3. Consultant shall not be relieved of its obligation for full performance of the Scope of Services as a result of any unfilled position. The Consultant shall be held fully responsible for any inefficiencies, schedule delays or cost overruns resulting in whole or in part from any Key Team Member departing from the Project or departing from his/her assigned role in the Project before the end of the committed duration.

12.4.4. Consultant shall bear any additional costs incurred in substituting personnel. Such costs include relocation expenses, expenses related to recruiting and hiring, training and learning on the job.

12.5. Liquidated Damages. Consultant acknowledges that the SFMTA's selection of Consultant and the negotiated amount of Consultant's Fixed Fee were based, in part, on the expertise and experience Consultant's proposed Key Team Members as submitted in the Proposal. The Consultant acknowledges and agrees that the replacement of Key Team Members during the course of the Project would be extremely disruptive and damaging to the City, the cost of which is difficult, if not impossible, to calculate. The Consultant, therefore, shall pay to the City a charge of Two Hundred Thousand Dollars (\$200,000) for the first Key Team Member whom the Consultant replaces without written approval by the City. For each additional Key Team Member whom the Consultant replaces without written approval by the City, the Consultant shall pay to the City a charge of Three Hundred Thousand Dollars (\$300,000). Said charges shall not be considered or act as a penalty, but shall be liquidated damages to the City to compensate the City for the additional costs and inefficiencies to the Central Subway Project that the Parties agree will necessarily arise from the unauthorized departure of a Key Team Member of the Consultant. The SFMTA reserves the right to require Consultant to replace or reassign any personnel assigned by Consultant to the Project, including but not limited to Key Team Members. Should the City require Consultant to replace or reassign any of its personnel so that said persons are no longer working on the Project, the liquidated damages provisions of this Section 12.5 shall not apply.

13. COMPENSATION.

13.1. 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 City 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. Notwithstanding any other provision of this Agreement, 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. Consultant's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION 13.1 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

13.2. Guaranteed Maximum Costs

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

13.2.2. 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 Consultant for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

13.2.3. 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 City Controller.

13.2.4. The City 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.

13.3. Total Amount.

13.3.1. The total amount of compensation under this Agreement for all Work performed by Consultant, shall not exceed Five Million Seven Hundred Ninety Five Thousand Dollars (\$5,795,000) for Base Services, and an additional Seven Hundred Five Thousand Dollars (\$705,000) for Optional Services.

13.3.2. The prices listed above for Base Services and Optional Services are inclusive of all direct labor costs, other direct costs, indirect costs and Fixed Fee for all Work performed under this Agreement subject only to authorized adjustments as specifically provided in this Agreement. Said amounts shall include all Work provided on a Cost-plus-Fixed-Fee basis or on a negotiated Lump Sum Price basis. In the event the Consultant incurs costs in excess of the Total Price, adjusted as provided herein, the Consultant shall pay such excess from its own funds and SFMTA shall not be required to pay any part of such excess and the Consultant shall have no claim against SFMTA on account thereof.

13.4. Fixed Fee.

13.4.1. For all of the Consultant's Basic Services, which are all services provided by Consultant except for those tasks and work specifically identified as Additional Work, the Agency shall pay the Consultant a Fixed Fee, which is Consultant's profit for performing the Basic Services under this Agreement. The Fixed Fee shall not exceed a sum total of Five Hundred Forty Seven Thousand Five Hundred Seventy One Dollars (\$547,571) for Base Services and an additional Sixty Three Thousand Eight Hundred Sixty-Six (\$63,866) for Optional Services. The Fixed Fee, which is profit, will be allocated to the Prime and Subconsultants and is included in the Total Price set forth above. The SFMTA will pay Consultant the Fixed Fee proportionate to the completion of the design, as set out in the following Table No. 1.

13.4.2. Payment of the full Fixed Fee is not guaranteed; to receive the full Fixed Fee Consultant shall fully perform all Work described in this Agreement in compliance with the standards of performance described herein.

13.4.3. It is understood and agreed that the Fixed Fee is a fixed amount that cannot be exceeded because of any differences between the Total Price and actual costs of performing the work required by this Agreement, and in no event shall payments to the Consultant exceed said Total Price, adjusted as provided herein. The Fixed Fee is based on earned value to the Project, and bears no relation to value of costs incurred by Consultant or reimbursed by the SFMTA. The SFMTA may approve an increase in Fixed Fee only if such increase is required due to an increase in the Basic Services scope of work or to "Additional Work" that increases the scope of work. The Fixed Fee shall not be increased for Consultant's additional level of effort to complete Basic Services. It is further understood and agreed that the fixed fee is only due and payable for Project work for which SFMTA has given notice to proceed and for which the Consultant has satisfactorily completed.

13.4.4. The Fixed Fee will be prorated and paid monthly in proportion to the Project work satisfactorily completed. The proportion of work completed shall be documented by invoices and shall be determined by a ratio of the total costs to date compared to the Total Price, less profit. A payment for an individual month shall include that approved portion of the fixed fee allocable to the Project work satisfactorily completed during said month and not previously paid. Any portion of the fixed fee not previously paid in the monthly payments shall be included in the final payment. The method of proration may be adjusted by SFMTA to reflect deletions or amendments in the Project work that are approved as herein described.

13.5. Change in Scope of Services. If the Scope of Services of any Phase or other portion of the Project is reduced, that reduction shall be memorialized in an amendment to the relevant Task Order(s) or Annual Design Plan, and the Fixed Fee for that Work shall be reduced, as negotiated by the Parties, but such reduction shall not be less than the proportional value of the reduced Work, as measured by the value of that Work set out in Attachment C (Summary of Fees) to this Agreement or other agreed document setting out the relative value of tasks. If the Scope of Services is increased, then the Parties will negotiate an appropriate Fixed Fee for the Additional Services. Any

negotiations for changes in the scope of services shall be subject to the agreement of the SFMTA's Program Officer and the Consultant. The Consultant shall do no work in addition to or beyond the scope of the services set forth and contemplated by this Agreement unless and until it is authorized to do so by the issuance to it of a "Modification of Contract," duly executed and approved.

13.6. Calculation of Compensation. Consultant acknowledges and agrees that the Agency shall compensate Consultant for its Work under the Agreement either by: (a) by Cost-plus-Fixed-Fee, in which the SFMTA shall reimburse Consultant Reimbursable Expenses to compensate Consultant its costs and applicable Overhead and pay a Fixed Fee proportionate to the value of the Work ("Cost-plus-Fixed-Fee") within a stated amount (amount not to exceed); or (b) Lump Sum, negotiated for specific tasks approved as Additional Work, identified in an approved Task Order or Annual Design Plan.

13.7. Redesign Due to Consultant's Error If during the course of construction, the City determines at its sole discretion that modifications to Construction Documents or Contract Documents are required due to errors or omissions on the part of the Consultant or its subconsultants in the final Construction Documents working drawings and specifications, the Consultant shall not be entitled to additional compensation for the cost of developing, preparing or reproducing the necessary revised drawings and specifications to correct said errors or omissions nor shall the Consultant be compensated in its fee for the cost of extra design work made necessary by errors or omissions of the Consultant or its subconsultants.

13.8. Cost Plus Fixed Fee Payment. For all Work that the City does not designate as Lump Sum Additional Work, the City will reimburse Consultant for Reimbursable Expenses (allowable costs) and will pay the Consultant a Fixed Fee proportionate to the value of the Work. The City will reimburse Consultant for only those expenses that are allowed under the principles set out in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" and as specifically authorized therein and as allowed under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. Compensation for Cost-plus-Fixed-Fee Work will be computed as follows:

13.8.1. Actual direct salaries paid by Consultant and subconsultants as shown in Attachment C; Overhead of Consultant and subconsultants as shown in Attachment C (Summary of Fees), and as described herein.

13.8.2. Actual costs or prices of approved Reimbursable Expenses for the Consultant and subconsultants at any tier, net of any discounts, rebates, refunds, or other items of value received by Consultant or any of its subconsultants that have the effect of reducing the cost or price actually incurred. Compensation for materials and expenses shall be at direct cost, without any mark-ups.

13.8.3. Consultant shall not "mark-up" or request additional compensation for work performed by subconsultants.

13.8.4. Costs for which Consultant seeks compensation must be (a) necessary in order to accomplish the work under an accepted Annual Design Plan or Task Order, and (b) be reasonable for the services performed.

13.8.5. A Fixed Fee invoiced as a proportionate share of the total Fixed Fee for the task.

13.8.6. All compensation due to Consultant for all Work performed under this Agreement shall be computed in conformance with Attachment C attached hereto.

13.9. Additional Work. Where the City designates Additional Work to be performed, the Parties shall negotiate a reasonable Cost-plus-Fixed Fee amount or a Lump Sum amount as compensation for the Additional Work. The SFMTA shall in its sole authority determine which pricing method shall be used for specified Additional Work. The City shall make monthly progress payments for Lump Sum Work based on agreed Milestones or proportionate to the percentage of tasks completed, as provided an approved Task Order, where the time to complete all Lump Sum Work under the relevant Task Order exceeds one month.

13.10. Salary Rates. Compensation under this Agreement will be based on the overhead and direct salary rates as shown on the Schedule of Rates attached as Attachment C. The direct salary rates in Attachment C may be adjusted at twelve (12) month intervals, but each increase shall be no more than the lesser of the Consumer Price Index (CPI) or two percent (2%). The CPI shall be defined as the Consumer Price Index for San Francisco-Oakland-San Jose, All Items, [1982-84=100] for All Urban Consumers. Consultant shall not make any individual salary adjustments above two percent (2%) for which the SFMTA would incur additional costs unless approved by the SFMTA's Program Manager in writing and in advance. The Consultant shall not submit requests to the SFMTA asking for salary adjustments for the same individual more than once within any 12-month period. Rate increases requiring SFMTA approval shall apply only to Work performed after the SFMTA's approval of the increased rates.

13.11. Overhead Rates - Provisional Rates and Annual Audit. The overhead rates applicable to Consultant and its subconsultants are listed in Appendix H, which is incorporated by reference as if fully set out here. Field Office Overhead rates are applicable to all Consultant and subconsultant personnel who have worked full time at the Project Field Office for more than six months continuously. Said employees are not working out of their home offices, and are therefore not receiving home office support in their day-to-day activities, so the hours they bill do not qualify for the Home Office Overhead rate. The Field Overhead rate is a reduced rate as consideration for the support those personnel receive from SFMTA. The purpose of the Field Office Overhead Rate is to reimburse the Consultant for the Salary Burden and home office support provided to the field employees. Composite Home Office Overhead rates are applicable to all other personnel who provide non-continuous or part time services to the project.

The rates set out in Appendix H are provisional and shall apply only for one year following NTP. Commencing within 90 days after the first anniversary of NTP, the City will audit Consultant's and subconsultants' books and records to determine the actual rates of compensation due. The Federal Acquisition Regulations (FAR) shall be used

for the purposes of this audit to provide guidance as to the calculations of the Overhead rates and Reimbursable Expenses to the extent the FAR does not conflict with standards set out in this Agreement. Based on the audited rates, the City shall then pay to Consultant or Consultant shall refund to the SFMTA any difference between amounts paid and amounts actually owed. The audited rates shall then be used as provisional rates for one the following year, until again reset by the City's audit of Consultant's books and records, which will commence each year within 90 days of the anniversary of NTP.

13.12. Transfer of Unused Funds. Consultant may request City's approval to transfer unused funds from one subtask to another subtask within the same main task to cover the unexpected shortfall of another subtask provided that the need for additional funds to complete the subtask is not due to Consultant's poor management or planning. Consultant may request City's approval to transfer unused funds from one task(s) to other tasks to cover the unexpected shortfall of the other Tasks, provided that (1) the task(s) from which the funds are transferred out of (including all subtasks within the task(s)) is at least ninety-five percent (95%) complete; (2) the funds are no longer necessary for the original task(s) for which the funds were allotted; and (3) the main reason for the task(s) requiring additional funds is not due to Consultant's poor management or planning. Such request must be made in writing to the Program Manager at least 15 calendar days in advance of the need to transfer funds across subtasks. City's approval of subtask or task amount changes will not be unreasonably withheld. City's approval shall be by the SFMTA Program Manager.

13.13. Non-Reimbursable Expenses. Consultant shall be compensated only for those Reimbursable Expenses authorized in Attachment C and that are allowed under Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," and under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. If an expense is not a Reimbursable Expense or Overhead, the City shall have no obligation to compensate Consultant for it. Notwithstanding any other provision of this Agreement, computer usage, facsimile and telecommunication expenses shall be considered Overhead and will not be accounted as Reimbursable Expenses. Consultant and subconsultant personnel entertainment or personal expenses of any kind shall not be considered Overhead or a Reimbursable Expense under this Contract. Office and field supplies/equipment expenses are not reimbursable expenses unless said supplies and equipment can be demonstrated to be out of the ordinary and used exclusively for this Project. Vehicle expenses that are beyond those calculated on a cost-per-mile or lease basis as listed in Attachment C are not reimbursable.

13.14. Prepayment. Unless the Program Manager gives specific written authorization, Consultant shall not submit invoices and the City shall not pay or otherwise reimburse Consultant for costs of any kind that the Consultant has not actually incurred and paid prior to date of invoice.

13.15. Refunds, Rebates and Credits. Consultant shall assign to the City any refunds, rebates or credits accruing the Consultant that are allocable to costs for which the Consultant has paid or has otherwise reimbursed the Consultant or for which the Consultant will submit an invoice.

13.16. Payment of Invoices. Compensation shall be made in monthly payments on or before the last day of each month for Work, as set forth in an Annual Design Plan or Task Order, that the Executive Director/CEO of the SFMTA or his designee, in his sole discretion, concludes has been performed as of the last day of the immediately preceding month in accordance with the Scope of Services attached to this Agreement as Attachment A and applicable Annual Design Plans and Task Orders. The City shall endeavor to issue payments of undisputed amounts to the Consultant within thirty (30) days following the receipt of complete and accurate invoices. City shall make payment to Consultant at the address specified in Section 26.1 (Notices to the Parties). All amounts paid by City to Consultant shall be subject to audit by City.

13.17. No Interest on Late Payments.. In no event shall City be liable for interest or late charges for any late payments.

13.18. Payment Limitations.

13.18.1. No charges shall be incurred under this Agreement nor shall any payments become due to Consultant until all Work Product and other services required under this Agreement are received from Consultant and approved by the SFMTA as being in accordance with this Agreement.

13.18.2. The City may reasonably withhold payment to the Consultant pending resolution, in an amount equal to questioned, disputed, or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the City in connection with the Consultant's negligent errors or omissions. Payments for undisputed amounts due on the same or other invoice shall not be unreasonably withheld or delayed.

13.18.3. If the evidence of production, the quality of the work, or the costs expended are not consistent with the budget and the schedule for an assigned task, the Consultant shall justify to the SFMTA's Program Manager the costs and Fixed Fee invoiced. The Program Manager will review the justification offered and adjust the monthly payment as deemed necessary. These requirements shall also apply to Work by subconsultants. No invoice shall be rendered if the total Work done under this Agreement since the last invoice amounts to less than Fifteen Hundred Dollars (\$1,500), except that an invoice may be submitted if three (3) months have elapsed since the last invoice was submitted. No more than one invoice shall be submitted in a month.

13.19. Invoices.

Form of Invoice. Invoices furnished by Consultant under this Agreement must be in a form acceptable to the City Controller. The Consultant shall submit invoices in quadruplicate for all allowable charges incurred in the performance of the Agreement. Each invoice must contain the following information:

1. Contract Number
2. Annual Design Plan or Task Order Number

3. Name, position, hourly rate and hours worked of employee(s) whose labor is invoiced
4. Description of the work performed or services rendered
5. Cost by employee (per hour or other agreed increment of measure) and other direct costs
6. Subconsultant costs supported by invoice itemization in the same format as described here
7. Fixed-Fee for current invoice period and amount of Fixed Fee paid as of date of invoice
8. Total costs
9. SBE utilization report (MTA Form 6)
10. Certified payroll records substantiating all labor charges for Consultant and all subconsultants shown on the invoice

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

13.21. Documentation for Payment. Invoices shall be submitted together with the Monthly Progress Reports, Monthly Cost Control Report and Monthly Update Schedule, the contents of which are defined herein, and shall be submitted by the 21st day of each month for work performed in the preceding month. The Monthly Cost Control Report shall include the current completed percentages for each task and subtask, the current estimated labor hours and cost for each Discipline to complete each of the tasks, an itemized breakdown of dollars and hours by employee and by subtask for all Consultant and subconsultant charges for the month being invoiced (accounting for a minimum of 28 calendar days of the month), and an itemized breakdown of out-of-pocket expenses by task incurred since the previous billing, along with copies of bills of materials and expenses incurred, and certified payroll records. Failure to submit a complete Monthly Cost Control Report, Monthly Updated Schedule and Monthly Progress Report by the due date shall constitute cause for suspension of invoice payments. In addition to the above, the SFMTA's Program Manager may, prior to authorization for payment of invoices, require delivery of either a complete or partial set of current work products as evidence of the status of the Consultant's work.

13.22. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code Sections 6.80 to 6.83 and Section 21.35, and pursuant to applicable federal law, any Consultant or subconsultant 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 Consultant or subconsultant 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 Consultant or subconsultant will be deemed to have submitted a false claim to the City if the Consultant or subconsultant: (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. Consultant agrees that said remedies are cumulative and in addition to the remedies and penalties provided for false claims under federal law.

13.23. Disallowance and Disputed Amounts. If Consultant claims or receives payment from City for a service, reimbursement for which is later disallowed by the City, the State of California or United States Government, Consultant 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 Consultant under this Agreement or any other Agreement. Any Compensation or reimbursement received by Consultant under this Agreement does not constitute a final decision or waiver of decision by the City as to whether said payment meets the terms and requirements of this Agreement. If following audit or other review, the City determines that the Consultant and/or subconsultants are not entitled to certain compensation requested or received, the City shall notify the Consultant stating the reasons therefore. Completion of the CSP or any portion of Consultant's Work will not alter Consultant's or a subconsultant's obligations to return any funds due the SFMTA as a result of later refunds, corrections, or other transactions, nor alter the SFMTA or its funding agencies' rights to disallow or otherwise not recognize costs on the basis a later audit or other review. The City may reasonably withhold payment to the Consultant pending resolution, in an amount equal to questioned, disputed or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the City in connection with the Consultant's negligent errors or omissions. Payments for other amounts due on the same or other invoice shall not be unreasonably withheld or delayed.

13.24. Payment Does Not Imply Acceptance of Work. The issuance of any progress payment or final payment by the City or the receipt thereof by the Consultant shall in no way lessen the liability of the Consultant to correct unsatisfactory work although the unsatisfactory nature of such work may or may not have been apparent or detected at the time such payment was made. Work that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced or performed again by Consultant without delay.

13.25. Project Suspension or Termination

13.25.1. If the Project is suspended for more than one hundred eighty (180) days or abandoned in whole or in part, the Consultant shall be

compensated for services satisfactorily performed prior to receipt of written notice from the City of such suspension or abandonment. If the Project is resumed after being suspended for more than one hundred eighty (180) days, the Consultant's documented and reasonable remobilization costs and compensation for the remainder of the services to be provided for the Project shall be equitably adjusted based on the Consultant's demonstrated increased costs.

13.25.2. In the event that the City terminates the Agreement for fault, the City may reduce any amount earned or otherwise due the Consultant by the sum of any additional costs the City has or will incur as a result of the Consultant's default.

13.26. Final Payment. Final payment of any balance earned by the Consultant for Project work will be made within sixty (60) days after all of the following:

1. Satisfactory completion of all work required by this Agreement;
2. Receipt by SFMTA of the Work Product not previously delivered;
3. Delivery of all equipment/materials purchased specifically for the Project ;
4. Receipt by SFMTA of a fully executed final statement of amounts paid to and owed to each SBE under this Agreement;
5. Such audit and verification as SFMTA may deem necessary, provided such audit is not unreasonably delayed beyond the completion of the Project; and,
6. Execution and delivery by the Consultant of a release of all claims against SFMTA arising under or by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by the Consultant from the operation of the release in stated amounts to be set forth therein.

14. TAXES; INDEPENDENT CONTRACTOR.

14.1. Obligation of Consultant. 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 Consultant.

14.2. Possessory Interest. Consultant 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 Consultant to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

14.2.1. Consultant, on behalf of itself and any permitted successors and assigns, recognizes and understands that Consultant, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

14.2.2. Consultant, 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. Consultant 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.

14.2.3. Consultant, 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). Consultant accordingly agrees on behalf of it 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.

14.2.4. Consultant 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.

14.2.5. Consultant shall provide a San Francisco Business Tax Registration to the SFMTA for the City to certify this Agreement.

14.3. Independent Contractor.

14.3.1. Independent Consultant. Consultant or any agent or employee of Consultant 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. Consultant or any agent or employee of Consultant 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. Consultant or any agent or employee of Consultant is liable for the acts and omissions of itself, its employees and its agents. Consultant 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 Consultant's performing services and work, or any agent or employee of Consultant providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Consultant or any agent or employee of Consultant.

14.3.2. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Consultant'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 Consultant performs Work under this Agreement.

14.3.3. Any claim by any agent, Subconsultant or employee of Consultant, Subprime Consultant or Subconsultant that alleges or seeks to establish employment status with the City shall come under the defense and indemnification provisions of this Agreement.

14.4. Payment of Employment Taxes and Other Expenses.

14.4.1. 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 Consultant 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 Consultant which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

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

14.4.3. 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, Consultant shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Consultant is an employee for any other purpose, then Consultant 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 Consultant was not an employee.

15. INSURANCE REQUIREMENTS.

Without in any way limiting Consultant's liability (i.e., PB and Telamon's joint and several liability) pursuant to the indemnity and indemnification provisions of this Agreement, including but not limited to Section 16, PB and Telamon shall maintain in force for as long as the City faces exposure to liability from Consultant's activities performed pursuant to this Agreement, insurance in the following amounts and coverages set out below.

15.1. Workers Compensation. PB and Telamon shall each maintain Workers' Compensation Insurance, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident injury or illness; and

15.2. General Liability. PB and Telamon shall each maintain Commercial General Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

15.3. Automobile. PB and Telamon shall each maintain 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.

15.4. Valuable Papers. PB shall maintain "All Risk" general insurance on Valuable Papers and Records for cost to repair or replace with like kind and quality including the costs of gathering and/or assembling information, subject to a minimum limit of Five Million Dollars (\$5,000,000). Telamon shall maintain "All Risk" general insurance on Valuable Papers and Records for cost to repair or replace with like kind and quality including the costs of gathering and/or assembling information, subject to a minimum limit of One Million Dollars (\$1,000,000).

15.5. Professional Liability.

15.5.1. PB. From the effective date of this Agreement, PB shall maintain professional liability insurance practice coverage with limits not less than Twenty Million Dollars (\$20,000,000) each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. Any deductible for said policy shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000). PB shall be responsible for the payment of all claim expenses and loss payments within the deductible. If required by the SFMTA, Consultant shall provide said professional liability insurance under insurance policy specific to the Project.

15.5.2. Telamon From the effective date of this Agreement, Telamon shall maintain professional liability insurance practice coverage with limits not less than Two Million Dollars (\$2,000,000) each claim/annual aggregate with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement. Any deductible for said policy shall not exceed Ten Thousand Dollars (\$20,000). Telamon shall be responsible for the payment of all claim expenses and loss payments within the deductible. If required by the SFMTA, Consultant shall provide said professional liability insurance under insurance policy specific to the Project.

15.5.3. The SFMTA may at its sole discretion obtain a professional liability excess liability policy (catastrophic risk umbrella policy) with a coverage limit of up to One Hundred Million Dollars (\$100,000,000), which shall provide coverage for claims and losses that exceed the coverage of Consultant's professional liability policy.

15.5.4. The actual cost for the insurance coverage will be reimbursed as an Other Direct Cost. Consultant shall not request or receive any mark-ups on insurance costs reimbursed.

15.5.5. Consultant shall maintain all professional liability policies for a claim reporting period not less than four (4) years following completion of services.

15.5.6. All professional liability policies shall protect against any negligent act, error or omission arising out of the design or engineering activities or with respect to the Project, including coverage for acts by Subprime Consultants and Subconsultants for whose work the Consultant is responsible under this Agreement. Professional liability policies shall be endorsed to require the insurer to provide the City with no less than 30 days notice of policy expiration or cancellation.

15.5.7. Consultant shall notify the SFMTA of any claims against its professional liability policy or policies that are not specific to the Project under this Agreement. If the SFMTA determines, in its sole discretion, that said claims jeopardize the protection against errors and omissions required by this Section 15, Contractor shall at its expense procure additional professional liability insurance in an amount sufficient to replenish coverage lost by said claim(s).

15.5.8. Each partner of the PB Telamon joint venture partnership shall ensure and does warrant for itself that its Professional Liability (Errors and Omissions) Insurance policy does not contain any provision excluding coverage for its services performed as part of the joint venture partnership. All insurance policies and certificates shall carry such endorsements, which shall be provided to the City.

15.6. Requirements of Insurance Policies.

15.6.1. Valuable Papers, Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

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

(b) 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 rights of subrogation against the City shall be waived.

15.6.2. Workers Compensation insurance policies must provide the following:

(a) 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.

(b) All rights of subrogation against the City shall be waived.

15.7. Notice. All insurance policies shall be endorsed to 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 via courier or U.S. Mail, first class, to the following persons:

Carter R. Rohan, R.A.
Central Subway Program Officer
Senior Director of Transportation Planning and Development
San Francisco Municipal Transportation Agency
1 South Van Ness, 7th floor
San Francisco, CA 94103

Shahnam Farhangi
Manager of Contract and Quality Management
San Francisco Municipal Transportation Agency
1 South Van Ness, 3rd floor
San Francisco, CA 94103

15.8. Claims-Made Form. Should any of the required insurance be provided under a claims-made form, Consultant shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of four 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.

15.9. General Annual Aggregate Limit. 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 are included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

15.10. Lapse of Insurance. 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.

15.11. Proof of Insurance. Before commencing any operations under this Agreement, Consultant 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 or approved 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.

15.12. No Decrease of Liability. Approval of the insurance by City shall not relieve or decrease the liability of Consultant hereunder.

15.13. Subconsultant Insurance. If a subconsultant will be used to complete any portion of this agreement, the Consultant shall ensure that the subconsultant shall provide all necessary insurance (as determined by Consultant) and shall name the City and County of San Francisco, its officers, and employees and the Consultant listed as additional insureds.

16. INDEMNITY, LIABILITY, AND REMEDIES,

16.1. Indemnification. To the fullest extent permitted by law, the Consultant 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 claim, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Consultant 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 willful misconduct of the Consultant, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

16.2. Limitations.

16.2.1. No insurance policy covering the Consultant's performance under this Agreement shall operate to limit the Consultant's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities.

16.2.2. The Consultant assumes no liability for the sole negligence, active negligence, or willful misconduct of any Indemnitee.

16.3. Intellectual Property Infringement. Notwithstanding any other provision of this Agreement, Consultant 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 rights 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 Consultant's services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, shall be considered a material breach of contract, if not the basis for indemnification under the law.

16.4. Joint Venture Partners.

16.4.1. If the Consultant is a joint venture partnership, notwithstanding the joint venture status of Consultant or other separate legal status of the Consultant from its owner partners, each of the joint venture partners, PB Americas and Telamon, as the owners of the Consultant, shall remain jointly and severally liable for the performance, errors and omissions of Consultant.

16.4.2. Any notice, order, direction, request or any communication required to be or that may be given by the SFMTA to the Consultant as set forth in Section 26.1 (Notices to the Parties) of this Agreement, shall be deemed to have been well and sufficiently given to and shall bind the Consultant, its individual joint venture members, and all persons acting on behalf of the Consultant. Any notice, request or other communications given by the Consultant to the SFMTA as indicated in Section 26.1 (Notices to the Parties) of this Agreement, shall be deemed to have been given by and shall bind the Consultant, its individual joint venture members, and all persons acting on behalf of the Consultant.

16.4.3. In the event of a dissolution of the joint venture, the SFMTA shall have the unqualified right to select which joint venture member, if any, shall continue the work under this Agreement and such selected member shall assume all liabilities, obligations, rights, and benefits of the Consultant under this Agreement. Such dissolution of the joint venture shall not be effected without prior consultation with the SFMTA. In the event of failure or inability of any one of the joint venture members to continue performance under this Agreement, the other joint venture member(s) shall perform all services and work and assume all liabilities, obligations, rights and benefits of the Consultant under this Agreement. Such determination of failure or inability to continue performance shall not be effected without prior consultation with SFMTA. Nothing in this Section shall be construed or interpreted to limit SFMTA's rights under this Agreement or bylaw to determine whether the Consultant or any one of the joint venture members has performed within the terms of this Agreement.

16.5. Liability of City. City's payment obligations under this Agreement shall be limited to the payment of the compensation for Work actually performed for the City in accordance with the payment provisions set out in Section 13 of this Agreement and the Appendices to this Agreement referenced therein. Notwithstanding any other provision of this Agreement, in no event shall City be liable to any individual or business entity, 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

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

16.6.1. Consultant fails or refuses to perform or observe any term, covenant or condition contained in any of the following Subsections of this Agreement:

(a) Consultant (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 Consultant or of any substantial part of Consultant's property, or (e) takes action for the purpose of any of the foregoing.

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

16.6.2. Consultant 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 Consultant.

16.7. 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 Consultant any Event of Default; Consultant 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 Consultant under this Agreement or any other agreement between City and Consultant all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Consultant pursuant to the terms of this Agreement or any other agreement.

16.8. No Preclusion of Remedies. 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.

17. EQUIPMENT.

17.1. 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 Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by City. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless the City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether

such damage be to Consultant, its employees, the City's employees, or third parties, or to property belonging to any of the above.

17.2. Ownership of Equipment. Any equipment, vehicles, computer programs (software licenses and media), and the like, purchased by the Consultant or its subconsultants in connection with services to be performed under this Agreement shall become property of and will be transmitted to the SFMTA at the conclusion of the Consultant's services under the Agreement.

18. CITY'S RESPONSIBILITIES

The City's responsibilities for design of the Project are expressly set out in this Agreement and the RFP. The Consultant shall be responsible for all aspects of the Project's design except for those tasks, duties, or areas of design that are expressly assigned or reserved to the City in this Agreement. In addition to those tasks, duties, or areas of design that are expressly assigned to the City elsewhere in the Agreement or RFP, the City shall perform the following:

18.1. Approvals. Obtain approvals from Appropriate Authorities, as defined herein, with the assistance of the Consultant, and promptly render decisions, when within its power to do so, pertaining thereto to avoid unreasonable delays in the progress of the Project.

18.2. Deficiencies. Promptly notify the Consultant in writing of apparent deficiencies in Consultant's designs.

18.3. Fees. Pay all fees required to secure building permits.

18.4. Hazardous Substances. Acknowledge that the discovery, presence, handling or removal of asbestos, asbestos products, polychlorinated biphenyl (PCB) or other hazardous substances, which may presently exist at the job site, is outside of the Consultant's expertise and is not included in the scope of work the Consultant is to perform nor included in the Consultant's insurance. The City therefore agrees to hire one or more expert consultants in this field to deal with these problems if the Project involves such materials. Even though the Contract Documents may incorporate the work of such other consultants, the Consultant shall not be responsible for the discovery, presence, handling or removal of such materials.

18.5. Nonaffixed Furniture and Equipment. Be responsible for purchase and coordination with successful vendors for delivery, assembly, storage and placement of loose furniture, furnishings and equipment not included within the Construction Documents prepared by the Consultant.

18.6. Project Data. Furnish the documents and data developed for the Project under conceptual and preliminary design, which are listed in the RFP in Appendix 10.

18.7. Program Manager. Designate a Program Manager who shall coordinate his or her duties with the Consultant as provided herein.

18.8. Respond to Submittals. Review and respond in writing at the following phases within ten (10) working days of submittal by the Consultant to all aspects of the documents.

18.9. Tests and Inspections. Furnish tests and inspections as required during the construction phase for structural, mechanical, chemical and other laboratory tests, inspections, special inspections and reports specified by the Consultant in the Construction Documents.

19. TERMINATION OF CONTRACT.

19.1. Termination for Cause. Either party may terminate this Agreement, in whole or in part, in writing, if the other party substantially fails to fulfill its obligations under this Agreement through no fault of the terminating party. However, such termination may not be effected unless the other party is given (a) not fewer than ten (10) calendar days written notice (delivery by certified mail) of its intent to terminate; and (b) an opportunity for consultation and to rectify failures of obligations (to cure the alleged breach or default of Agreement) within thirty (30) days of consultation with the terminating party before termination becomes effective.

19.2. Termination for Convenience.

19.2.1. Exercise of Option to Terminate for Convenience.

Notwithstanding any other provision of this Agreement, the 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 Consultant no less than fourteen (14) calendar days written notice of termination. The notice shall specify the date on which termination shall become effective. Consultant shall not have the right to terminate this Agreement for convenience. Consultant does not have the right to terminate for convenience,

19.3. Duties of Consultant Upon Notice of Termination. Upon receipt of the notice, Consultant shall commence and perform, with diligence, all actions necessary on the part of Consultant to effect the termination of this Agreement on the date specified by City and to minimize the liability of Consultant 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:

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

19.3.2. Not placing any further orders or subcontracts for materials, services, equipment or other items.

19.3.3. Terminating all existing orders and subcontracts.

19.3.4. At City's direction, assigning to City any or all of Consultant'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.

19.3.5. Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts, as allowed under the principals set out in 48 CFR Subparts 49.2 and 49.3 to the extent that those principles are in accord with the cost principles for local governments set out in the Office of Management and Budget Circular A-97.

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

19.3.7. 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 Consultant and in which City has or may acquire an interest.

19.4. Final Invoice for Services Performed. Within 30 days after the specified termination date, Consultant shall submit to City an invoice, which shall set forth each of the following as a separate line item:

19.4.1. A reasonable allowance for profit on the cost of the services and other work described necessary to effect termination.

19.4.2. The reasonable cost to Consultant of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

19.4.3. A deduction for the cost of materials to be retained by Consultant, 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.

19.4.4. Expenses directly attributable to termination which the Consultant is not otherwise compensated, such as the cost to dispose of, or buy out commitments for, trailers, office space, computers, motor vehicles, cell phones and blackberry-like devices.

19.5. Non-Recoverable Costs. In no event shall City be liable for costs incurred by Consultant or any of its subconsultants after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding Subsection 19.2.3. 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 19.2.3.

19.6. Deductions. In arriving at the amount due to Consultant under this Section 19, City may deduct: (a) all payments previously made by City for work or other services covered by Consultant's final invoice; (b) any claim which City may have

against Consultant in connection with this Agreement; (c) any invoiced costs or expenses excluded pursuant to the immediately preceding Subsection 19.2.4; and (d) the reasonable costs to the City to remedy or replace defective or rejected services or other work that does not comply with the requirements of this Agreement.

19.7. Survival of Payment Obligation. City's payment obligation for Work performed in accordance with this Agreement shall survive termination of this Agreement.

19.8. Rights and Duties Upon Termination or Expiration.

19.8.1. Survival of Provisions. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 13.22 (Submitting False Claims; Monetary Penalties), 13.23 (Disallowance and Disputed Amounts), 13.24 (Payment Does Not Imply Acceptance of Work), 14 (Taxes, Independent Contractor), 15 (Insurance Requirements), 16.1 (Indemnification), 16.5 (Incidental and Consequential Damages), 16.6 (Liability of City), 17 (Equipment), 19.1 (Termination for Cause), 19.2 (Termination for Convenience), 21.3 (Protection of Private Information), 22 (Work Product and Works for Hire), 23 (Audit and Inspection of Records), 26 (Contract Administration and Construction),

19.8.2. Duties Upon Termination. Subject to the immediately preceding Subsection 19.3.1, upon termination of this Agreement prior to expiration of the term specified in Section 1.2, this Agreement shall terminate and be of no further force or effect. Consultant 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.

20. CONFLICT OF INTEREST.

20.1. Applicable Authority. Through its execution of this Agreement, Consultant acknowledges that it is familiar with Article I, Chapter I and Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the California Government Code, and certifies that it does not know of any facts which constitute 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. Consultant further acknowledges that it is aware of the requirements concerning the filing of Statements of Economic Interest, California Fair Political Practices Commission Form 700, under the requirements of California Government Code Section 87300 et seq. and the San Francisco Campaign and Governmental Code Section 3.1-102, and that Consultant shall ensure that its employees and subconsultants are aware of those requirements and comply with them.

20.2. Other Bids Prohibited. Consultant agrees that neither it nor any corporation, joint venture or partnership in which it has a financial interest shall submit a proposal for Program Controls System RFP or bid for construction work on the Central Subway Project. Consultant further agrees that except as may be specifically authorized by the SFMTA Consultant shall not consult with or otherwise provide advice or information concerning the Central Subway Project to any potential proposers for the Program Controls System RFP or to potential bidders for construction contracts for the Central Subway Project.

20.3. No Financial Interest in the Project. By submission of its Proposal, the Consultant covenants that it has no direct or indirect financial interest and that it shall not acquire any financial interest that creates or would create a conflict of interest with respect to any of the work, services or materials required to be performed or provided under this Agreement. Furthermore, the Consultant shall not employ any person or agent having any such conflict of interest. In the event that the Consultant or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to SFMTA and take action immediately to eliminate the conflict or to withdraw from this Agreement, as SFMTA requests. The Consultant shall not employ any consultant who is concurrently employed by SFMTA or by another consultant to the SFMTA (including, but not limited to, surveyors, engineers, Consultants, and testing laboratories), without first obtaining SFMTA's approval in writing.

20.4. Conflicts of Interest. By submission of its Proposal, the Consultant covenants that it has no direct or indirect pecuniary or proprietary interest and that it shall not acquire any interest that conflicts in any manner or degree with the work, services or materials required to be performed or provided under this Agreement. Furthermore, the Consultant shall not employ any person or agent having any such conflict of interest. In the event that the Consultant or its agents, employees or representatives hereafter acquires such a conflict of interest, it shall immediately disclose such interest to SFMTA and take action immediately to eliminate the conflict or to withdraw from this Agreement, as SFMTA requests. The Consultant shall not employ any consultant who is concurrently employed by SFMTA or by another consultant to the SFMTA (including, but not limited to, surveyors, engineers, Consultants, and testing laboratories), without first obtaining SFMTA's approval in writing.

20.5. Other Agreements between the City and the Consultant. Through its execution of this Agreement, the Consultant certifies that neither it nor any of its employees has any undisclosed financial interest, however remote, in any other Agreement with the City, whether or not such Agreement is with Consultant's respective firms, affiliate firms or through separate employment, except as expressly itemized below. The Consultant understands and agrees that failure to disclose such information may result in termination of this Agreement for cause.

20.6. Lobbyists and Gratuities.

20.6.1. Contingency Fees Prohibited. The Consultant warrants and covenants that it has not employed or retained any person or persons to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees. For breach of violation of this warranty SFMTA shall have the right to annul this

Agreement without liability or in its discretion to deduct from the Total Price or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee

20.6.2. No Gratuities to City Employees. The Consultant warrants and covenants that no gratuities, in the form of entertainment, gifts, or otherwise, have been or will be offered or given by the Consultant or any of its agents, employees, or representatives to any official or employee of the City and County of San Francisco in an attempt to secure a contract or favorable treatment in awarding, amending, or making any determination related to the performance of this Agreement. Consultant acknowledges that it is familiar with San Francisco Campaign and Governmental Conduct Code Section 3.216 and the regulations adopted thereunder, and understands that Consultant is a "restricted source" for all SFMTA employees and officers, as the term is defined in that Section. Contractor agrees that it will make no gifts to any SFMTA employee or officer the acceptance of which would violate Section 3.216. (See also federal lobbying restrictions discussed at Section 28.6, below.)

20.7. Collusion in Contracting. Consultant warrants and covenants that it has not imposed on any Subprime Consultant or Subconsultant as a condition for receiving a subcontract under this Agreement a requirement that said subconsultant not participate in or be listed on in any other Proposal for this Contract. This restriction provision shall not apply between a Proposer and a Subprime Consultant listed in the Proposal to whom the Consultant provided proprietary or confidential financial information such that the participation of the Subprime Consultant in another Proposer's Proposal would provide an unfair advantage to a Proposer. Consultant further warrants that it informed its Subprime Consultants that Subconsultants cannot be restricted from being listed or otherwise participating in a Proposal from another consultant for this Contract, and that to Consultant's knowledge its Subprime Consultants have complied with these requirements.

20.8. Remedies. If the Executive Director/CEO has reason to believe that the Consultant has breached the covenants set forth in this Section 20, he shall so notify the Consultant in writing. The Consultant shall respond to said notice within ten (10) days of receipt with a detailed written explanation or answer to any facts, allegations, or questions contained or referenced in said notice. The Consultant may request a hearing on the matter by Executive Director/CEO or his designee that shall be conducted within fifteen (15) days of the receipt by the Executive Director/CEO of the request unless a later date is concurred in by SFMTA and the Consultant. The decision of the Executive Director/CEO shall be a prerequisite to appeal thereof to SFMTA Board of Directors or to Superior Court in the County of San Francisco, State of California. If, after consideration of the Consultant's response and any hearing, the Executive Director/CEO determines that the covenants have been breached, the Executive Director/CEO shall have the discretion to exercise those remedies provided by any applicable federal or state laws or regulations or by this Agreement in the event of said breach and/or prohibited conflicts of interest.

21. CONFIDENTIALITY, PRIVACY AND SECURITY OF INFORMATION.

21.1. Proprietary, Confidential and Security Sensitive Information.

Consultant understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Consultant may have access to private or confidential information which may be owned, controlled by, or licensed to the City and that such information may contain proprietary or confidential details, or it may constitute Sensitive Security Information, the disclosure of which to third parties may be contrary to law, harmful to public safety, and/or damaging to City. Consultant agrees that all information disclosed by City to Consultant shall be held in the strictest confidence and used only in performance of the Agreement. Consultant agrees that all Work Product, reports, studies, analyses, specifications, work schedules and recommendations prepared by the Consultant for use in connection with the work under this Agreement or furnished to the Consultant by the City are confidential, and that Consultant will not publish, circulate or use any of the foregoing except in the performance of this Agreement without first obtaining the SFMTA's written approval to do so.

21.2. Project Security. Consultant shall consider and treat all Work Product as Sensitive Security Information as defined by FTA Circular 42.20.1(f) and other applicable regulation and authority. Consultant shall at all times guard and keep secure and confidential all such information and documents. Consultant's failure to guard and keep safe and confidential said documents shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Consultant pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Consultant.

21.3. Protection of Private Information. Consultant 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. Consultant 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 Consultant pursuant to Chapter 6 or Chapter 21 of the San Francisco Administrative Code, or debar the Consultant.

22. WORK PRODUCT AND WORKS FOR HIRE.

22.1. Ownership. All Work Product, including but not limited to documents, electronic, written, graphic, or three dimensional models, including drawing sets, CADD files, BIM files, schematics, system designs, blue prints, specifications, presentation drawings, models, films and videos, simulations or other presentation materials and other documents, models or computer files prepared by the Consultant are works for hire as defined under Title 17 of the United States Code commissioned by the SFMTA, and all such works shall be made and remain the property of the City, including all intellectual property rights to all documents; provided, however, that the Consultant shall be entitled to retain one reproducible copy thereof and CADD files, made at the Consultant's expense. As part of its Basic Services, the Consultant shall provide the City with one licensed copy of software that will allow the City to view the electronic

CADD files prepared by the Consultant and its Subprime Consultants and Subconsultants. Additionally, the Consultant shall provide technical specifications for any computer hardware required to use the provided software and files.

22.2. Assignment. To the extent that the Work Product does not qualify as a work made for hire under applicable law, and to the extent that the Work Product includes material subject to copyright, patent, trade secret, mask work, or other proprietary right protection, the Consultant hereby assigns to SFMTA, its successors and assigns, all right, title and interest in and to the Work Product, including but not limited to (1) all copyrights in the same, and in all renewals and extensions of the copyrights that may be secured under applicable laws; and (2) all rights in and to any inventions and designs embodied in the Work Product or developed in the course of the Consultant's creation of the Work Product. The foregoing assignment includes a license under any current and future patents owned, patents applied for or licensable by the Consultant to the extent necessary to exercise any rights of ownership in the Work Product. Any reuse of the Work Product except for the specific purpose intended will be at the users' sole risk without liability or legal exposure to the Consultant.

22.3. Moral Rights. To the extent that the Consultant may have any moral rights to the Work Product, the Consultant hereby forever waives any and all such rights. Neither the Work Product nor anything constructed from the plans, designs, drawings and specifications in the Work Product shall be considered art or a work of art. To the extent that the Work Product, any part of the Work Product, or anything constructed from the plans, designs, drawings and specifications in the Work Product are considered art or works of art, any rights of the Consultant or obligations of the City under applicable law, including but not limited to Visual Artists Rights Act of 1990, 17 U.S.C. §§ 101 et seq., and the California Art Preservation Act, Civil Code sec. 987, are hereby forever waived.

22.4. Assistance. At SFMTA's expense, the Consultant shall execute and deliver such instruments and take such other action as may be requested by SFMTA to perfect or protect SFMTA's rights in the Work Product and to perfect the assignments contemplated by this Section.

22.5. Delivery of Work Product. The Consultant agrees to deliver all aspects of the Work Product, including without limitation all plans, drawings, designs, specifications, technical reports, operating manuals, notes, data, documentation, and computer software (in source code and object code form), in accordance with the delivery schedule set forth in this Agreement. In the event of early termination of this Agreement, the Consultant shall deliver all aspects of the Work Product immediately upon such early termination at the then-existing stage of completion, and all aspects of the Work Product shall become the property of SFMTA.

22.6. Representations and Warranties. The Consultant hereby represents and warrants that:

22.6.1. It has full power to enter into this Agreement and make the assignments set forth herein;

22.6.2. It has not previously and will not grant any rights in the Work Product to any third party that are inconsistent with the rights granted to SFMTA herein;

22.6.3. The Work Product does not infringe or violate any copyright, trade secret, trademark, patent or other proprietary or personal right held by any third party; and

22.6.4. The Work Product has been or will be created solely by the Consultant or employees of the Consultant within the scope of their employment and under obligation to assign all rights in the Work Product to SFMTA, or by independent subconsultants, approved by SFMTA in advance, under written obligations to (a) assign all rights in the Work Product to SFMTA and (b) maintain the confidentiality of any SFMTA confidential information disclosed to the subconsultant.

22.7. Indemnity for Copyright or Patent Infringement. The indemnity and defense requirements set out in Section 16.3 of this Agreement shall apply to Consultant's Work Product and the tools used by Consultant to product it, without limitation.

22.8. Notations. All Work Product furnished by the Consultant, other than documents exclusively for the internal use by SFMTA, shall carry such notations on the front cover or a title page (or in the case of maps, in the name block) as may be determined by SFMTA. The Consultant shall also place its endorsement on all Work Products. All such notations and endorsements shall be subject to prior approval by SFMTA prior to delivery. All such notations and/or endorsements placed on the Work Product(s) by the Consultant shall be for intellectual property purposes only and shall not be for professional engineering services.

22.9. Reuse. Should the City or any other person, firm or legal entity under the authority and control of the City, without the Consultant's participation, use, re-use, or modify the Consultant's drawings, specifications or other documents prepared under this Agreement, the City agrees to notify the Consultant of said intended use. The Consultant shall not be responsible for any loss, costs or expenses incurred by any party arising out of such use, re-use or modification of the Consultant's drawings, specifications, and other documents.

22.10. Artists Rights. If Consultant contracts for any art or work of art to be included in the Project, prior to executing such contract, Consultant shall obtain from the artist(s) who produced or will produce the art a written and signed agreement stipulating that such works are works for hire for commercial use and forever waiving any and all rights of the artist(s) and any and all obligations of the City under applicable law requiring preservation of said art or works of art, including but not limited to Visual Artists Rights Act of 1990, 17 U.S.C. §§ 101 et seq., and the California Art Preservation Act, Civil Code § 987 et sec.

22.11. Subcontracts. Consultant shall include the provisions of this Section in all contracts with Subprime Consultants and shall further require that Subprime Consultants include said provision in their respective contracts with Subconsultants.

23. AUDIT AND INSPECTION OF RECORDS.

23.1. Access to Records. Consultant agrees to maintain and make available to the City accurate books and accounting records relative to its activities under this Agreement, irrespective of whether such services were funded in whole or in part by this Agreement. Consultant will permit the City to audit, examine, reproduce, 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 necessary to determine or audit allowable expenses, overhead, including costs and overhead incurred as work performed as Additional Services,.

23.2. Maintenance of Records. Consultant shall maintain such data and records in an accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The period of access and examination for records that relate to (1) litigation or the settlement of claims arising out of the performance of this Agreement, or (2) costs and expenses of this Agreement as to which exception has been taken by the Comptroller General of the United States or the U.S. Department of Transportation, or any of their duly authorized representatives, shall continue until such litigation, claims, or exceptions have been finally resolved. Consultant shall require its subconsultants to also comply with the provisions of this Section, and shall include the provisions of the Section in each of its subcontracts.

23.3. Audit of Subconsultants. Consultant shall include the provisions of this Section in all agreements between Consultant and its Subprime Consultants and subconsultants of every tier giving the City the same rights against the Subprime Consultants. Consultant shall require that the Subprime Consultants include the provisions of this Section in their respective contracts with Subconsultants. Cancelled checks of payments to Subprime Consultants and Subconsultants must be maintained by Consultant and Subprime Consultants, respectively, and made available to the City upon request.

23.4. Audit. The City may initiate an audit under this Agreement by written notice, upon not fewer than seven (7) calendar days.

23.5. Rights of State or Federal Agencies. Consultant shall comply with reporting requirements of the U.S. Department of Transportation grant management rules, and any other reports required by the Federal Government. The State of California or any federal agency having an interest in the subject matter of this Agreement shall at a minimum have the same rights conferred upon City by this Section 23.

24. NONDISCRIMINATION; PENALTIES.

24.1. Consultant Shall Not Discriminate. In the performance of this Agreement, Consultant agrees not to discriminate against any employee, City and County employee working with such Consultant or subconsultant, applicant for employment with such Consultant or subconsultant, 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. The Consultant shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT-assisted contracts. Failure by the Consultant to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the City deems appropriate.

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

24.3. Nondiscrimination in Benefits. Consultant 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.

24.4. Condition to Contract. As a condition to this Agreement, Consultant 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.

24.5. 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. Consultant 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, Consultant 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 Consultant and/or deducted from any payments due Consultant.

24.6. Compliance with Americans with Disabilities Act. Consultant 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 Consultant, must be accessible to the disabled public. Consultant's design of the Project under this Agreement shall comply with the ADA and any and all other applicable federal, state and local disability rights and/or access legislation. Said

requirements shall apply both to the manner and process by which the Consultant provides the services, and the content of all deliverables under this Agreement. Consultant 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 Consultant, its employees, agents or assigns will constitute a material breach of this Agreement.

25. GENERAL CONTRACT REQUIREMENTS.

25.1. Compliance with All Laws and Regulations.

25.1.1. The Consultant 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

25.1.2. The Consultant shall comply with all federal, state, and local licensing, registration, filing and/or certifications standards, all applicable accrediting standards, and any other standards or criteria established by any agency of the State of California or of the federal government applicable to the Consultant's operation.

25.2. 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 Consultant acknowledges and agrees that he or she has read and understood this Section.

25.3. Use of Public Transportation. San Francisco is a transit-first city, and the SFMTA encourages Consultant and subconsultants to use public transit in the performance of its services to the maximum extent possible. The SFMTA will closely review the Consultant's requests for reimbursement of travel expenses. Travel from and to airports must be by public transit to the maximum extent possible. Taxicabs, and hired vans and cars are not considered public transit. The City reserves the right to refuse to reimburse travel expenses that are not in accord with these policies.

25.4. 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.

25.4.1. Provision of Forms to Eligible Employees. Consultant shall provide EIC Forms to each Eligible Employee at each of the following times: (a) within thirty days following the date on which this Agreement becomes effective (unless Consultant has already provided such EIC Forms at least once during the

calendar year in which such effective date falls); (b) promptly after any Eligible Employee is hired by Consultant; and (c) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

25.4.2. Failure to Comply. Failure to comply with any requirement contained in this Section shall constitute a material breach by Consultant of the terms of this Agreement. If, within 30 days after Consultant receives written notice of such a breach, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Consultant 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.

25.4.3. Application to Subconsultants. Any subcontract entered into by Consultant shall require the subconsultant to comply, as to the subconsultant's Eligible Employees, with each of the terms of this Section.

25.4.4. 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.

25.5. Sunshine Ordinance. In accordance with San Francisco Administrative Code §67.24(e), contracts, Consultants' 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 Section 67.24(e) will be made available to the public upon request.

25.6. Public Access to Meetings and Records. If the Consultant 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, Consultant shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Consultant 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. Consultant 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 Consultant acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Consultant 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.

25.7. Limitations on Contributions. Through execution of this Agreement, Consultant 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 (A) 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, (B) a candidate for the office held by such individual, or (C) 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. Consultant 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. Consultant further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Consultant's board of directors; Consultant's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Consultant; any Subprime Consultant or Subconsultant listed in the bid or contract; and any committee that is sponsored or controlled by Consultant. Additionally, Consultant acknowledges that Consultant must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

25.8. Requiring Minimum Compensation for Covered Employees.

25.8.1. Consultant 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 Consultant's obligations under the MCO is set forth in this Section. Consultant is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

25.8.2. The MCO requires Consultant to pay Consultant'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 Consultant is obligated to keep informed of the then-current requirements. Any subcontract entered into by Consultant shall require the subconsultant 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 Consultant's obligation to ensure that any subconsultants of any tier under this Agreement comply with the requirements of the MCO. If any subconsultant under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Consultant.

25.8.3. Consultant 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.

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

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

25.8.6. Consultant'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 Consultant fails to comply with these requirements. Consultant 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 Consultant's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

25.8.7. Consultant 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, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Consultant 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.

25.8.8. Consultant 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.

25.8.9. If Consultant is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Consultant later enters into an agreement or agreements that cause Consultant to exceed that amount in a fiscal year, Consultant 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 Consultant and this department to exceed \$25,000 in the fiscal year.

25.9. Requiring Health Benefits for Covered Employees. Consultant 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.

25.9.1. For each Covered Employee, Consultant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Consultant

chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

25.9.2. Notwithstanding the above, if the Consultant is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with Subsection 25.9.1 above.

25.9.3. Consultant's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Consultant 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, Consultant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Consultant 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.

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

25.9.5. Consultant shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Consultant'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.

25.9.6. Consultant 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.

25.9.7. Consultant 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.

25.9.8. Consultant shall keep itself informed of the current requirements of the HCAO.

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

25.9.10. Consultant 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.

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

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

25.9.13. If Consultant is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Consultant later enters into an agreement or agreements that cause Consultant'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 Consultant and the City to be equal to or greater than \$75,000 in the fiscal year.

25.10. First Source Hiring Program.

25.10.1. 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. Consultant 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.

25.10.2. 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 Consultant shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Consultants shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) Set the term of the requirements.

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

(h) 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.

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

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

25.10.4. 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.

25.10.5. 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. Consultant agrees:

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

(b) 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;

(c) That the Consultant's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the Consultant 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 Consultant from the first source hiring process, as determined by the FSHA during its first investigation of a Consultant, does not exceed a fair estimate of the

financial and other damages that the City suffers as a result of the Consultant's failure to comply with its first source referral contractual obligations.

(d) That the continued failure by a Consultant 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 Consultant's continued failure to comply with its first source referral contractual obligations;

(e) 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:

- 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
- 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;

(f) That the failure of Consultants to comply with this Chapter, except property Consultants, 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

(g) 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 Consultant will be liable for the City's costs and reasonable attorneys fees.

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

25.11. Prohibition of Political Activity with City Funds. No funds appropriated by the City for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of City funds will cooperate in audits conducted by the Chief Financial Officer to verify that no City funds were used for political purposes.

In accordance with San Francisco Administrative Code Chapter 12.G, Consultant 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. Consultant 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 Consultant violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (A) terminate this Agreement, and (B) prohibit Consultant from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Consultant's use of profit as a violation of this Section.

25.12. Services Provided by Attorneys. Any services to be provided as part of Consultant's services under this Agreement that are provided by a law firm or attorney retained by the Consultant must be reviewed and approved in writing in advance by the San Francisco City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subconsultants of Consultant, will be paid unless the provider received advance written approval from the City Attorney.

26. CONTRACT ADMINISTRATION AND CONSTRUCTION.

26.1. 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 SFMTA: Carter R. Rohan, R.A.
Central Subway Program Officer
Senior Director of Transportation Planning
and Development
San Francisco Municipal Transportation Agency
1 South Van Ness, 7th floor
San Francisco, CA 94103
Tel: 415-701-4282
Fax: 415-701-4300
carter.rohan@SFMTA.com

Shahnam Farhangi
Senior Manager of Contract and Quality Management
San Francisco Municipal Transportation Agency
1 South Van Ness, 3rd floor
San Francisco, CA 94103
Tel: 415-701-4284
Fax: 415-701-4300
shahnam.farhangi@SFMTA.com

To Consultant: Matthew E. Fowler, PE
Professional Associate
Parsons Brinkerhoff, Inc.
303 Second Street, Suite 700 North
San Francisco, CA 94107

Any notice of default must be sent by registered mail.

26.2. Assignment. The services to be performed by Consultant are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Consultant unless first approved by City by written instrument executed and approved as required by SFMTA policy and City law. Consultant and the partners of any joint venture or association that constitute the Consultant or any of the Consultant's subconsultants may incorporate or change their business names, and such actions shall not be considered an assignment for purposes of this Agreement provided such incorporation or name change does not decrease that entity's obligation or liability under this Agreement.

26.3. Successors and Assigns. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns. Neither the performance of this Agreement nor any part thereof, nor any funds due or to become due there under may be assigned by the Consultant without the prior written consent and approval of the City.

26.4. 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.

26.5. 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 the terms of this Agreement or as otherwise required by law.

26.6. Successors and Assigns. This Agreement shall be binding upon the City and the Consultant and their respective successors and assigns.

26.7. 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 or as provided by Code of Civil Procedure Section 394; the venue for litigation in a county other than San Francisco pursuant to Section 394 will be Alameda County.

26.8. Priority of Documents. The Final Design services Consultant shall provide to the City for the Project are described in this Agreement, the RFP, and the Proposal. All requirements of the RFP and the representations made in the Consultant's Proposal that are not in conflict with provisions of this Contract are hereby incorporated by reference and made an integral part of the contract as though fully set

forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or the Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP shall control. The Proposal shall control only where an issue or subject is not addressed in either the RFP or this Agreement. A Task Order or Annual Design Plan shall control as to any matter not specifically addressed in the Agreement, RFP or Proposal.

26.9. Construction of Agreement. All article or section titles and paragraph captions are for reference only and shall not be considered in construing this Agreement. This Agreement is the result of and memorializes a negotiated contract between the Parties, each of which is experienced and knowledgeable in professional services contracting for public works architectural and engineering design, construction support and related services, and each of which was represented by and had the assistance of legal counsel of its choosing. No rule of construction in which an ambiguity in a contract is construed against the drafter shall be applied to interpret this Agreement or the Parties' intentions thereto.

26.10. Entire Agreement. This Agreement and its listed Attachments and other documents incorporated by reference constitute an integrated document that sets forth the entire agreement between the parties as to the matters addressed therein, and the provisions of this Agreement and its listed Attachments supersede all other oral or written provisions, drafts of the Agreement. This contract may be modified only as provided in Section 8.

26.11. Compliance with Laws. Consultant 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.

26.12. Disputes and Resolution.

26.12.1. 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: (a) a statement of the Party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the Party's position.

26.12.2. Resolution of Disputes. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Program Manager and Consultant's Project Manager shall be decided in writing by the SFMTA Senior Manager of Contract and Quality Management. The decision shall be administratively final and conclusive unless within ten (10) days from the date of such decision, the Consultant mails or otherwise furnishes a written appeal to the SFMTA Program 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 SFMTA

Program Officer shall be administratively final and conclusive. This Section applies to all disputes unless a specific provision of this Agreement provides that the SFMTA Program Manager's decision as to a particular dispute is final.

26.12.3. 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 SFMTA Program Manager.

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

26.12.5. 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 sub-consultants stop work due to an unresolved dispute.

26.12.6. Disputes among Consultant Partners. If Consultant is a joint venture partnership, 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 Consultant's performance of the Contract or otherwise delay the Project. 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.

26.13. Mutual Agreement. This Agreement is the product of negotiations between the Parties. Each Party represents that it is a sophisticated and experienced participant in contracting for public works. Each Party has been represented by legal counsel of their choosing. Each Party represents that it has read and understands this Agreement, and enters into this Agreement of its own free-will and without coercion of any kind. The Parties agree that this Agreement shall not be subject to any rule of contract construction that may hold or would result in any ambiguity of any provision of this Agreement being held against the drafter of said provision.

26.14. 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.

26.15. No Third Party Beneficiary. This Agreement is intended for the sole benefit of the City and the Consultant, and is not intended to create any third-party rights or benefits.

26.16. Signatories Authorized. By signing below, each signatory warrants that he or she is authorized to execute this Agreement and thereby bind the Party he or she represents.

27. ENVIRONMENTAL REQUIREMENTS.

27.1. Resource Efficiency and Conservation. Consultant shall adhere to the extent practicable to all requirements of Chapter 82 Resource Efficiency Requirements for City-owned Facilities (Green Building Ordinance), attached hereto as Attachment J. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Consultant to comply with any of the applicable requirements of Chapter 5 specifically required by the SFMTA may be deemed a material breach of contract.

27.2. Preservative-Treated Wood Containing Arsenic. Consultant shall 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. Consultant 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 Consultant 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.

27.3. 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.

Consultant shall remove all graffiti from any real property owned or leased by Consultant in the City and County of San Francisco within forty eight (48) hours of the earlier of Consultant'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 Consultant 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 Consultant to comply with this Section of this Agreement shall constitute an Event of Default of this Agreement.

27.4. Food Service Waste Reduction Requirements. Consultant 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, Consultant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Consultant 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 Consultant's failure to comply with this provision.

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

27.6. Recycled Products. Consultant shall use recycled products, as set out in Sections 28.10 and 28.19, below.

28. FEDERAL REQUIREMENTS.

28.1. Federal Contract Requirements and Applicable Law. The provisions set out this Section 28 are required by federal law. If there is any conflict between said provisions or any federal law, regulation or requirement, including such limitations and requirements as the FTA may impose, such federal requirements, terms and conditions shall take precedence over any terms and conditions set out in this Agreement. The City and County of San Francisco is a chartered City and County with home rule powers under the Constitution of the State of California. The terms of this Agreement are governed by California Law and the ordinances and Charter of the City and County of San Francisco. Except as expressly provided for in this Agreement, the Federal

Acquisition Regulations (FAR) shall not apply to this Agreement, except as to provide guidance as to accounting and auditing standards, including but not limited to calculation of compensable costs and overhead.

28.2. Incorporation of Federal Transit Administration (FTA) Terms.

28.2.1. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, (http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html), as amended and the Master Grant Agreement (<http://www.fta.dot.gov/documents/15-Master.pdf>), 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 Consultant shall not perform any act, fail to perform any act, or refuse to comply with any SFMTA request that would cause SFMTA to be in violation of the FTA terms and conditions.

28.2.2. The FTA Master Agreement obligates SFMTA to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Consultant and its lower tier subconsultants at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Consultant shall comply with all such requirements.

28.2.3. Copies of the FTA Master Agreement are available from SFMTA.

28.3. Applicability of Federal Grant Contract.

28.3.1. This procurement may be subject to one or more financial assistance contracts between SFMTA and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1F as amended. U.S. Department of Transportation's level of financial assistance may be between zero and eighty percent (0-80%). The Consultant is required to comply with all terms and conditions prescribed for third party contracts in these documents.

28.3.2. Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Agreement is established and may apply to this Agreement. To assure compliance with changing federal requirements, Contract Award indicates that the Consultant agrees to accept all changed requirements that apply to this Agreement.

28.4. Federal Funding Limitation. Consultant understands that funds to pay for Consultant's performance under this Agreement are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. SFMTA's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Agreement. If funds are not allocated, or ultimately are disapproved by FTA, SFMTA may terminate or suspend Consultant's services without penalty or obligation other than those specifically provided for in Section 19.2 of this

Agreement as a termination for convenience. SFMTA shall notify Consultant promptly in writing of the non-allocation, delay, or disapproval of funding.

28.5. No Federal Government Obligation to Third Parties. Consultant agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the Grant Agreement in connection with this Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including a subrecipient or third party contractor.

28.6. Federal Lobbying Restrictions.

28.6.1. This Agreement is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 C.F.R. Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress or an employee of any Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Consultants and Subconsultants at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Consultant shall submit the "Certification Regarding Lobbying" included in this document. The Consultant's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed \$100,000, and that all such subconsultants shall certify and disclose accordingly. SFMTA is responsible for keeping the certification form of the Consultant, who is in turn responsible for keeping the certification forms of subconsultants. Further, by executing the Agreement, the Consultant agrees to comply with these laws and regulations.

28.6.2. If the Consultant has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, the Consultant must disclose these activities. In such a case, the Consultant shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities". SFMTA must also receive all disclosure forms.

28.6.3. The Consultant and any subconsultants shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or

(b) A change in the person(s) influencing or attempting to influence this federally funded Agreement; or

(c) A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

28.7. Lobbying Certification and Disclosure. Pursuant to 49 C.F.R. Part 20 (which is by this reference incorporated herein), the Consultant shall execute and return the Certification Regarding Lobbying by Consultant form set forth in Attachment H with the execution of this agreement.

28.8. Certification Regarding Debarment, Suspension And Other Responsibility Matters.

28.8.1. Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 and federal regulations in 49 C.F.R. 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on this FTA-financed contract, if the contract exceeds \$25,000 each Consultant shall complete and submit, as part of its Proposal, the certification form, contained in these documents. The inability of a Consultant to provide a certification will not necessarily result in denial of consideration for contract award. A Consultant that is unable to provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation may disqualify the Consultant from participation under this Contract. SFMTA, in conjunction with FTA, will consider the certification or explanation in determining contract award. No contract will be awarded to a potential third-party contractor submitting a conditioned debarment or suspension certification, unless approved by the FTA.

28.8.2. The certification is a material representation of fact upon which reliance is placed in determination of award of contract. If at any time the Consultant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to SFMTA. If it is later determined that the Consultant knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may disqualify the Consultant. If it is later determined that the Consultant knowingly rendered an erroneous certification, or failed to notify

SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may terminate the contract, in addition to other remedies available including FTA suspension and/or debarment.

28.8.3. Further, the Consultant shall not knowingly enter into any subcontract with an entity or person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds. As such, the Consultant shall require all subconsultants seeking subcontracts to complete and submit the same certification form contained in these documents before entering into any agreement with said subconsultant.

28.9. Exclusionary Or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the Consultant agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

28.10. Conservation. The Consultant shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State Energy Action plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

28.11. Clean Water. The Consultant 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. The Consultant agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Consultant also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

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

28.13. Fly America. International air transportation of any persons involved in or property acquired for the Project must be provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

28.14. Seismic Safety. The Consultant agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety

Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Consultant also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

28.15. National Intelligent Transportation Systems Consultanture and Standards. The Consultant agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Consultanture and Standards as required by Section 5206(e) of TEA-21, 23 U.S.C. § 502-, and with FTA Notice, "Federal Transit Administration National ITS Consultanture Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other subsequent Federal directives that may be issued.

28.16. Electronic and Information Technology. When providing reports or other information to the SFMTA, or to the Federal Transit Administration (FTA), among others, on behalf of the SFMTA, the Consultant agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

28.17. Nondiscrimination. In addition to the provisions prohibiting discrimination set out in Sections 10.4 and 24.1, above, the Consultant shall ensure compliance by it and its subconsultants with all requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d), federal Executive Order No. 11246, regulations of the U. S. Department of Labor issued thereunder, the regulations of the federal Department of Transportation issued thereunder, and the Americans with Disabilities Act, as they may be amended from time to time. Accordingly, during the performance of this Agreement, the Consultant, for itself, its assignees, and successors in interest (hereinafter referred to as the "Consultant"), agrees as follows:

28.17.1. The Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT"), Title 49, Code of Federal Regulations, Part 21 ("Nondiscrimination in Federally-Assisted Programs of the Dept. of Transportation"), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

28.17.2. In all solicitations either by competitive bidding or negotiation made by the Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by the Consultant of the Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, creed, sex, sexual orientation, disability, age, or nationality.

28.17.3. The Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access

to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or FTA to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required of a contractor or subconsultant that is in the exclusive possession of another who fails or refuses to furnish this information, the Consultant shall so certify to SFMTA, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

28.17.4. In the event of the Consultant's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

- (a) Requiring the Consultant to take remedial action to bring the Consultant into compliance;
- (b) Withholding of payments to the Consultant under the Agreement until the Consultant complies; and/or
- (c) Cancellation, termination, or suspension of the Agreement, in whole or in part.

28.17.5. The Consultant shall include the provisions of these Subsections 28.17.1 to 28.17.4 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as SFMTA or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, the Consultant may request SFMTA to enter into such litigation to protect the interests of SFMTA and, in addition, the Consultant may request the United States to enter into such litigation to protect the interest of the United States.

28.18. Title VI Compliance. During the performance of this Agreement, Consultant, for itself, its assignees, and its successors in interest agrees as follows:

28.18.1. Compliance with Regulations: Consultant shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

28.18.2. Nondiscrimination: Consultant, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subconsultants, including procurement of materials and leases of equipment. Consultant shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices

when the Agreement covers a program set forth in Appendix B of the Regulations.

28.18.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by Consultant for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subconsultant or supplier shall be notified by Consultant of Consultant's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

28.18.4. Information and Reports: Consultant shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or the FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Consultant is in the exclusive possession of another who fails or refuses to furnish this information, Consultant shall so certify to SFMTA, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

28.18.5. Sanctions for Noncompliance: In the event of Consultant's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to Consultant under the Agreement until Consultant complies, and/or,

(b) Cancellation, termination or suspension of the Agreement, in whole or in part.

28.18.6. Incorporation of Provisions: Consultant shall include the provisions of Subsection 28.18.1 through 28.18.5 of this Section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Consultant shall take such action with respect to any subcontract or procurement as SFMTA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Consultant becomes involved in, or is threatened with, litigation with a subconsultant or supplier as a result of such direction, Consultant may request SFMTA to enter into such litigation to protect the interests of SFMTA, and, in addition, Consultant may request the United States to enter into such litigation to protect the interests of the United States.

28.19. Requirements of Americans with Disabilities Act. The Consultant is required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

28.19.1. U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

28.19.2. U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27;

28.19.3. U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

28.19.4. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

28.19.5. U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

28.19.6. U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

28.19.7. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. Part 64, Subpart F; and

28.19.8. FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

28.19.9. Any implementing requirements that the FTA may issue.

28.20. Recycled Products. To the extent practicable and economically feasible, the Consultant agrees to provide a competitive preference for recycled products to be used in the Project pursuant to the U.S. Environmental Protection Agency Guidelines at 40 C.F.R. Parts 247, implementing Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962. If possible, the Consultant shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical at the fulfillment of this Agreement.

28.21. Privacy.

28.21.1. Should the Consultant, or any of its subconsultants, or their employees administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC § 552a, imposes restrictions on the party administering the system of records.

28.21.2. For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, SFMTA and any Consultants, third-party contractors, subcontractors, and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to

those individuals involved. Failure to comply with the terms of the Act or this provision of this Agreement will make this Agreement subject to termination.

28.21.3. The Consultant agrees to include this clause in all subcontracts awarded under this Agreement that require the design, development, or operation of a system of records on individuals subject to the Act.

28.22. False or Fraudulent Statements and Claims.

28.22.1. The Consultant recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing this Agreement, the Consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, Cooperative agreement, Contract or Project. In addition to other penalties that may be applicable, the Consultant acknowledges that if it makes 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, as amended, on the Consultant, to the extent the Federal Government deems appropriate.

28.22.2. The Consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Consultant the penalties of 18 U.S.C. § 1001, 31 USC §§ 3801, et seq., and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

28.22.3. The Consultant 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 subconsultant who will be subject to the provisions.

28.23. Drug-Free Workplace Policy. Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, 41 U.S.C. 702, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns will be deemed a material breach of this Agreement.

29. INCLUDED APPENDICES.

The following documents included as exhibits to this Agreement are incorporated by reference as if fully set out herein.

- A. Scope of Services/Scope of Work
- B. Directory of Subconsultants
- C. Summary of Fees - Cost Breakdown/Schedule of Charges
- D. Other Direct Costs

- E. Organization Chart
- F. SBE Forms
- G. Small Business Enterprise (SBE) Program
- H. Overhead Rates for Field and Home Office Personnel
- I. San Francisco Art Commission Civic Design Review Committee Guidelines
- J. Chapter 82 Resource Efficiency Requirements for City-owned Facilities (Green Building Ordinance).
- K. CityBuild Implementation Policy
- L. Quality Management Manual
- M. Design Schedule

The remainder of this page is intentionally left blank.

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

CITY	CONSULTANT
City and County of San Francisco Municipal Transportation Agency	By signing this Agreement, Consultants each certifies that it complies with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
By _____ NATHANIEL P. FORD, SR. Executive Director/CEO	Each Consultant has read and understands 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.
SFMTA Board of Directors Resolution No. _____ Adopted: _____ Attest: _____	
_____ Roberta Boomer, Secretary SFMTA Board of Directors	
Approved as to Form:	
Dennis J. Herrera City Attorney	_____ Ray Hornbuckle Senior Vice President PB Americas, Inc, a division of 303 Second Street, Suite 700 North San Francisco, CA 94107 Federal Employer ID No. 41-2045366
By _____ Robert K. Stone Deputy City Attorney	_____ Menno Chan, PE President Telamon Consulting Engineers, Inc. 855 Folsom Street, Unit 142, San Francisco, CA 94107 Federal Employer ID No. _____

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

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute Contract #2008/09-38A, #2008/09-38B and #2008/09-38C, Agreements between the City and County of San Francisco and Backstrom McCarley Berry & Co., LLC, Ross Financial and The PFM Group respectively (collectively the Financial Advisor Pool) to provide as-needed financial advisory services for terms not to exceed five years each and an amount not to exceed \$2,000,000.00, for each contract, excluding bond issuance fees paid for with bond proceeds.

SUMMARY:

- Proposition A gave the SFMTA increased responsibility and authority with respect to the long-term financial stability of the agency.
- On December 2, 2009, the SFMTA Board of Directors adopted Resolution No. 08-197 authorizing the Executive Director/CEO to issue a Request for Proposals (RFP) for as-needed financial advisory services.
- The SFMTA received seven proposals on January 30, 2009 in response to the RFP and all were deemed non-responsive for failure to demonstrate compliance with the Human Rights Commission Good Faith Effort requirements in establishing the 20% Local Business Enterprise sub-contracting goal.
- On March 20, 2009, staff re-issued the RFP and provided clarification and assistance on HRC related compliance. Six proposals were later received by the SFMTA on April 17, 2009.
- A selection committee of representatives from the SFMTA, SF Port, SF Airport and the Tax Collectors Office ranked the proposals.
- The three top ranked firms comprise the Financial Advisor Pool and will provide as-needed financial advisory services that include, but are not limited to, developing a Financial Plan for cost effective financing, advice on market conditions and providing analytical support for transit oriented development projects, public/private partnerships and leveraging of SFMTA assets.

ENCLOSURES:

1. SFMTAB Resolution
2. Agreement between SFMTA and Backstrom McCarley Berry & Co. LLC
3. Agreement between SFMTA and Ross Financial
4. Agreement between SFMTA and The PFM Group

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Sonali Bose

ASSIGNED MTAB CALENDAR DATE: _____

PURPOSE

SFMTA Board approval of this resolution would authorize the Executive Director/CEO to execute agreements with Backstrom McCarley Berry & Co., LLC, Ross Financial and The PFM Group, collectively the “Financial Advisor Pool”, to provide as-needed financial advisory services to the SFMTA for terms not to exceed five years each and an amount not to exceed \$2,000,000.00, for each contract, excluding bond issuance fees paid for with bond proceeds.

GOAL

The proposed agreements will help further the following goals and objectives in the SFMTA Strategic Plan:

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

Objective 3.1 Improve economic vitality by growing relationships with businesses, community, and stakeholder groups.

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

Objective 4.1 Increase revenue by 20% or more by 2012 by improving collections and identifying new sources.

Objective 4.2 Ensure efficient and effective use of resources.

DESCRIPTION

Background

In November 2007, the voters of San Francisco approved Proposition A, a Charter Amendment which gave the SFMTA greater authority and responsibility over its finances in order to ensure the long-term financial stability of the agency. Proposition A also provided the SFMTA with the ability to issue debt directly, which enables the SFMTA to explore the most beneficial financing options to fund capital and long-term maintenance projects. Developing a long-term Financial Plan is vital to the stability of the SFMTA to ensure funding for major capital projects and maintaining the highest levels of service to the public.

Staff prepared a Request for Proposals (RFP) for the selection of a Financial Advisor (FA). The FA would assist in the development of a Financial Plan and determine the most economic structure for any given financing after a thorough review and analysis of existing financial resources, cash flows and legal structure. The FA would also provide critical advice on the current market conditions and trends, financial products, credit and credit analysis, third party alternative financing, analysis and evaluations for refunding existing bond and establish the highest credit rating possible for the SFMTA.

The FA would also provide financial analytical support for transit oriented development projects, public/private partnerships and leveraging of SFMTA assets.

On December 2, 2008, the SFMTA Board of Directors approved Resolution No. 08-197 authorizing the Executive Director/CEO to issue a Request for Proposals (RFP) for Financial Advisory services.

On January 30, 2009, the SFMTA receive seven proposals in response to the RFP issued on December 5, 2008. Upon review, the SFMTA Contract Compliance Office determined that all proposals were non-responsive to the RFP due to their failure to demonstrate the Good Faith Effort requirements in establishing the 20% Local Business Enterprise sub-contracting goal. Staff subsequently reissued the RFP on March 20, 2009 and provided specific clarification on items of non-compliance and assistance with producing the required Good Faith Effort documentation. Six proposals were received on April 17, 2009.

The original intent of the RFP was to select a single firm to perform the work, for a term of three years with two one-year options; however due to the variety of project work and the need for specialized financial services, three firms were selected to form a pool of as-needed financial advisors for a term not to exceed five years. A selection committee consisting of representative from the SFMTA, the Port of San Francisco, San Francisco International Airport and the City's Tax Collector's Office scored the six written proposals in accordance with the criteria outlined in the RFP. The top three firms were interviewed by the selection committee which determined final scores and ranked the three within the pool of financial advisors. Work will be assigned based on their pool ranking and subject matter expertise.

The FA Pool firms scored as follows:

Firm Ranking	Final Average Score (100 points possible)
Backstrom McCarley Berry & Co., LLC	95.9
Ross Financial	92.2
The PFM Group	89.0

The Contract Compliance Office has established a Local Business Enterprise (LBE) participation goal of at least 20% for this contract.

The City Attorney has reviewed this report.

ALTERNATIVES CONSIDERED

An alternative to contracting out this work is to do the work "in-house." Staff determined that the SFMTA does not have the specialized expertise or staff resources to perform the scope of services necessary.

FUNDING IMPACT

Anticipated costs for services are budgeted in FY 2010.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

These contracts are subject to approval by the Civil Service Commission.

SFMTA Contract Compliance Office has confirmed each firm's commitment to meeting the 20 percent Local Business Enterprise sub-contracting goals and has certified the ranking of the firms.

RECOMMENDATION

Authorize the San Francisco Municipal Transportation Agency through its Executive Director/CEO to execute Contract #2008/09-38A, #2008/09-38B and #2008/09-38C, Agreements between the City and County of San Francisco and Backstrom McCarley Berry & Co., LLC, Ross Financial and The PFM Group respectively, to provide as-needed financial advisory services for terms not to exceed five years each and an amount not to exceed \$2,000,000.00, for each contract, excluding bond issuance fees paid for with bond proceeds.

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

RESOLUTION No. _____

WHEREAS, Developing a long-term Financial Plan is vital to the stability of the SFMTA to ensure funding for major capital projects and maintaining the highest levels of service to the public; and

WHEREAS, On December 2, 2009, the SFMTA Board of Directors adopted Resolution No. 08-197 authorizing the Executive Director/CEO to issue a Request for Proposals (RFP) for as-needed financial advisory services; and

WHEREAS, On January 30, 2009, seven proposals were received in response to the RFP and all were deemed non-responsive for failure to demonstrate compliance with the Human Rights Commission Good Faith Effort requirements in establishing the 20% Local Business Enterprise sub-contracting goal; and

WHEREAS, Staff reissued the RFP on March 20, 2009 and provided specific clarification on items of non-compliance and assistance with producing the required Good Faith Effort documentation; and

WHEREAS, Six proposals were received on April 17, 2009; and

WHEREAS, A selection committee consisting of representatives from the SFMTA, the Port of San Francisco, San Francisco International Airport and the City's Tax Collector's Office scored the six written proposals in accordance with the criteria outlined in the RFP; and

WHEREAS, The top three firms were interviewed by the selection committee which determined final scores and ranked the three within the pool of financial advisors; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the SFMTA Executive Director/CEO to execute Contract #2008/09-38A, #2008/09-38B and #2008/09-38C, Agreements between the City and County of San Francisco and Backstrom McCarley Berry & Co., LLC, Ross Financial and The PFM Group respectively to provide as-needed financial advisory services for terms not to exceed five years each and an amount not to exceed \$2,000,000.00, for each contract, excluding bond issuance fees paid for with bond proceeds.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Agreement between the City and County of San Francisco and
Backstrom McCarley Berry & Co., LLC
for Financial Advisory Services**

Contract No. 2008/09-38A

This Agreement is made this _ day of October, 2009, in the City and County of San Francisco, State of California, by and between: Backstrom McCarley Berry & Co., LLC, 115 Sansome Street, Mezzanine A, San Francisco, California 94104 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

- A. The SFMTA wishes to create a Financial Advisor Pool (FA Pool) of three financial advisors to provide as-needed financial advisory services.
- B. A Request for Proposals for Financial Advisor ("RFP") was issued on March 20, 2009, and City selected Contractor as one of the three highest qualified scorers pursuant to the RFP.
- C. The SFMTA wishes to enter into an agreement with Contractor to provide financial advisory services on an as-needed basis as a member of the FA Pool.
- D. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.
- E. Approval for this Agreement is contingent upon Civil Service Commission Approval.

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 October __, 2009 to September __, 2014.

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 As-Needed Services," attached hereto and incorporated by reference as though fully set forth herein. As-needed services shall be performed by one or more Contractors in the Financial Advisor Pool through the issuance of Task Orders in which the agreed work the Contractor shall perform is specifically described and milestones are set out, in accordance with the following procedures:

- a. The SFMTA will prepare a request for services, signed by the project manager, which shall include a detailed description of the scope of required services, including specific deliverables and expected time(s) for completion of each deliverable.
- b. Contractor shall respond by preparing and submitting within 15 days of receipt of the request for services a detailed work proposals, which shall include:
 1. A description by task and subtask of the work to be performed and the means and methods to perform it;
 2. Milestones for completion of each deliverable;
 3. A cost estimate for each task or subtask showing a breakdown of the estimated hours and direct salaries by individual for each activity required to complete all tasks and subtasks, as well as estimated out-of-pocket expenses.
- c. The SFMTA and Contractor will then negotiate a final written description of services, staff assignments, deliverables, schedule requirements, and budget for all tasks included in the Task Order.
- d. Before beginning work on any task under a task order, the task order, including the scope of services, schedule requirements and budget must be signed by both parties' authorized representatives and the SFMTA must issue a notice to proceed to the Contractor to begin work.

- e. The SFMTA shall have the authority to direct Contractor to discontinue, perform further, or provide additional resources to the performance of any task or subtask included in a Task Order.

5. Compensation. Compensation shall be made in monthly payments on or before the 30th 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 total amount of this Agreement with contractor exceed two million dollars (\$2,000,000). 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 SFMTA, the Director of HRC and 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. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the 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. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

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.

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

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

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

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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. 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 negotiated under each Task Order, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.00) per day for each day of delay beyond scheduled milestones and timelines is 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 Purchasing.

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

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

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| 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 business days after written notice thereof from City to Contractor, unless extended by mutual agreement of the parties.

(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.

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.

21. Termination for Convenience

a. Either party shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Such party shall exercise this option by giving written notice of termination to other party. The notice shall specify the date on which termination shall become effective, which date shall be not be less than 45 calendar days from the date of the notice.

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 in the notice and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- (7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

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

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

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

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

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

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

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

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

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

- 8. Submitting false claims
- 9. Disallowance

- 10. Taxes

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

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

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

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

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

To City: Sonali Bose
 Chief Financial Officer
 San Francisco Municipal Transportation Agency
 One South Van Ness Avenue, 8th Floor

San Francisco, CA 94103
Fax: 415-701-4725
Sonali.Bose@SFMTA.com

To Contractor: Vincent McCarley
Chief Executive Officer
Project Manager
Backstrom McCarley Berry & Co., LLC
115 Sansome Street, Mezzanine A
San Francisco, CA 94104
Fax: 415-392-5276
vmccarley@bmcbbco.com

Any notice of default must be sent by registered mail.

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

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

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

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

30. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as 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. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

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 20%. 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 available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the

City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

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

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

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 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.

43. Requiring Minimum Compensation for Covered Employees.

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

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

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

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

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

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

the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

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

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

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

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 nonduplicative, and facilitate a coordinated flow of information and referrals.

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

(6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

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

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

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

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

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

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

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

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

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

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

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

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 in the same manner as this Agreement. Contractor shall cooperate with the SFMTA to submit to the SFMTA 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% (HRC Contract Modification Form).

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 Purchasing 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, "Modification of Agreement."

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. Left blank by agreement of the parties. (Supervision of Minors).

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 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.

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 of Administrative Services 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 of Administrative Services 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 of Administrative Services. 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.

61. 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.

62. Approval by Counterparts.

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

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

CITY	CONTRACTOR
San Francisco Municipal Transportation Agency	Backstrom McCarley Berry & Co., LLC
_____ Nathaniel P. Ford, Sr. Executive Director/CEO	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.
Approved as to Form:	
Dennis J. Herrera City Attorney	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
By: _____ David A. Greenburg Deputy City Attorney	San Francisco companies to do business with corporations that abide by the MacBride Principles.
AUTHORIZED BY:	
MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS	_____ Vincent McCarley Chief Executive Officer Project Manager Backstrom McCarley Berry & Co., LLC 115 Sansome Street, Mezzanine A San Francisco, CA 94104 Fax: 415-392-5505
Resolution No: _____	
Adopted: _____	
Attest: _____ Roberta Boomer, Secretary to the SFMTA Board of Directors	City vendor number:

Appendices

A: Services to be provided by Contractor

B: Calculation of Charges

Appendix A

As-Needed Services to be provided by Contractor

1. Description of Services

As a member of the Financial Advisory Pool, Contractor may be directed by task order to perform some, all, or some portion of the following tasks, as well as other Financial Advisory or project services as may be assigned by mutual agreement of the parties:

A. FINANCIAL PLANNING SERVICES

1. FINANCIAL PLAN:

- (a) Contractor shall consult with SFMTA and City officials, bond counsel, disclosure counsel, underwriter, and rating agencies to develop a Financing Plan which will provide the most economical structure for any given financing. The Financing Plan shall include, but not be limited to, the following:
 - i. A thorough review and analysis of the existing financial resources, cash flows, and legal structure of the SFMTA, as well as all relevant data pertaining to the financing plan.
 - ii. A determination of the amount necessary to be issued.
 - iii. A determination of the structure, which will result in the SFMTA receiving the lowest possible borrowing, cost.
- (b) Contractor will provide guidance on the timing, structure and method of raising capital for proposed transactions in the financial plan.
- (c) Contractor will keep the SFMTA abreast of changing state and federal laws in connection with the SFMTA's financings and will be available to provide assistance and advice on any legislative issues impacting the SFMTA.

2. ANALYZE FUTURE DEBT CAPACITY:

- (a) Contractor will formulate financial models to help evaluate the viability of various financing strategies to provide the required level of funding over time.

3. IDENTIFY FINANCING ALTERNATIVES:

- (a) Contractor will develop objective financing plans incorporating a full range of financing alternatives including; pay-as-you-go, revenue bonds, lease financing or special district debt where appropriate.

B. DEBT MANAGEMENT SERVICES

1. MAINTAIN DEBT POSITION SUMMARY:

- (a) Following each sale of debt the Contractor will update and maintain schedules for the SFMTA's Outstanding Debt Summary including, but not limited to:
 - i. Updates reflecting outstanding debt
 - ii. Debt capacities
 - iii. Debt service schedules

- iv. Ratings
 - v. Assessed values
 - vi. Authorized but unissued debt
 - vii. Contractor will maintain copies of all transcripts.
2. DEVELOP AND MONITOR FINANCING SCHEDULE
- (a) Contractor will prepare a bond sale calendar that clearly identifies the responsibilities of each participant in the transaction.
 - i. SFMTA will have sufficient time for review of all disclosure materials prior to final printing and distribution.
 - ii. Contractor we will keep SFMTA staff informed about the progress of the financing and, if necessary, modify the schedule to meet changing circumstances.
3. ANALYZE DEBT STRUCTURE ALTERNATIVES:
- (a) Contractor will analyze the debt structure and provide a determination based on the following three elements:
 - i. Is the proposed amortization schedule well-coordinated with SFMTA's existing liabilities and cash flow;
 - ii. Are the resources pledged to debt redemption sufficient to meet coverage requirements or tax rate parameters; and,
 - iii. Is the proposed maturity schedule designed to attract maximum interest from underwriters and potential investors in the current market.
 - (b) Contractor will provide advice and assistance concerning debt covenants, pledge of revenues, flow of funds, and legal coverage requirements.
 - (c) Contractor will utilize the information from policy review and development to formulate the issue structure and other terms under which the bonds are to be offered addressing the following key issues:
 - i. Maturity Schedule and Pattern of Debt Service-provide advice and assistance in planning debt issue, determining the principal amount of debt to be sold, and develop a maturity schedule for each bond issue.
 - ii. Call Features- Contractor will perform detailed analyses of different call features, analyzing the effects of shorter call dates, smaller call premiums or even non-callable bonds and the potential impact they may have on marketing the bonds and interest rates that would be attained.
 - iii. Credit Enhancement- Contractor will analyze the merits of obtaining credit enhancements for discussion with SFMTA staff.
4. DEVELOP FINANCING DOCUMENTS:
- (a) Contractor will assist in the preparation, review and adoption of all legal documents and for drafting, printing, and distributing all disclosure documents prior to the bond sale.
 - (b) Contractor will coordinate with SFMTA officials, bond counsel, and other team members in the preparation, review and finalization of all bond document preparation activities including:
 - i. Arranging for debt sales advertising in trade journals and periodicals such as the Bond Buyer and making all necessary arrangements for each bond sale with the registrar and trustee.

- ii. Coordinate the printing and delivery of securities and notify the purchaser of the date and place that payment will be made.
5. COORDINATE THE MARKETING OF BONDS:
- (a) To assist the SFMTA with the timing of proposed issues, Contractor will closely monitor all local, national and international developments and evaluate the potential impact of each event on a new-issue of tax-exempt securities.
 - (b) Contractor will assist the SFMTA in coordinating its offerings with those of other issuers. This effort is designed to focus underwriter interest in the SFMTA's transactions by separating them from other sales. The overall goal is to identify a market in which: interest rates are stable; the supply of tax-exempt securities is light; and there is significant demand from both institutional and retail investors.
 - (c) Working closely with SFMTA staff and bond counsel, Contractor will be actively involved in the review and development of key disclosure materials required to effectively market the SFMTA's issues (including the necessary documents for electronic bidding, if appropriate). These disclosure materials include the preliminary official statement ("POS"), the final official statement ("OS"), and for competitively bid issues, the official bid form and the Notice of Sale.
 - (d) For the SFMTA's offerings, Contractor will work closely with SFMTA staff and financing team members to ensure that the POS is in full compliance with SEC guidelines, and industry standards including the guidelines developed by GFOA and MSRB.
 - (e) Assist with securing a line or letter of credit when necessary.
6. RATING AGENCY CONTACTS:
- (a) Contractor will develop a presentation and coordinate the introduction of SFMTA as a new issue to the three major rating agencies, Moody's Investors Service, Standard & Poor's Corporation and Fitch Ratings
 - (b) Contractor will determine both credit strengths and weaknesses prior to any presentation of materials to rating analysts based on a clear understanding of the analytical methods utilized by Moody's Investors Service, Standard & Poor's Corporation and Fitch Ratings.
 - (c) Contractor will recommend the rating firms to be used, if necessary, and prepare and present such information as is required to receive rating.
7. ASSIST WITH THE PRICING OF THE BONDS:
- (a) Contractor will provide the SFMTA with market information relating to comparable issues in the market, comparisons of takedown levels and important economic data releases.
 - i. Contractor will provide aggressive and informed representation to prospective bidders on behalf of the SFMTA in the pricing of securities.
 - ii. Contractor will assist in the evaluation of competitive bids and actively monitor market conditions to effectively advise the SFMTA as to the most appropriate market timing for its security offerings.
 - (b) Contractor will provide the SFMTA with a Final Pricing Report so that the SFMTA can evaluate the fairness of the pricing of the bonds.
 - i. The Report will be a summary of the bond pricing, final pricing and debt service

schedules, orders and allocation of bonds (for negotiated financings), review of market conditions, bond rating reviews, and related news articles.

- ii. The report will serve as a measure of the fairness of the pricing terms, and also as a comprehensive reference to which the SFMTA may refer in the future.

8. **ASSIST WITH PRECLOSING AND CLOSING:**

- (a) Contractor will work with all parties involved with the closing to prepare a schedule of tasks to be completed prior to closing and identify the party responsible for completing the task. These tasks include completing the final official statement, preparing closing documents, arranging for the transfer of funds and the investment of funds.

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. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be:

Steven Lee
Finance and Information Technology Division
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 8th Floor
San Francisco, CA 94103

Appendix B Calculation of Charges

As-needed services shall be performed by one or more Contractors in the Financial Advisor Pool through the issuance of Task Orders as described in Section 4. of this agreement. The total amount paid to the Contractor for each Task Order shall not exceed the total negotiated budgeted amount for that specific Task Order nor shall the hourly rates charged by the Contractor exceed amounts listed in the Hourly Rate Table below.

The SFMTA shall reimburse for “Out-of-Pocket” expenses upon proper invoice rendered with appropriate receipts attached. Such expenses include long distance telephone charges, postage, air express charges, fax, reproduction and related costs necessarily incurred as Financial Advisor. Such expenses will be paid from legally available funds of the SFMTA. Travel expenses related to performance of the services to the SFMTA, and approved in advance by the SFMTA, will be reimbursed in accordance with the City’s travel policy. Any costs incurred by Financial Advisor which are not specifically provided for herein shall be the expense of the Financial Advisor. Out of pocket costs shall not exceed 20% of the negotiated budgeted amount for that specific Task Order.

Hourly Rates shall be subject to annual increases, beginning on the second year, based upon the Consumer Price Index for the San Francisco-Oakland-San Jose metropolitan area or 2.5%, whichever is less. Fees associated with bond transactions shall be negotiated.

Hourly Rate Table by Firm & Sub-Consultants

Title	Hourly Rate
Backstrom McCarley Berry	
CEO or Managing Director	\$245
Vice President	\$235
Senior Associate	\$190
Robert Kuo Consulting	
CEO	\$220
Scott Balice Strategies	
Senior Vice President	\$270
Vice President	\$235

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

**Agreement between the City and County of San Francisco and
Ross Financial
for Financial Advisory Services**

Contract No. 2008/09-38B

This Agreement is made this _ day of October, 2009, in the City and County of San Francisco, State of California, by and between: Ross Financial, 1736 Stockton Street, Suite One, San Francisco, California 94133 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

- A. The SFMTA wishes to create a Financial Advisor Pool (FA Pool) of three financial advisors to provide as-needed financial advisory services.
- B. A Request for Proposals for Financial Advisor ("RFP") was issued on March 20, 2009, and City selected Contractor as one of the three highest qualified scorers pursuant to the RFP.
- C. The SFMTA wishes to enter into an agreement with Contractor to provide financial advisory services on an as-needed basis as a member of the FA Pool.
- D. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.
- E. Approval for this Agreement is contingent upon Civil Service Commission Approval.

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 October __, 2009 to September __, 2014.

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 As-Needed Services," attached hereto and incorporated by reference as though fully set forth herein. As-needed services shall be performed by one or more Contractors in the Financial Advisor Pool through the issuance of Task Orders in which the agreed work the Contractor shall perform is specifically described and milestones are set out, in accordance with the following procedures:

- a. The SFMTA will prepare a request for services, signed by the project manager, which shall include a detailed description of the scope of required services, including specific deliverables and expected time(s) for completion of each deliverable.
- b. Contractor shall respond by preparing and submitting within 15 days of receipt of the request for services a detailed work proposals, which shall include:
 1. A description by task and subtask of the work to be performed and the means and methods to perform it;
 2. Milestones for completion of each deliverable;
 3. A cost estimate for each task or subtask showing a breakdown of the estimated hours and direct salaries by individual for each activity required to complete all tasks and subtasks, as well as estimated out-of-pocket expenses.
- f. The SFMTA and Contractor will then negotiate a final written description of services, staff assignments, deliverables, schedule requirements, and budget for all tasks included in the Task Order.
- g. Before beginning work on any task under a task order, the task order, including the scope of services, schedule requirements and budget must be signed by both parties' authorized representatives and the SFMTA must issue a notice to proceed to the Contractor to begin work.

- h. The SFMTA shall have the authority to direct Contractor to discontinue, perform further, or provide additional resources to the performance of any task or subtask included in a Task Order.

5. Compensation. Compensation shall be made in monthly payments on or before the 30th 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 total amount of this Agreement with contractor exceed two million dollars (\$2,000,000). 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 SFMTA, the Director of HRC and 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. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the 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. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

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.

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

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

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

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the

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

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

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 (In consideration of the Contractor's representation that it has no employees, the Worker's Compensation insurance requirement is hereby waived for Contractor ; see letter attached as Appendix C); and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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. 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 negotiated under each Task Order, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.00) per day for each day of delay beyond scheduled milestones and timelines is 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 Purchasing.

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

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

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| 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 business days after written notice thereof from City to Contractor, unless extended by mutual agreement of the parties.

(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.

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.

21. Termination for Convenience

a. Either party shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Such party shall exercise this option by giving written notice of termination to other party. The notice shall specify the date on which termination shall become effective, which date shall be not be less than 45 calendar days from the date of the notice.

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 in the notice and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. Notices

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

To City: Sonali Bose
Chief Financial Officer
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Fax: 415-701-4725
Sonali.Bose@SFMTA.com

To Contractor: Peter Ross
Ross Financial
1736 Stockton Street, Suite One
San Francisco, CA 94133
Fax: 415-912-5611
rossfinancial@smkc.com

Any notice of default must be sent by registered mail.

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

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

28. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this

Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

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

30. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as 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. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

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 20%. 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 available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

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

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

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 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.

43. Requiring Minimum Compensation for Covered Employees.

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

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

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

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

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

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

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

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

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

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 nonduplicative, and facilitate a coordinated flow of information and referrals.

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

(6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

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

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

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

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

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

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

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

individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

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

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

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

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

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 in the same manner as this Agreement. Contractor shall cooperate with the SFMTA to submit to the SFMTA 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% (HRC Contract Modification Form).

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 Purchasing 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, "Modification of Agreement."

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. Left blank by agreement of the parties. (Supervision of Minors).

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 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.

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 of Administrative Services 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 of Administrative Services 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 of Administrative Services. 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.

61. 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.

62. Approval by Counterparts.

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

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

CITY	CONTRACTOR
San Francisco Municipal Transportation Agency	Ross Financial
_____ Nathaniel P. Ford, Sr. Executive Director/CEO	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.
Approved as to Form:	
Dennis J. Herrera City Attorney	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
By: _____ David A. Greenburg Deputy City Attorney	San Francisco companies to do business with corporations that abide by the MacBride Principles.
AUTHORIZED BY:	
MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS	_____ Peter Ross Ross Financial 1736 Stockton Street, Suite One San Francisco, CA 94133
Resolution No: _____	City vendor number:
Adopted: _____	
Attest: _____ Roberta Boomer, Secretary to the SFMTA Board of Directors	

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: Worker's Compensation Insurance Waiver

Appendix A

As-Needed Services to be provided by Contractor

1. Description of Services

As a member of the Financial Advisory Pool, Contractor may be directed by task order to perform some, all, or some portion of the following tasks, as well as other Financial Advisory or project services not list herein as may be assigned by mutual agreement of the parties:

A. FINANCIAL PLANNING SERVICES

1. FINANCIAL PLAN:

- (a) Contractor shall consult with SFMTA and City officials, bond counsel, disclosure counsel, underwriter, and rating agencies to develop a Financing Plan which will provide the most economical structure for any given financing. The Financing Plan shall include, but not be limited to, the following:
 - i. A thorough review and analysis of the existing financial resources, cash flows, and legal structure of the SFMTA, as well as all relevant data pertaining to the financing plan.
 - ii. A determination of the amount necessary to be issued.
 - iii. A determination of the structure, which will result in the SFMTA receiving the lowest possible borrowing, cost.
- (b) Contractor will provide guidance on the timing, structure and method of raising capital for proposed transactions in the financial plan.
- (c) Contractor will keep the SFMTA abreast of changing state and federal laws in connection with the SFMTA's financings and will be available to provide assistance and advice on any legislative issues impacting the SFMTA.

2. ANALYZE FUTURE DEBT CAPACITY:

- (a) Contractor will formulate financial models to help evaluate the viability of various financing strategies to provide the required level of funding over time.

3. IDENTIFY FINANCING ALTERNATIVES:

- (a) Contractor will develop objective financing plans incorporating a full range of financing alternatives including; pay-as-you-go, revenue bonds, lease financing or special district debt where appropriate.

B. DEBT MANAGEMENT SERVICES

1. MAINTAIN DEBT POSITION SUMMARY:

- (a) Following each sale of debt the Contractor will update and maintain schedules for the SFMTA's Outstanding Debt Summary including, but not limited to:
 - i. Updates reflecting outstanding debt
 - ii. Debt capacities
 - iii. Debt service schedules

- iv. Ratings
 - v. Assessed values
 - vi. Authorized but unissued debt
 - vii. Contractor will maintain copies of all transcripts.
2. DEVELOP AND MONITOR FINANCING SCHEDULE
- (a) Contractor will prepare a bond sale calendar that clearly identifies the responsibilities of each participant in the transaction.
 - i. SFMTA will have sufficient time for review of all disclosure materials prior to final printing and distribution.
 - ii. Contractor we will keep SFMTA staff informed about the progress of the financing and, if necessary, modify the schedule to meet changing circumstances.
3. ANALYZE DEBT STRUCTURE ALTERNATIVES:
- (a) Contractor will analyze the debt structure and provide a determination based on the following three elements:
 - i. Is the proposed amortization schedule well-coordinated with SFMTA's existing liabilities and cash flow;
 - ii. Are the resources pledged to debt redemption sufficient to meet coverage requirements or tax rate parameters; and,
 - iii. Is the proposed maturity schedule designed to attract maximum interest from underwriters and potential investors in the current market.
 - (b) Contractor will provide advice and assistance concerning debt covenants, pledge of revenues, flow of funds, and legal coverage requirements.
 - (c) Contractor will utilize the information from policy review and development to formulate the issue structure and other terms under which the bonds are to be offered addressing the following key issues:
 - i. Maturity Schedule and Pattern of Debt Service-provide advice and assistance in planning debt issue, determining the principal amount of debt to be sold, and develop a maturity schedule for each bond issue.
 - ii. Call Features- Contractor will perform detailed analyses of different call features, analyzing the effects of shorter call dates, smaller call premiums or even non-callable bonds and the potential impact they may have on marketing the bonds and interest rates that would be attained.
 - iii. Credit Enhancement- Contractor will analyze the merits of obtaining credit enhancements for discussion with SFMTA staff.
4. DEVELOP FINANCING DOCUMENTS:
- (a) Contractor will assist in the preparation, review and adoption of all legal documents and for drafting, printing, and distributing all disclosure documents prior to the bond sale.
 - (b) Contractor will coordinate with SFMTA officials, bond counsel, and other team members in the preparation, review and finalization of all bond document preparation activities including:
 - i. Arranging for debt sales advertising in trade journals and periodicals such as the Bond Buyer and making all necessary arrangements for each bond sale with the registrar and trustee.

- ii. Coordinate the printing and delivery of securities and notify the purchaser of the date and place that payment will be made.
- 5. COORDINATE THE MARKETING OF BONDS:
 - (a) To assist the SFMTA with the timing of proposed issues, Contractor will closely monitor all local, national and international developments and evaluate the potential impact of each event on a new-issue of tax-exempt securities.
 - (b) Contractor will assist the SFMTA in coordinating its offerings with those of other issuers. This effort is designed to focus underwriter interest in the SFMTA's transactions by separating them from other sales. The overall goal is to identify a market in which: interest rates are stable; the supply of tax-exempt securities is light; and there is significant demand from both institutional and retail investors.
 - (c) Working closely with SFMTA staff and bond counsel, Contractor will be actively involved in the review and development of key disclosure materials required to effectively market the SFMTA's issues (including the necessary documents for electronic bidding, if appropriate). These disclosure materials include the preliminary official statement ("POS"), the final official statement ("OS"), and for competitively bid issues, the official bid form and the Notice of Sale.
 - (d) For the SFMTA's offerings, Contractor will work closely with SFMTA staff and financing team members to ensure that the POS is in full compliance with SEC guidelines, and industry standards including the guidelines developed by GFOA and MSRB.
 - (e) Assist with securing a line or letter of credit when necessary.
- 6. RATING AGENCY CONTACTS:
 - (a) Contractor will develop a presentation and coordinate the introduction of SFMTA as a new issue to the three major rating agencies, Moody's Investors Service, Standard & Poor's Corporation and Fitch Ratings
 - (b) Contractor will determine both credit strengths and weaknesses prior to any presentation of materials to rating analysts based on a clear understanding of the analytical methods utilized by Moody's Investors Service, Standard & Poor's Corporation and Fitch Ratings.
 - (c) Contractor will recommend the rating firms to be used, if necessary, and prepare and present such information as is required to receive rating.
- 7. ASSIST WITH THE PRICING OF THE BONDS:
 - (a) Contractor will provide the SFMTA with market information relating to comparable issues in the market, comparisons of takedown levels and important economic data releases.
 - i. Contractor will provide aggressive and informed representation to prospective bidders on behalf of the SFMTA in the pricing of securities.
 - ii. Contractor will assist in the evaluation of competitive bids and actively monitor market conditions to effectively advise the SFMTA as to the most appropriate market timing for its security offerings.
 - (b) Contractor will provide the SFMTA with a Final Pricing Report so that the SFMTA can evaluate the fairness of the pricing of the bonds.
 - i. The Report will be a summary of the bond pricing, final pricing and debt service

schedules, orders and allocation of bonds (for negotiated financings), review of market conditions, bond rating reviews, and related news articles.

- ii. The report will serve as a measure of the fairness of the pricing terms, and also as a comprehensive reference to which the SFMTA may refer in the future.

8. **ASSIST WITH PRECLOSING AND CLOSING:**

- (a) Contractor will work with all parties involved with the closing to prepare a schedule of tasks to be completed prior to closing and identify the party responsible for completing the task. These tasks include completing the final official statement, preparing closing documents, arranging for the transfer of funds and the investment of funds.

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. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be:

Steven Lee
Finance and Information Technology Division
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 8th Floor
San Francisco, CA 94103

Appendix B Calculation of Charges

As-needed services shall be performed by one or more Contractors in the Financial Advisor Pool through the issuance of Task Orders as described in Section 4. of this agreement. The total amount paid to the Contractor for each Task Order shall not exceed the total negotiated budgeted amount for that specific Task Order nor shall the hourly rates charged by the Contractor exceed amounts listed in the Hourly Rate Table below.

The SFMTA shall reimburse for “Out-of-Pocket” expenses upon proper invoice rendered with appropriate receipts attached. Such expenses include long distance telephone charges, postage, air express charges, fax, reproduction and related costs necessarily incurred as Financial Advisor. Such expenses will be paid from legally available funds of the SFMTA. Travel expenses related to performance of the services to the SFMTA, and approved in advance by the SFMTA, will be reimbursed in accordance with the City’s travel policy. Any costs incurred by Financial Advisor which are not specifically provided for herein shall be the expense of the Financial Advisor. Out of pocket costs shall not exceed 20% of the negotiated budgeted amount for that specific Task Order.

Hourly Rates shall be subject to annual increases, beginning on the second year, based upon the Consumer Price Index for the San Francisco-Oakland-San Jose metropolitan area or 2.5%, whichever is less. Fees associated with bond transactions shall be negotiated.

Hourly Rate Table

Firm & Sub-Consultants	Title	Hourly Rate
Ross Financial	Principal	\$300
Robert Kuo Consulting	Principal	\$275
Capital Partnerships	Principal	\$200

Appendix C
Worker's Compensation Waiver

ROSS FINANCIAL

1736 Stockton Street, Suite One • San Francisco, CA 94133 • (415) 912-5612 • FAX (415) 912-5611

Writer's Email Address: rossfinancial@smkc.com

July 17, 2009

Mr. Ben Kawamura
Procurement Manager
Office of Contracts and Procurement
San Francisco Municipal Transportation Authority
One South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

Re: Financial Advisory Services

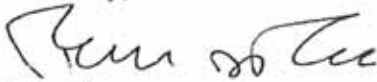
Dear Mr. Kawamura:

As I noted in my email of July 14th, Ross Financial carries general liability and professional liability insurance with limits that meet the requirements of SFMTA. However, as Ross Financial is a sole proprietorship, it does not carry Worker's Compensation Insurance and, to my knowledge, it is not required to do so. Moreover, my automobile coverage is provided by my personal automobile policy, with added liability provided by an umbrella policy.

In prior contracts with other public agencies, including, I believe, the City and County of San Francisco, I have received waivers with respect to the Worker's Compensation and automobile liability provisions – or they are deemed complied with as a result of my sole proprietorship status.

Please let me know how you would like to provide on these matters. Thank you.

Sincerely,



Peter Ross
Ross Financial

cc: Steven Lee

*Waiver of Workers' Compensation
insurance is hereby granted
per above statement*

*E. Fitzgerald
Risk Manager
8/18/09*

Letter dated July 17, 2009 from Ross Financial, as sole proprietorship, requesting waiver of Worker's Compensation Insurance requirements. Waiver approved as noted on letter by Risk Manager's Office dated August 18, 2009.

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

**Agreement between the City and County of San Francisco and
The PFM Group
for Financial Advisory Services**

Contract No. 2008/09-38C

This Agreement is made this _ day of October, 2009, in the City and County of San Francisco, State of California, by and between: The PFM Group, 50 California Street, Suite 2300, San Francisco, California 94111 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

- A. The SFMTA wishes to create a Financial Advisor Pool (FA Pool) of three financial advisors to provide as-needed financial advisory services.
- B. A Request for Proposals for Financial Advisor ("RFP") was issued on March 20, 2009, and City selected Contractor as one of the three highest qualified scorers pursuant to the RFP.
- C. The SFMTA wishes to enter into an agreement with Contractor to provide financial advisory services on an as-needed basis as a member of the FA Pool.
- D. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.
- E. Approval for this Agreement is contingent upon Civil Service Commission Approval.

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 October __, 2009 to September __, 2014.

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 As-Needed Services," attached hereto and incorporated by reference as though fully set forth herein. As-needed services shall be performed by one or more Contractors in the Financial Advisor Pool through the issuance of Task Orders in which the agreed work the Contractor shall perform is specifically described and milestones are set out, in accordance with the following procedures:

- a. The SFMTA will prepare a request for services, signed by the project manager, which shall include a detailed description of the scope of required services, including specific deliverables and expected time(s) for completion of each deliverable.
- b. Contractor shall respond by preparing and submitting within 15 days of receipt of the request for services a detailed work proposals, which shall include:
 1. A description by task and subtask of the work to be performed and the means and methods to perform it;
 2. Milestones for completion of each deliverable;
 3. A cost estimate for each task or subtask showing a breakdown of the estimated hours and direct salaries by individual for each activity required to complete all tasks and subtasks, as well as estimated out-of-pocket expenses.
- i. The SFMTA and Contractor will then negotiate a final written description of services, staff assignments, deliverables, schedule requirements, and budget for all tasks included in the Task Order.
- j. Before beginning work on any task under a task order, the task order, including the scope of services, schedule requirements and budget must be signed by both parties' authorized representatives and the SFMTA must issue a notice to proceed to the Contractor to begin work.

- k. The SFMTA shall have the authority to direct Contractor to discontinue, perform further, or provide additional resources to the performance of any task or subtask included in a Task Order.

5. Compensation. Compensation shall be made in monthly payments on or before the 30th 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 total amount of this Agreement with contractor exceed two million dollars (\$2,000,000). 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 SFMTA, the Director of HRC and 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. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the 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. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

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.

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

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

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

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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. 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 negotiated under each Task Order, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.00) per day for each day of delay beyond scheduled milestones and timelines is 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 Purchasing.

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

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

- | | |
|---|---------------------------------------|
| 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 business days after written notice thereof from City to Contractor, unless otherwise extended by mutual agreement of the parties.

(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.

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.

21. Termination for Convenience

a. Either party shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Such party shall exercise this option by giving written notice of termination to other party. The notice shall specify the date on which termination shall become effective, which date shall be not be less than 45 calendar days from the date of the notice..

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 in the notice and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Submitting false claims

9. Disallowance

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

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

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

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

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

To City: Sonali Bose
 Chief Financial Officer

San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Fax: 415-701-4725
Sonali.Bose@SFMTA.com

To Contractor: Peter Shellenberger
Senior Managing Consultant
The PFM Group
50 California Street, Suite 2300
San Francisco, CA 94111
Fax: 415-982-4513
www.pfm.com

Any notice of default must be sent by registered mail.

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

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

28. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved,

whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

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

30. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as 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. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

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 20%. 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 available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

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

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

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 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.

43. Requiring Minimum Compensation for Covered Employees.

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

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

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

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

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

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

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

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

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

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 nonduplicative, and facilitate a coordinated flow of information and referrals.

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

(6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

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

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

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

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

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

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

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

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

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

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

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

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 in the same manner as this Agreement. Contractor shall cooperate with the SFMTA to submit to the SFMTA 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% (HRC Contract Modification Form).

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 Purchasing 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, “Modification of Agreement.”

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. Left blank by agreement of the parties. (Supervision of Minors).

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 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.

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 of Administrative Services 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 of Administrative Services 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 of Administrative Services. 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.

61. 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.

62. Approval by Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed an

original and all of which together shall be considered one and the same agreement. Signed counterparts may be delivered by telephone facsimile or by PDF delivered by email.

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

CITY	CONTRACTOR
San Francisco Municipal Transportation Agency	The PFM Group
<hr/> Nathaniel P. Ford, Sr. Executive Director/CEO	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.
Approved as to Form:	
Dennis J. Herrera City Attorney	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
By:	San Francisco companies to do business with corporations that abide by the MacBride Principles.
<hr/> David A. Greenburg Deputy City Attorney	
AUTHORIZED BY:	
MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS	<hr/> Peter Shellenberger Senior Managing Consultant The PFM Group 50 California Street, Suite 2300 San Francisco, CA 94111
Resolution No: _____	
Adopted: _____	
Attest: _____ Roberta Boomer, Secretary to the SFMTA Board of Directors	City vendor number:

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges

Appendix A

As-Needed Services to be provided by Contractor

1. Description of Services

As a member of the Financial Advisory Pool, Contractor may be directed by task order to perform some, all, or some portion of the following tasks, as well as other Financial Advisory or project services not list herein as may assigned by mutual agreement of the parties:

A. FINANCIAL PLANNING SERVICES

1. FINANCIAL PLAN:

- (a) Contractor shall consult with SFMTA and City officials, bond counsel, disclosure counsel, underwriter, and rating agencies to develop a Financing Plan which will provide the most economical structure for any given financing. The Financing Plan shall include, but not be limited to, the following:
 - i. A thorough review and analysis of the existing financial resources, cash flows, and legal structure of the SFMTA, as well as all relevant data pertaining to the financing plan.
 - ii. A determination of the amount necessary to be issued.
 - iii. A determination of the structure, which will result in the SFMTA receiving the lowest possible borrowing, cost.
- (b) Contractor will provide guidance on the timing, structure and method of raising capital for proposed transactions in the financial plan.
- (c) Contractor will keep the SFMTA abreast of changing state and federal laws in connection with the SFMTA's financings and will be available to provide assistance and advice on any legislative issues impacting the SFMTA.

2. ANALYZE FUTURE DEBT CAPACITY:

- (a) Contractor will formulate financial models to help evaluate the viability of various financing strategies to provide the required level of funding over time.

3. IDENTIFY FINANCING ALTERNATIVES:

- (a) Contractor will develop objective financing plans incorporating a full range of financing alternatives including; pay-as-you-go, revenue bonds, lease financing or special district debt where appropriate.

B. DEBT MANAGEMENT SERVICES

1. MAINTAIN DEBT POSITION SUMMARY:

- (a) Following each sale of debt the Contractor will update and maintain schedules for the SFMTA's Outstanding Debt Summary including, but not limited to:
 - i. Updates reflecting outstanding debt
 - ii. Debt capacities
 - iii. Debt service schedules

- iv. Ratings
 - v. Assessed values
 - vi. Authorized but unissued debt
 - vii. Contractor will maintain copies of all transcripts.
2. DEVELOP AND MONITOR FINANCING SCHEDULE
- (a) Contractor will prepare a bond sale calendar that clearly identifies the responsibilities of each participant in the transaction.
 - i. SFMTA will have sufficient time for review of all disclosure materials prior to final printing and distribution.
 - ii. Contractor we will keep SFMTA staff informed about the progress of the financing and, if necessary, modify the schedule to meet changing circumstances.
3. ANALYZE DEBT STRUCTURE ALTERNATIVES:
- (a) Contractor will analyze the debt structure and provide a determination based on the following three elements:
 - i. Is the proposed amortization schedule well-coordinated with SFMTA's existing liabilities and cash flow;
 - ii. Are the resources pledged to debt redemption sufficient to meet coverage requirements or tax rate parameters; and,
 - iii. Is the proposed maturity schedule designed to attract maximum interest from underwriters and potential investors in the current market.
 - (b) Contractor will provide advice and assistance concerning debt covenants, pledge of revenues, flow of funds, and legal coverage requirements.
 - (c) Contractor will utilize the information from policy review and development to formulate the issue structure and other terms under which the bonds are to be offered addressing the following key issues:
 - i. Maturity Schedule and Pattern of Debt Service-provide advice and assistance in planning debt issue, determining the principal amount of debt to be sold, and develop a maturity schedule for each bond issue.
 - ii. Call Features- Contractor will perform detailed analyses of different call features, analyzing the effects of shorter call dates, smaller call premiums or even non-callable bonds and the potential impact they may have on marketing the bonds and interest rates that would be attained.
 - iii. Credit Enhancement- Contractor will analyze the merits of obtaining credit enhancements for discussion with SFMTA staff.
4. DEVELOP FINANCING DOCUMENTS:
- (a) Contractor will assist in the preparation, review and adoption of all legal documents and for drafting, printing, and distributing all disclosure documents prior to the bond sale.
 - (b) Contractor will coordinate with SFMTA officials, bond counsel, and other team members in the preparation, review and finalization of all bond document preparation activities including:
 - i. Arranging for debt sales advertising in trade journals and periodicals such as the Bond Buyer and making all necessary arrangements for each bond sale with the registrar and trustee.

- ii. Coordinate the printing and delivery of securities and notify the purchaser of the date and place that payment will be made.
- 5. COORDINATE THE MARKETING OF BONDS:
 - (a) To assist the SFMTA with the timing of proposed issues, Contractor will closely monitor all local, national and international developments and evaluate the potential impact of each event on a new-issue of tax-exempt securities.
 - (b) Contractor will assist the SFMTA in coordinating its offerings with those of other issuers. This effort is designed to focus underwriter interest in the SFMTA's transactions by separating them from other sales. The overall goal is to identify a market in which: interest rates are stable; the supply of tax-exempt securities is light; and there is significant demand from both institutional and retail investors.
 - (c) Working closely with SFMTA staff and bond counsel, Contractor will be actively involved in the review and development of key disclosure materials required to effectively market the SFMTA's issues (including the necessary documents for electronic bidding, if appropriate). These disclosure materials include the preliminary official statement ("POS"), the final official statement ("OS"), and for competitively bid issues, the official bid form and the Notice of Sale.
 - (d) For the SFMTA's offerings, Contractor will work closely with SFMTA staff and financing team members to ensure that the POS is in full compliance with SEC guidelines, and industry standards including the guidelines developed by GFOA and MSRB.
 - (e) Assist with securing a line or letter of credit when necessary.
- 6. RATING AGENCY CONTACTS:
 - (a) Contractor will develop a presentation and coordinate the introduction of SFMTA as a new issue to the three major rating agencies, Moody's Investors Service, Standard & Poor's Corporation and Fitch Ratings
 - (b) Contractor will determine both credit strengths and weaknesses prior to any presentation of materials to rating analysts based on a clear understanding of the analytical methods utilized by Moody's Investors Service, Standard & Poor's Corporation and Fitch Ratings.
 - (c) Contractor will recommend the rating firms to be used, if necessary, and prepare and present such information as is required to receive rating.
- 7. ASSIST WITH THE PRICING OF THE BONDS:
 - (a) Contractor will provide the SFMTA with market information relating to comparable issues in the market, comparisons of takedown levels and important economic data releases.
 - i. Contractor will provide aggressive and informed representation to prospective bidders on behalf of the SFMTA in the pricing of securities.
 - ii. Contractor will assist in the evaluation of competitive bids and actively monitor market conditions to effectively advise the SFMTA as to the most appropriate market timing for its security offerings.
 - (b) Contractor will provide the SFMTA with a Final Pricing Report so that the SFMTA can evaluate the fairness of the pricing of the bonds.
 - i. The Report will be a summary of the bond pricing, final pricing and debt service

schedules, orders and allocation of bonds (for negotiated financings), review of market conditions, bond rating reviews, and related news articles.

- ii. The report will serve as a measure of the fairness of the pricing terms, and also as a comprehensive reference to which the SFMTA may refer in the future.

8. **ASSIST WITH PRECLOSING AND CLOSING:**

- (a) Contractor will work with all parties involved with the closing to prepare a schedule of tasks to be completed prior to closing and identify the party responsible for completing the task. These tasks include completing the final official statement, preparing closing documents, arranging for the transfer of funds and the investment of funds.

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. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be:

Steven Lee
Finance and Information Technology Division
San Francisco Municipal Transportation Agency
One South Van Ness Avenue, 8th Floor
San Francisco, CA 94103

Appendix B Calculation of Charges

As-needed services shall be performed by one or more Contractors in the Financial Advisor Pool through the issuance of Task Orders as described in Section 4. of this agreement. The total amount paid to the Contractor for each Task Order shall not exceed the total negotiated budgeted amount for that specific Task Order nor shall the hourly rates charged by the Contractor exceed amounts listed in the Hourly Rate Table below.

The SFMTA shall reimburse for “Out-of-Pocket” expenses upon proper invoice rendered with appropriate receipts attached. Such expenses include long distance telephone charges, postage, air express charges, fax, reproduction and related costs necessarily incurred as Financial Advisor. Such expenses will be paid from legally available funds of the SFMTA. Travel expenses related to performance of the services to the SFMTA, and approved in advance by the SFMTA, will be reimbursed in accordance with the City’s travel policy. Any costs incurred by Financial Advisor which are not specifically provided for herein shall be the expense of the Financial Advisor. Out of pocket costs shall not exceed 20% of the negotiated budgeted amount for that specific Task Order.

Hourly Rates shall be subject to annual increases, beginning on the second year, based upon the Consumer Price Index for the San Francisco-Oakland-San Jose metropolitan area or 2.5%, whichever is less. Fees associated with bond transactions shall be negotiated.

Hourly Rate Table by Firm & Sub-Consultants

Title	Hourly Rate
The PFM	
Managing Director	\$300
Senior Managing Consultant	\$250
Consultant	\$190
The Pineapple Group	
Managing Principal	\$300
Principal	\$250
Analyst	\$190
Robert Kuo Consulting	
Principal	\$300

THIS PRINT COVERS CALENDAR ITEM NO.: 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Muni Operations

BRIEF DESCRIPTION:

Authorizing the Executive Director/CEO to execute a Master Agreement with ThyssenKrupp Elevator Corporation for the maintenance of elevators and escalators in the Muni Metro System and at various facilities for an amount not to exceed \$625,600 and a term of five years.

SUMMARY:

- Under the previous provisions of Administrative Code Section 6.65 competitive bidding requirements did not apply for the procurement of elevator, escalator or fire alarm service inspection, maintenance, and repair work from the original equipment manufacturers (OEM). This ordinance now requires the execution of a master agreement for the provision of elevator maintenance services on an as-needed basis.
- ThyssenKrupp Elevator Corporation provided elevator maintenance service at various locations in the Muni Metro System and at the William B. Scott Non-Revenue Facility under a contract that expired July 31, 2009.
- All elevator and escalator equipment has been maintained by the original installers or their successor companies since installation. ThyssenKrupp Elevator Corporation is the remaining OEM without a Master Agreement with the SFMTA.

ENCLOSURES: (List numerically and by title)

1. SFMTAB Resolution
2. Master Agreement for ThyssenKrupp Elevator Corporation

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

Rosa Rankin

ASSIGNED MTAB CALENDAR DATE: _____

PURPOSE:

The purpose of this Master Service Agreement is to provide for an elevator maintenance contract with ThyssenKrupp Elevator Corporation that provides labor, materials and maintenance service for elevators and escalators in the Muni Metro System and at SFMTA facilities.

GOAL:

This Master Service Agreement supports the following goals and objectives of the 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 No. 1.4 Improve accessibility across transit service

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

Objective No. 2.2 Ensure efficient transit connectivity and span of service.

DESCRIPTION:

In 2005, San Francisco Administrative Code Section 6.65 was amended and now requires the execution of a master agreement for elevator and escalator inspection, maintenance, and repair on an as-needed basis. The securing of a master service agreement does not guarantee work nor does it obligate the City to pay the service provider the total not-to-exceed amount specified in the master service agreement.

For the performance of specific work, the SFMTA must seek price quotations from at least three providers with master agreements. The SFMTA must enter into a contract for the work to be performed by the provider who submits the lowest price unless the public interest would best be served by accepting a higher priced bid.

The SFMTA operates a total of 55 elevators and escalators. Forty elevators and escalators are located in the Muni Metro System. The fifteen remaining elevators are located at other SFMTA facilities.

Since installation, all elevator and escalator equipment has been maintained by the five original manufacturers or their successor companies under prior elevator/escalator maintenance agreements. In 2007, the SFMTA entered into a Master Agreement with Star Elevator, Inc. that expires in 2011. In 2008, the SFMTA entered into Master Agreements with three additional companies, Otis Elevator Company, Schindler Elevator Corporation, and KONE, Inc. These agreements expire in 2013.

All of these elevator/escalator service companies have existing Master Agreements with the Department of Public Works for elevator/escalator inspection, service and repair in accordance with the Administrative Code.

DESCRIPTION (CONT):

At this time, staff recommends approval of a Master Agreement with the remaining original manufacturer, ThyssenKrupp Elevator Corporation.

ALTERNATIVES CONSIDERED:

No alternatives were considered as Section 6.65 of the Administrative Code specifies that Department heads who are authorized to execute public work contracts are authorized to award contracts for the inspection, maintenance and repair services of existing elevator, escalator, security, fire protection or fire alarm systems. These services are deemed “special services” which are awarded under master agreement contracts.

FUNDING IMPACT:

Funds for the maintenance of elevators and escalators are budgeted in the FY10 Operating budget.

OTHER APPROVAL RECEIVED OR STILL PENDING:

The City Attorney's Office has reviewed this item.

RECOMMENDATION:

Authorizing the Executive Director/CEO to execute the Master Service Agreement with ThyssenKrupp Elevator Corporation in an amount not to exceed \$625,600.00 for a period not to exceed five years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION NO. _____

WHEREAS, San Francisco Administrative Code section 6.65 provides that departments shall award master agreements on an as need basis to contractors who can establish experience, expertise, and quality of work; and,

WHEREAS, Staff recommends that the SFMTA enter into a Master Agreement with ThyssenKrupp Elevator Corporation for elevator/escalator maintenance; and,

WHEREAS, Staff recommends approval of the Master Service Agreement with ThyssenKrupp Elevator Corporation in an amount not to exceed \$625,600.00 for a term of five years; and,

WHEREAS, Funds are available for this work in the Operating Budget; now, therefore be it

RESOLVED, That the SFMTA Board authorizes the Executive Director/CEO to execute the Master Agreement with ThyssenKrupp Elevator Corporation for elevator and escalator maintenance at various locations; and be it further

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute a Master Service Agreement with ThyssenKrupp Elevator Corporation in an amount not to exceed \$625,600 for a term of 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
MUNICIPAL TRANSPORTATION AGENCY**

**MASTER AGREEMENT FOR SPECIAL SERVICES
UNDER SAN FRANCISCO ADMINISTRATIVE CODE §6.65**

AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND

This Agreement is made this _____ day of, _____ 2009, in the City and County of San Francisco, State of California, by and between:

ThyssenKrupp Elevator Corporation
85 Federal Street
San Francisco, CA 94107

hereinafter referred to as "Contractor," and City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency, hereinafter referred to as the "SFMTA."

Recitals

WHEREAS, the Municipal Transportation Agency wishes to inspect, maintain, and repair elevator and escalator equipment on an if- and as-needed basis at various SFMTA-owned and/or operated facilities in accordance with the provisions specified in the San Francisco Administrative Code Section 6.65; and,

WHEREAS, Contractor represents and warrants that it is qualified and has the special expertise and experience to perform the services required for City as set forth under this contract; and,

WHEREAS, approval for said Agreement was obtained from the Civil Service Commission by Resolution No. PSC #Not Applicable dated Not Applicable

Now, THEREFORE, the parties agree as follows:

1. Definitions

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

AUTHORIZATION

Contract Order of the City and County of San Francisco properly executed by the Director of Transportation and certified by the Controller for the specific funding of this Agreement or any modification thereof.

CITY	City and County of San Francisco, a municipal corporation.
CONTRACTOR	
CONTROLLER	Controller of the City and County of San Francisco.
EXECUTIVE DIRECTOR/CEO	Director of Transportation of the City and County of San Francisco.
WORK	The work to be done in providing the services as described and specified in Appendix A.

Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the SFMTA. The words "sufficient", "necessary", or "proper", and the like, mean sufficient, necessary or proper in the judgment of the SFMTA. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Department of SFMTA, unless otherwise indicated by the context.

2. 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 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 in the event 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.

3. Term of the Agreement

Subject to Section 2, the term of this Agreement shall be from August 1, 2009 to July 31, 2014.

4. 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.

5. Services Contractor Agrees to Perform

The Contractor agrees to perform the basic services at the standards provided for in **Appendix A**, "Services

and Standards of Performance under Master Agreement For Special Services For Elevator and Escalator," attached hereto and incorporated by reference as though fully set forth herein.

Contractor acknowledges and agrees that this Agreement does not guarantee Contractor any work. For the performance of most specific tasks, the Department, at its sole discretion, shall seek price quotations from at least three special service providers with Master Agreements. The Department shall issue a Contract Service Order ("CSO") for the work to the provider submitting the lowest quotation. In the event that the Department is unable to obtain three quotations, the Executive Director/CEO shall base the issuance of the CSO on the quote or quotes received. The Department reserves the right to reject any and all quotes for any reason or no reason. The Executive Director/CEO may accept other than the lowest quotation if, in his/her discretion, the public interest would best be served.

The Contractor acknowledges and agrees that once the Department issues a CSO under this Agreement, the scope of work and price as set forth in the CSO shall be binding on Contractor as though fully incorporated into this Agreement.

6. Compensation

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 5 of this Agreement, that the 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 contract exceed \$625,600.00 dollars (\$).

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

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

7. Method of Payment

Invoices furnished by Contractor under this Agreement must be in a form acceptable to Executive Director/CEO and Controller. 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 stated hereinabove.

8. Disallowance

In the event Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by City or 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.

9. Taxes

Payment of any taxes, including California Sales and Use Taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor

to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

- a. 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;
- b. 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.
- c. 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.
- d. 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.

10. Payment Does Not Imply Acceptance of Work

The granting of any progress payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work or material although the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Materials, components, or workmanship which do not conform to the Specifications will be rejected and shall be replaced by Contractor without delay.

11. 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 conform with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, shall be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

12. 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. The acceptance or use of such equipment by Contractor or any of its employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to the

contractor, its employees, City employees or third parties, or to property belonging to any of the above.

13. Independent Contractor

Contractor shall be deemed at all times to be an independent Contractor and shall be wholly responsible for the manner in which Contractor performs the service required of Contractor by the terms of this Agreement. Contractor shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between City and Contractor. 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.

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.

14A . Performance Bond and Payment (Labor and Materials) Bond for Contracts in Excess of \$25,000

If the contract amount of this agreement is in excess of \$25,000, Contractor shall submit the Performance and Payment bonds to the SFMTA when the agreement is awarded as follows:

Contractor shall always have bonds in a total amount equal to or greater than the total dollar value of all CSOs for special services performed under this Agreement.

Prior to commencing any work under this Agreement, Contractor shall provide an initial Performance Bond in the amount of not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower and a Payment (Labor and Materials) Bond in the amount not less than fifty percent (50%) of the amount of the agreement as awarded or \$50,000, whichever is lower. The Contractor may alternatively provide Performance and Payment bonds covering 100% of the total possible compensation amount under paragraph 6 of this Agreement.

The Contractor shall provide additional bonds in accordance with this Paragraph 14A in increments of not less than \$50,000 when the total amount of contracted construction activity for all CSOs approaches or equals \$50,000.

The City will provide forms for bonding. Sureties shall conform to the standards set forth by the City's Risk Manager under San Francisco Administrative Code section 6.22. No work shall commence without the verification of valid Performance and Payment bonds. The City will require Bonds from the entity named in the Agreement and may not accept Bonds from subcontractors.

14B. Insurance

- a. Without in any way limiting Contractor's liability pursuant to Section 15, "Indemnification and General Liability," of this Agreement, Contractor will maintain in force, during the full term of the Agreement, insurance in the following amounts and coverage:
 - (1) Workers' Compensation, in statutory amounts, with Employers' Liability limits not less than \$1,000,000 each accident; 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 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 – not applicable for public work or improvement construction services.
- b. Commercial General Liability and Commercial Automobile Liability Insurance policies shall be endorsed to 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 contract, and that insurance applies separately to each insured against whom claim is made or suit is brought.
- c. All policies shall be endorsed to 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:

Rosa Rankin
Contracts Administrator
Maintenance Engineering
700 Pennsylvania Avenue
San Francisco, California 94107

- 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 contract and, without lapse, for a period of three years beyond the contract expiration, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the contract, such claims shall be covered by such claims-made policies.
- e. Should any of the required insurance, other than professional liability, 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 services or 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. Contractor shall furnish complete copies of policies of any or all of the above-listed insurance policies promptly upon City request. 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.

15. Indemnification

- a. To the fullest extent permitted by law, the Contractor shall assume the defense of, indemnify and save harmless the City and its officers and employees (collectively "Indemnitees") from any claim, loss, damage, injury (including, without limitation, injury to or death of an employee of the Contractor or its subcontractors) and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees and costs of investigation) that arise directly or indirectly to the extent caused, in whole or in part, from: (1) the services under this Agreement, or any part thereof, (2) any act or omission of Contractor, and subcontractor to the Contractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"), even if such Liabilities are caused in part by the negligence of any Indemnatee, subject to the provisions set forth below in this Section.
- b. The Contractor assumes no liability whatsoever for the sole negligence or willful misconduct of any Indemnatee or the contractors of any Indemnatee.

- c. The Contractor's indemnification obligations for claims involving "Professional Liability" (claims involving acts, errors, or omissions in the rendering of professional services) and "Economic Loss Only" (claims involving economic loss which are not connected with bodily injury or physical damage to property) shall be limited to the proportionate extent of Contractor's negligence or other breach of duty.

16. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages to the extent caused by Contractor's negligent acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation or any rights which City may have under applicable law.

17. Liability of City

City's obligations under this contract shall be limited to the payment of the compensation provided for in Section 6 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 Contractor's own 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.

18. Liquidated Damages

Contractor acknowledges and agrees that time is of the essence in responding to calls for service and repairs, as set forth in Appendix A of this Agreement, and that failure to respond may result in actual damages to the City which would be extremely difficult to or impracticable to determine. Contractor therefore further acknowledges and agrees that Individual service orders may include liquidated damages, not as a penalty, but as a reasonable estimate of the loss the City would incur based on the delay. Such liquidated damages may be set by the City, at its sole discretion, according to the particular circumstance of the service order. The City may deduct a sum representing the liquidated damages from any money due to Contractor.

19. Termination For Cause

- 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 this Agreement, and such default continues for a period of ten days after written notice from City to Contractor.
 - (2) 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.

- (3) 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.

20. 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.

21. Rights and Duties Upon Termination or Expiration

Subject to the immediately preceding subsection (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.

22. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's Charter and §87100 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 such provisions.

23. 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.

24. Notices to the Parties

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and registered as follows:

To City: Municipal Transportation Agency
 Contracts Administrator, Operations Engineering
 700 Pennsylvania Avenue
 San Francisco, CA 94107

To Contractor: ThyssenKrupp Elevator Corporation
 85 Federal Street, First Floor
 San Francisco, CA 94107

25. Ownership of Results

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.

26. Audit and Inspection of Records

Contractor agrees to maintain and make available to City during business hours accurate books and accounting records relative to its activities 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 of this Agreement shall have the same rights conferred upon City by this Section.

27. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is approved by written instrument executed and approved in the same manner as this Agreement. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Contractor acknowledges and agrees that an independent contractor employed by Contractor to perform work under this Agreement shall be considered a subcontractor for the purposes of this Agreement. An Agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

28. Assignment

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

29. 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 SFMTA's Contract Compliance Unit or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Contract Compliance Director") 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 Contract Compliance Director 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 Contract Compliance Director 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 Contract Compliance Director or the Controller upon request.

30. Compliance with South Africa Divestment Ordinance; Liquidated Damages

Not applicable.

31. 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.

32. Drug-Free Workplace Policy

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

33. 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.

34. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the SFMTA to submit to the Contract Compliance Director 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%.

35. 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 Executive Director/CEO who shall decide the true meaning and intent of the Agreement.

36. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

37. Construction

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

38. 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 34.

39. Tropical Hardwood and Virgin Redwood Ban

The City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood or tropical hardwood wood product, virgin redwood or virgin redwood wood product.

40. Ownership of Equipment

Any equipment, vehicles, computer programs (software licenses and media), etc., purchased by the

Contractor or its subcontractors in connection with services to be performed under this Agreement shall become property of and will be transmitted to the City.

41. Guaranteed Maximum Costs

- a. The City's obligations 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.

42. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), Contracts, contractor's bids, responses to requests for proposals and all other records of communications between the department 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 benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this subdivision will be made available to the public upon request.

43. Non-Discrimination in City Contracts and Benefits Ordinance

- a. Contractor Shall Not Discriminate. In the performance of this Agreement, 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 status) 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.
- b. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

- c. Non-Discrimination 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 or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.
- d. 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 of the Administrative Code, including but not limited to the 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 payments due Contractor.

44. Submitting False Claims; Monetary Penalties

Any contractor, subcontractor or consultant who commits any of the following acts shall be liable to the City for three times the amount of damages which the City sustains because of the act of that contractor, subcontractor or consultant. A contractor, subcontractor or consultant who commits any of the following acts shall be liable to the 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 the City for a civil penalty of up to \$10,000 for each false claim: (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. (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.

45. Earned Income Credit (EIC) Forms

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

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

(c) Any Subcontract entered into by Contractor 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.

46. Requiring Minimum Compensation for Employees

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. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

- (a) For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, Contractor shall pay a minimum of \$10.77 an hour beginning January 1, 2005 and for the remainder of the term of this Agreement; provided, however, that Contractors that are Nonprofit Corporations or public entities shall pay a minimum of \$9 an hour for the term of this Agreement.
- (b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.
- (c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.
- (d) 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, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

- (1) The right to charge Contractor an amount equal to the difference between the Minimum

Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

- (e) 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.
- (f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.
- (g) Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.
- (h) The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.
- (i) The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.
- (j) 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. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. 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.

- (k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.
- (l) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

47. 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 <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission..
- b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these

remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

- d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.
- e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.
- h. Contractor shall keep itself informed of the current requirements of the HCAO.
- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

48. Notification of Limitations on Contributions

This paragraph applies if this contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the “Conduct Code”) Section 3.700 *et. seq.*, and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are “public benefit recipients” of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed “public benefit recipients” under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official’s compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

49. Prohibiting Use of City Funds for Political Activity

No funds appropriated by the City and County of San Francisco for any contract, grant agreement or loan agreement may be expended for participating in, supporting, or attempting to influence a political campaign for any candidate or measure. Recipients of city funds will cooperate in audits conducted by the Controller to verify that no City funds were used for political purposes.

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.

50. 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.

51. 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.

52. 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, 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.

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. Nondisclosure of Private Information

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

- (a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:
 - (i) The disclosure is authorized by this Agreement;
 - (ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or

(iii) The disclosure is required by law or judicial order.

- (b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.
- (c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.
- (d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

55. 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.

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

CITY

City and County of San Francisco: By and through
its Municipal Transportation Agency

Nathaniel P. Ford, Sr.
Executive Director/CEO

Approved as to Form:

Dennis J. Herrera
City Attorney

John I. Kennedy
Deputy City Attorney

San Francisco Municipal Transportation Agency:
Board of Directors

Resolution No.

Adopted:

Attest:

CONTRACTOR

ThyssenKrupp Elevator Company

Name

85 Federal Street, First Floor
Address

San Francisco, California 94107
City State Zip

By signing this Agreement, I certify that I
comply with the requirements of the
Minimum Compensation Ordinance, which
entitles Covered Employees to certain
minimum hourly wages and compensated and
uncompensated time off.

I have read and understood Sec. 31, 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.

By
Signature

Name Title

Area Code Phone Number

Roberta Boomer
Secretary, SFMTA Board of Directors

APPENDIX A

SCOPE OF SERVICES AND STANDARDS OF PERFORMANCE UNDER MASTER AGREEMENT FOR SPECIAL SERVICES FOR THE INSPECTION, MAINTENANCE AND REPAIR OF ELEVATOR AND ESCALATOR

Bidding Packages shall be issued for each facility or facilities to be serviced. Each Bidding Package shall include specific terms and conditions in the specifications for the Contract Service Order (CSO) award that shall be used in lieu of the Scope of Services and Standards of Performance in Appendix A. No terms and conditions in the Bidding Package are intended to conflict with the terms and conditions of the Master Agreement For Special Services; however, if a conflict exists, the terms and conditions of the Master Agreement For Special Services shall govern. In the event that a Bidding Package is not issued for a bid quotation, the terms and conditions in the Scope of Services and Standards of Performance in Appendix A shall be used.

1. SCOPE OF WORK

The scope of work shall include the furnishing of all labor, materials, equipment and services necessary for and incidental to the full service maintenance of elevators and escalators at various locations within the City & County of San Francisco.

NOTE: Contractor will be responsible for all permits, fees, building inspections and other requirements in connection with the execution of the above scope of work. If additional work not related to the above scope of work is required the contractor shall notify the contract manager in writing of any discrepancies and submit a written proposal if work can be performed by contractor. Contractor will comply with all Federal, State and local environmental regulations and follow outlined procedures.

2. NOTICE OF START OF WORK

The Contractor shall notify Rosa Rankin at (415) 401-3107 at least five (5) days prior to starting work.

3. SCHEDULING

The areas are presently occupied and the contractor shall arrange a schedule with Scott Border, Elevator/Escalator Inspector at (415) 509-6929 (cell).

4. TIME ALLOWED FOR COMPLETION

Time allowed for full performance of the Contract Service Order referenced by this document is 30 working days from award and orders to begin performance which will be issued by Rosa Rankin for the City and County of San Francisco, telephone number (415) 401-3107.

5. COMPLETION OF WORK

All work shall be completed in a manner satisfactory to the Elevator/Escalator Inspector within 30 days of award of a Contract Service Order.

6. OBTAINING PLANS AND SPECIFICATIONS

Plans and specifications are available at Maintenance Engineering Contracts Administrator, 700 Pennsylvania Street, San Francisco, California. To obtain a copy of plans and specifications contact Rosa Rankin at (415) 401-3107.

7. INSPECTION OF THE SITE

The Contractor shall inspect the location of the work and familiarize himself or herself with the conditions under which the work shall be performed, and verify that all conditions, dimensions and specifications are as indicated on the drawings prior to submittal of bid. Do not proceed with affected work until any variations or discrepancies are resolved by Scott Broder at (415-509-6929 (cell).

8. PROTECTION OF PROPERTY

Keep construction area broom clean, All work shall be done in neat, clean and professional manner. Protect from damage all materials, construction, utilities and other items and appurtenances not scheduled for demolition. Any damage that should occur shall be repaired as incidental work under the contract at no additional cost to the City.

9. DEBRIS

All dirt, rubbish and debris caused by the work shall be hauled away by the contractor. Premises will be left in a clean and orderly condition at the completion of each days work.

10. LABOR STANDARDS

Contractor shall comply with the mandate under San Francisco Charter section A7.204 and Administrative section 6.22(E) and shall pay its workers performing work under this Agreement the prevailing wage for the craft or crafts required to complete the work. The Board of Supervisors determines the prevailing wage rates and such wage rates are available at the San Francisco Office of Labor Standards Enforcement ("OLSE") or through the California Department of Industrial Relations. In the event that Contractor employs a subcontractor to perform work under this Agreement, Contractor shall require its subcontractor(s) likewise comply with the prevailing wage requirements.

The Contractor shall keep for a period of four years from the date of performance of any CSO, payrolls and basic records including time cards, trust fund forms, apprenticeship agreements, accounting ledgers, tax forms and superintendent and foreman daily logs for all trades workers performing work under this Agreement. Such records shall include the name, address and social security number of each worker who worked under a CSO, including apprentices, his/her classification, a general description of the work each worker performed each day, the rate of pay (including fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. The Contractor shall require its subcontractors, if any, to maintain the same records.

The Contractor shall maintain weekly certified payroll records for submission to the awarding department as required. The Contractor shall be responsible for the submission of payroll records of its subcontractors, if any.

All payroll and related records described in the foregoing paragraphs shall at all times be open to inspection and examination of the duly authorized officers and agents of the City and County of San Francisco, including representatives of the Office of Labor Standards Enforcement.

The Contractor further acknowledges and agrees that it shall comply with the City's labor standards enforcement procedures as follows:

1. Contractor shall cooperate fully with the Labor Standards Enforcement Officer and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage and other labor standards requirements;
2. The Labor Standards Enforcement Officer and his or her designees, in the performance of his/her duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the contractor, employee time sheets, inspection logs, payroll records and employee paychecks;
3. Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site;
4. Contractor shall prominently post at each job-site a sign informing employees that the work is subject to the City's prevailing wage requirements with reference to the Office of Labor Standards Enforcement;
5. The Office of Labor Standards Enforcement may audit such records of the contractor as he or she reasonably deems necessary to determine compliance with the prevailing wage and other labor standards imposed by the City Charter and the Administrative Code.

Failure to comply with the labor standards provisions of this Agreement may result in a forfeiture of penalties and back wages under Administrative Code section 6.22(E)(8).

11. DEMOLITION

Demolition is not limited to what is shown on the drawings. The intent of the drawings is to indicate the general scope of the work required. Notify Scott Broder at (415-509-6929 (cell) of any discrepancies.

12. MATERIALS

All work and materials shall be new unless otherwise noted.

13. ASBESTOS

If during the course of the work performed it is discovered that there is a potential for disturbing asbestos containing material, work must be suspended immediately until it is determined that it is safe to proceed and/or adequate control measures have been established.

14. ASBESTOS INFORMATION

Attached hereto and incorporated by reference as though fully set forth herein.

15. INSTALLATION

The contractor shall furnish all labor, equipment and materials to provide for the installation of the following:

- A. Repair & maintenance of City owned elevators and escalators at various locations.

16. STANDARDS

All work to comply with Title 21 and Title 24 of the CAC and to conform with Federal ADA (Americans with Disabilities Act) Standards.

APPENDIX B

SCHEDULE OF VALUES

Billing rates shall be based on the bid quotations awarded for each Contract Service Order.

THIS PRINT COVERS CALENDAR ITEM NO. :

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Authorizing the San Francisco Municipal Transportation Agency ("SFMTA"), through its Executive Director/CEO, to execute Contract No. SFMTA 2008/09-21, Balboa Park Station Capacity and Conceptual Engineering Study, with Jacobs Engineering Group, Inc., for an amount not to exceed \$370,000 and a term of 24 months.

SUMMARY:

- The Balboa Park Station Capacity and Conceptual Engineering Study is a project to conduct an engineering feasibility analysis and supporting studies on various elements of the "Better Neighborhood Program's Balboa Park Station Area Plan" and the SFMTA/BART station improvement plans. It will examine alternatives for the various plan proposals and make recommendations for moving specific projects towards implementation.
- On December 20, 2007, the Office of the Controller released a Request for Qualifications (RFQ #CON2007-06) for transit service planning and implementation consulting services.
- On March 4, 2008, the Controller issued a list of pre-qualified firms, which will remain in place through March 31, 2010.
- On May 4, 2009, the SFMTA Transportation Planning and Development division issued a mini-RFP to the firms on the pre-qualified list for consulting services related to the Balboa Park Station Capacity and Conceptual Engineering Study. For this mini-RFP, the Contract Compliance Office established a goal of 25% Local Business Enterprise (LBE) subcontracting.
- Two proposals were received on May 27, 2009. Staff recommends awarding the Contract to Jacobs Engineering Group, Inc., the only responsive proposer, for an amount not to exceed \$370,000 and a term of 24 months.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO

Frank Markowitz, 1 South Van Ness Avenue, 7th Floor

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

SFMTA Board approval of this resolution would authorize the SFMTA through its Executive Director/CEO to execute Contract No. SFMTA 2008/09-21, Balboa Park Station Capacity and Conceptual Engineering Study, with Jacobs Engineering Group, Inc., for an amount not to exceed \$370,000 and a term of 24 months.

GOALS

The SFMTA will further the following goals of the Strategic Plan through the execution of this agreement:

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 (such as transit, walking, bicycling, rideshare)

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

Objective 2.2 – Transit connectivity and span of service

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

DESCRIPTION

As part of the Better Neighborhoods Program, the San Francisco Planning Department developed the Balboa Park Station Area Plan. The Planning Department did substantial outreach to the community, the Mayor, the Board of Supervisors and the Planning Commission. The Environmental Impact Review was completed in December 2008, and the Plan was adopted by the San Francisco Planning Commission, and subsequently by the Board of Supervisors in April 2009.

The Balboa Park Station Area Plan would potentially reconfigure transit services and add new housing and retail services in the Balboa Park Station area. The “Transit Station Neighborhood Development Plan,” a section of the overall Balboa Park Station Area Plan, provides for improvements and a reconfiguration of transit services, potentially including: a reconfigured and expanded BART station; a deck over I-280 between Geneva and Ocean Avenues with reconfigured on- and off-ramps; a reconfigured terminal facility for SFMTA’s light rail lines and improved bus transfer facility; and a number of pedestrian and bicycle improvements. Among other proposals, the Balboa Park Station Area Plan envisions the development of housing and retail on the “Upper Yard” parcel, currently owned by BART and SFMTA. Other planning efforts in the area include the 2002 BART Balboa Park Comprehensive Station Area Plan (which sketched a long-range vision for the station and transit properties) and the BART-led Geneva Plaza Study (which produced short-term and long-term concept plans for the Upper Yard.)

Several years after the conclusion of the Better Neighborhoods community process, one recommended capital improvement project is set to commence: the \$2 million pedestrian walkway from a new west entrance of the BART station to Ocean Avenue, sponsored by BART, which had its ground breaking on August 21, 2009. SFMTA is working in conjunction with BART to construct a walkway over the BART station box from the new westside walkway to the J/K boarding area. Two Safe Routes to Transit (SR2T) grants have funded the SFMTA's Balboa Park Pedestrian and Bicycle Connection Project, which is analyzing potential changes to Geneva and Ocean Avenues and the station frontage. This nearly completed study is focusing on low-cost, short term pedestrian and bicycle improvements, rather than major long-term changes in the station and yards (which are the focus of the Station Capacity Study).

The SFMTA's Transit Effectiveness Project (TEP) has endorsed for environmental review service planning recommendations for all bus and rail lines, proposing significant changes to bus and light rail service at and near the Balboa Park Station, including withdrawing M-line service to San Francisco State University (SFSU) and instead extending the J-line on the current M-line tracks to SFSU. This will be supplemented by the Geneva Avenue Transit Preferential Streets (TPS) project, which is considering mid-range improvements to transit service on Geneva, while retaining the long-term option for Bus Rapid Transit (BRT) or light rail. The Geneva TPS Final Report and Implementation Plan are expected by the fall of 2009.

The SFMTA, in conjunction with BART and other agencies, will use Prop K funds to investigate feasible alternatives and develop implementation plans for the Balboa Park station area transportation proposals. The critical products of this study will be engineering feasibility and alternative analyses, cost estimates, and phasing plans for the entire body of the station area transportation improvements. The emphasis is on preparing grant-ready improvement projects and developing the implementation and funding strategy.

Selection Process:

On December 20, 2007, the Office of the Controller released a Request for Qualifications (RFQ #CON2007-06) for transit service planning and implementation consulting services. On March 4, 2008, the Controller issued a list of prequalified firms, which is in effect until March 31, 2010. On May 4, 2009, the SFMTA issued an RFP to prequalified firms on the Controller's list. For this mini-RFP, the Contract Compliance Office established a goal of 25% Local Business Enterprise (LBE) subcontracting. Responses were received from two firms; however, only the proposal from Jacobs Engineering was found to be responsive to the RFP.

Based on the evaluation of the proposal received, an oral interview and a discussion of relative strengths and weaknesses, the Evaluation Team found that Jacobs Engineering Group, Inc. was highly qualified. The consultant's team, comprised of Jacobs Engineering Group, Inc., Fehr and Peers, MSA Design & Consulting, and CHS Consulting Group, is highly experienced in conducting such studies and in developing a variety of solutions which can be implemented in various stages. Results of their efforts will enable SFMTA to seek future funding for the implementation of the proposed concepts developed by the consultants.

Scope of Contract:

The following are key tasks and work products included in the contract negotiated with Jacobs Engineering Group, Inc.:

- Task 1 -Consultant Team Management, including a detailed work plan with project schedule, work flow diagram, work processes and communications protocols.
- Task 2 - Station Intermodal Functions and Facilities Analysis, including engineering and operational analysis of space requirements and operating requirements for transit vehicles, including passenger boarding/alighting/transfer, access, routing, and layover needs for all Muni bus and light rail lines serving the station, both in the short and long term.
- Task 3 - Functional Analysis of Muni LRV Maintenance and Storage Needs, including identifying the space requirements for light rail vehicle maintenance and storage needs, and identifying where capacity at existing facilities can be consolidated and space-optimized.
- Task 4 - High Level Feasibility Report on Better Neighborhoods Plan Proposals, to evaluate the feasible and infeasible elements of projects identified in the Balboa Park Station Area Plan, identify alternatives to those elements deemed infeasible, and identify possible conflicts between long-range Balboa Park Station Area Plan recommendations and specific short/mid-range improvement proposals. There will be a focus on identification of fatal flaws or those who could not be constructed within a 20 year time horizon.
- Task 5 - Preliminary Site Plan and Circulation/Access Plan for Balboa Park Station Area, with development of a minimum of three alternative site, circulation and access plans for the Balboa Park Station area, including the Upper Yard, Geneva Yard and Green Yard together with their interfaces with the surrounding streets.
- Task 6 - Parking Analysis, including recommendations for on-street parking changes in the area within 1,500 feet of the station entrances and analysis of parking supply, regulations, ADA issues, and compatibility with station plans and SFMTA parking policies.
- Task 7 - Identify, Prioritize, and Prepare Selected “Fast-Track” Projects for Grant Applications, including developing criteria for selecting and prioritizing five small to medium sized “fast track” projects with sufficient design and cost estimating for grant applications.
- Task 8 - Funding and Implementation Strategy, which will analyze and recommend funding and agency responsibilities, and establish schedules for staging and linking “fast track” projects.
- Task 9 - Comprehensive Final Report, to summarize findings, recommend next steps and which elements for which funding should be sought in the next 1-2 years versus those elements recommended for further development.

ALTERNATIVES CONSIDERED

SFMTA staff considered the alternative of performing all of the project tasks in-house. However, it was determined that the SFMTA staff does not have the specialized expertise or staff resources to perform the entirety of the required work. If this contract with Jacobs Engineering Group, Inc. is not executed, it will have an adverse impact on SFMTA’s ability to provide adequate future service to the public.

PAGE 5.

FUNDING IMPACT

This contract will be funded from Prop K grant funding.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

In March 2008 the Civil Service Commission approved all firms on the Controller's Pre-Qualified list.

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

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the SFMTA, through its Executive Director/CEO, to execute Contract No. SFMTA 2008/09-21, Balboa Park Station Capacity and Conceptual Engineering Study, with Jacobs Engineering Group, Inc., for an amount not to exceed \$370,000 and a term of 24 months.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Office of the Controller, on December 20, 2007, released a Request for Qualifications (RFQ #CON2007-06) for transit service planning and implementation consulting services; and,

WHEREAS, On March 4, 2008, the Controller issued a list of those firms responding to the RFP that were eligible to be placed on a pre-qualified list; and,

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) has received Proposition K funds to conduct the Balboa Park Station Capacity and Conceptual Engineering Study; and,

WHEREAS, On May 4, 2009, the SFMTA Transportation Planning and Development Division issued a mini-RFP for the Balboa Park Station Capacity and Conceptual Engineering Study, soliciting proposals from the Controller's pre-qualified list; and,

WHEREAS, On May 27, 2009, the SFMTA received two proposals, only one of which was responsive to the RFP; and,

WHEREAS, On June 23, 2009, the SFMTA convened a Technical Evaluation Team (TET) comprised of SFMTA staff and key stakeholders (BART and SFCTA) who evaluated and scored the responsive proposal and interview responses and determined that Jacobs Engineering Group, Inc., 160 Spear St., San Francisco, is qualified to perform the requested services; and,

WHEREAS, The SFMTA has negotiated an agreement with the consultant, Jacobs Engineering Group, Inc.; now therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute San Francisco Municipal Transportation Agency Contract No. SFMTA 2008/09-21, Balboa Park Station Capacity and Conceptual Engineering Study, with Jacobs Engineering Group, Inc., for an amount not to exceed \$370,000, and a term of 24 months.

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

_____.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Agreement between the City and County of San Francisco and
Jacobs for Balboa Park Station Capacity and Conceptual Engineering Study**

Contract No. SFMTA 2008/09-21

This Agreement is made this _____ day of September, 2009, in the City and County of San Francisco, State of California, by and between: Jacobs, 160 Spear Street, Suite 330, San Francisco, CA 94105 (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (“SFMTA”).

Recitals

- A. The Municipal Transportation Agency wishes to conduct an engineering and feasibility analysis and supporting studies on various elements of the Better Neighborhood Program’s “Balboa Park Station Area Plan” and SFMTA/BART station improvement plans.
- B. A Request for Proposals (“RFP”) was issued on May 4, 2009, and City selected Contractor as the highest-ranked proposer.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.
- D. Approval for this Agreement was obtained when the Civil Service Commission approved contract number PSC #4114-07/08 on March 17, 2008.

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 24 months from the Effective Date.
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 accordance with the Compensation Schedule in Appendix B, attached hereto and fully incorporated by reference. Payments will be made in progress payments, after the tasks and deliverables relative to each invoice identified in the Compensation Schedule have been performed to the satisfaction of the Executive Director/CEO of the SFMTA, or his designee. Payments of undisputed sums due shall be made by Client within thirty (30) Days after receipt of a proper and timely invoice for payment. In no event shall the amount of this Agreement exceed Three Hundred Seventy Thousand Dollars (\$370,000).

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the 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 SFMTA, the Director of HRC and 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.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the 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. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

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

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. Left Blank by Agreement of Parties (Disallowance)

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

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

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

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

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

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

15. Insurance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Indemnification.

a. General. To the fullest extent permitted by law, Contractor shall assume the defense of, 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, 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 willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities"). Should a conflict of interest arise between City and Contractor in litigation, as an alternative to Contractor hiring counsel to defend City, City may elect to defend itself, and Contractor shall be responsible to reimburse City the attorneys fees and costs associated with its defense, at reasonable market rates.

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. Copyright 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.

17. Left Blank by Agreement of the Parties. (Incidental and Consequential Damages)

18. Liability of the 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. Schedule Adherence. The schedule for performance of the tasks assigned to Contractor under this Agreement is set forth in the Scope of Services, attached as Appendix A.

a. Critical Tasks. Several deliverables in the Station Capacity Study have critical deadlines which SFMTA must meet in order to be eligible for grant programs or to fulfill promises made to stakeholders. In order to see that these and other deadlines are met, the Contractor proposes to manage schedule adherence as set forth below. Contractor acknowledges

that these provisions are in lieu of liquidated damages, and promises to use its best efforts to ensure that all deadlines are met.

b. Progress Meetings

- (1) Monthly progress meetings will be scheduled to review the past month's performance and look ahead to upcoming activities, concentrating on the next 45 days. These will be face-to-face meetings between the project managers and key staff of both SFMTA and Contractor of up to 90 minutes each. Action items will be identified with due dates and the responsible party for following through on the action items. Any actions on the "critical path" will be flagged. Any desired changes to the project schedule will be discussed at these meetings.
- (2) Interim meetings by telephone will be scheduled between the project managers of SFMTA and Contractor of up to 60 minutes each. These telephone meetings will be scheduled approximately two weeks following each monthly meeting in order to ensure that important schedule issues do not wait until the following monthly meeting to be resolved.

c. Remedial Action

- (1) In cases where delays arise that may threaten a critical deadline, Contractor and City will meet to coordinate and discuss the impact of the delays on the deadline. After such discussions, the City, at its sole discretion, may either direct Contractor to shift resources away from less critical tasks (that would be completed on a mutually agreed upon timeline), or modify the deliverable product, at no additional cost to the City, in order to meet critical deadlines and fit within the funds available for this project; provided that if such delays constitute Unavoidable Delays, as defined in Section 55, City shall provide Contractor with additional time to complete the critical tasks subject to such Unavoidable Delays.
- (2) Contractor shall provide the SFMTA at least forty-eight (48) hours notice if it is unable to meet any deadline contained in Appendix A, along with the reasons for such failure. Along with such notice, Contractor shall submit a proposed timeline to meet the milestone without affecting the timeline for other milestones or the completion date of the project, if feasible.

If additional services are required to be performed which affect the completion of scheduled milestones, Contractor shall promptly advise the SFMTA of the nature of such services. If necessary, SFMTA and Contractor shall negotiate an extension to the schedule to accommodate such services.

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

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

- | | |
|---|---------------------------------------|
| 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 (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.

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. 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.

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).

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

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

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

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

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

of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

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

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

To City: Frank Markowitz
Sr. Transportation Planner
San Francisco Municipal Transportation Agency
One S. Van Ness Ave., 7th floor
San Francisco, CA 94103
Fax: (415) 701-4343
Email: frank.markowitz@sfmta.com

To Contractor: William Lieberman
Project Manager
Jacobs
160 Spear Street, Suite 330
San Francisco, CA 94105
Fax: (510) 457-0037
Email: william.lieberman@jacobs.com

Any notice of default must be sent by registered mail.

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

27. Works for Hire. If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs,

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

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

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

30. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as 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. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this

Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

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 25 %. 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 available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

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

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

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

provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

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 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.

43. Requiring Minimum Compensation for Covered Employees.

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

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep

informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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

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

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

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

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

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

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with 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.
- 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 nonduplicative, and facilitate a coordinated flow of information and referrals.

(5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the

FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

(6) Set the term of the requirements.

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

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

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

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

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

e. Liquidated Damages. Contractor agrees:

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

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

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

(4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry

level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

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

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

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

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

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

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

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 in the same manner as this Agreement. Contractor shall cooperate with the SFMTA to submit to the SFMTA 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% (HRC Contract Modification Form).

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 Purchasing 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, "Modification of Agreement."

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. Unavoidable Delays. A delay in Contractor's performance of its duties under the Agreement that Contractor demonstrates could not have been avoided by Contractor's exercise of due care, prudence, foresight, or diligence and that arises directly from: an act of God; fire; flood; windstorm; tornado; earthquake; war; riot; insurrection; epidemic; quarantine restrictions; acts of terrorism; inability of Contractor to procure labor to the extent that such inability is not caused by disputes related to collective bargaining; inability of Contractor to procure material; fuel shortage; freight embargo; accident; priorities or privileges established for the manufacture, assembly or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent or administrator of any legally constituted public authority; the prevention by the City of Contractor from commencing or prosecuting any of its duties under the Agreement; inability of Contractor to obtain applicable and timely input, reviews, approvals, permits and licenses from relevant governmental authorities; or failure of public utility service or internet service outside the control of Contractor.

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 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.

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. Left blank by agreement of the parties. (Slavery Era Disclosure)

61. 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 San Francisco Municipal Transportation Agency _____ Nathaniel P. Ford, Sr. Executive Director/CEO Approved as to Form: Dennis J. Herrera City Attorney By: _____ Robin M. Reitzes Deputy City Attorney AUTHORIZED BY: MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS Resolution No: _____ Adopted: _____ Attest: _____ Roberta Boomer, Secretary to the SFMTA Board of Directors	CONTRACTOR Jacobs Engineering Group, Inc. By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off. I have read and understood paragraph 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. _____ Authorized Signature Robert Clement _____ Title <u>Jacobs Engineering Group Inc.</u> Company <u>777 Main Street</u> Address <u>Fort Worth, TX 76102</u> City, State, ZIP <u>(817) 735-6100</u> Telephone No. _____ City vendor number: <u>60517</u>
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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 described in Appendix A-1 attached:

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 Frank Markowitz.

APPENDIX A.1. BALBOA PARK STATION CAPACITY STUDY PROJECT SCOPE AND DELIVERABLES

1. SCOPE OF WORK

Tasks Include:

1. Consultant Team Management – Task includes:

- Continuing planning and oversight for project, including schedule and budget control and consultant management.

Consultant Tasks include:

- Prepare Project Work Plan under direction of SFMTA; and
- Conduct progress meetings with SFMTA Project Manager as needed.

For budget purposes, assume 20 meetings, 10 in-person and 10 via phone for the duration of the project.

SFMTA Role is to: Lead planning and oversight, including consultant management.

Deliverables:

- Detailed Project Work Plan, including detailed project schedule, work flow diagram, work processes and communications protocols. To be revised periodically as needed.

- 2. Station Intermodal Functions and Facilities Analysis :** This task will identify the space requirements and operating requirements for transit vehicles, including passenger boarding/alighting, access, routing, and layover needs for all Muni bus and light rail lines serving the station, both in the short and long term. This task will include an analysis of passenger transfer options and requirements. It will be based, in part, on a Muni passenger intercept survey to be conducted by the Consultant. This survey will include questions on passengers' access modes, transfers between Muni and BART lines, and origins and destinations. Questions will focus on barriers to transfers (distances and slopes, characteristics of passengers, attitudes and concerns, etc.). These data will be compared with the most recent BART Station Profile Study survey data. These requirements will be used to inform Task 5, the development of site, access, and circulation plans for the station area. This effort will build on the TEP and Geneva Avenue TPS studies, to review how the entire station functions as an intermodal facility, how this may change with TEP/TPS recommendations and expected growth, and how LRT alignment, stops and layover locations can be optimized. The TEP service planning recommendations have been endorsed by the SFMTA Board for environmental review. The TPS study is underway and expected to issue recommendations by the Fall of 2009. Therefore, this task will narrowly focus on determining the impact of station redesign proposed by these and other key studies on service

(e.g., J-line extension and M-line terminal move impacts on boardings and alightings) and also to analyze compatibility of potential long range changes, like Geneva Ave. BRT/LRT, and changes to Ocean Ave. K-line boarding platform, with short/mid-range proposals. The task will consider transfer patterns and detailed ridership patterns, and how these might be affected by proposed changes. It will discuss the whether it is important to locate an elevator to the BART station on the south side of Geneva Avenue. Also, this task will refine the TEP recommendations by identifying locations and facilities for new stops (primarily the Geneva to Ocean switch proposed for some bus lines). This effort will also consider major service changes to support such key redevelopment projects as Park Merced (San Francisco State University area) and the San Francisco/San Mateo Bi-County Study (focusing on India Basin, Hunters Point/Candlestick Point, Executive Park, Daly City/Cow Palace, and Brisbane Baylands). This task will be conducted in conjunction with Task 3's identification of light rail vehicle maintenance needs, as those needs will affect the station's transit vehicle access and layover needs.

Consultant tasks include:

- Engineering (traffic, civil-structural in yard) and operational analysis of current and proposed service options and development of a phased facilities plan consistent with the TEP, TPS, and other key projects;
- Review and analysis of long-range travel demand and land use forecasts for station area; and
- Preparation of draft and final deliverables.

SFMTA role is to:

- Direct and manage consultant activities;
- Provide TEP and Geneva TPS studies
- Provide bus and LRV data;
- Review consultant deliverables; and
- Integrate with relevant SFMTA studies as necessary (TEP, TPS).

Deliverables – Tech Memo 1: Intermodal Facilities Functional Analysis report, including analysis of current/planned transit and transfer functions, identification of short- and long-term space and operational needs, summary of issues and compensatory strategies for impacts related to changes within the Balboa Park Station area. Consultant shall provide one preliminary draft for review by SFMTA, then second revised draft to be reviewed by TAC (expected only if major revisions are needed), and then a Final Tech Memo. Consultant shall provide electronic files and 5 copies of the final Tech Memo. (The same process will be followed for other Technical Memoranda.)

3. Functional analysis of Muni LRV Maintenance and Storage Needs:

This task will identify the space requirements for light rail vehicle maintenance and storage needs for the Balboa Park station area, with a view to identifying where capacity at the existing facilities at the MME, Green Yard, the Upper Yard, and the Geneva Yard can be consolidated

and space-optimized to free up land for other uses in the medium to long-term. These requirements will be used to inform Task 5, development of site, circulation, and access plans for the station area. This task will be conducted in conjunction with Task 2's identification of the station's intermodal functional needs, as those needs will affect maintenance and storage needs.

Task includes:

- Analysis and review of revenue vehicle maintenance and storage needs, as informed by data and reports supplied by SFMTA, including capacity and operational enhancements offered by Muni's Metro East maintenance facility (MME), SFMTA fleet planning, and the status of other capital improvements already underway in relevant facilities in the Balboa Park Station Area (especially Green Yard rail replacement, Geneva Yard Historic Streetcar Enclosure, etc.). The capacity and operational enhancement information is also intended to be supplied by SFMTA.
- Provide input to review of Balboa Park Station Area Plan proposals in light of critical Muni needs (e.g., is development deck over Green Yard feasible and compatible with Muni maintenance/storage needs and site constraints?);
- Review findings and recommendations of the Balboa Park Pedestrian and Bicycle Connection Project and the Balboa Park Station Area Plan as related to transit maintenance and storage functions (e.g., track/sidewalk interface);
- Review current revenue vehicle related transit uses (including Muni offices) for possible alteration or relocation; and
- Coordinate review of Muni long-range maintenance and storage needs, as supplied by SFMTA with SFMTA Real Estate Systemwide Facilities Master Plan (RFP expected in 2009). If the Facilities Master Plan is not available from SFMTA, the Consultant will provide a modified review based upon data that SFMTA can supply.

Because the SFMTA Systemwide Facilities Master Plan will not be finished in time for the Balboa Park Station Capacity Study, it will be necessary to take a systemwide, although focused, view of LRV storage/maintenance needs.

Consultant tasks include:

- Analysis of physical and operational constraints from an engineering feasibility perspective based upon data provided by SFMTA;
- Identification of opportunities and critical paths toward solutions in all related facilities to the extent that data are provided by SFMTA; and
- Evaluation of cost and schedule implications of analysis, to the extent that data are provided by SFMTA.

SFMTA role includes:

- Complete a long-range Fleet Plan Update before this task, which will define the size and type of vehicles that will need storage and maintenance;
- Hold internal meetings to analyze and coordinate Agency operations/maintenance, real estate, financial needs (with particular emphasis on the impacts of Metro East); provide the Consultant with the needs analysis data and conclusions;
- Direct and manage consultant activities;
- Provide data to consultant, including capital improvement detailed scopes, schedules and costs; and
- Review and approve deliverables.

Deliverables – Tech Memo 2: Functional analysis report with recommendations about short- and mid-term use of all station area yards, shops, and administration facilities related to LRV storage and maintenance and phased strategy of all yards, shops, and administration facilities for space-optimizing in light of Project goals, cost implications, constraints and priorities.

- 4. High Level Feasibility Report on Better Neighborhoods Plan Proposals:** This report will use the Balboa Park Station Area Plan as a reference point to evaluate the feasible and infeasible elements of projects identified in the Balboa Park Station Area Plan, identify alternatives to those elements deemed infeasible, and define the roles of key agencies such as BART, DPW, SFMTA Traffic Engineering, Caltrans, etc. Another primary focus will be to identify possible conflicts between long-range Balboa Park Station Area Plan recommendations and specific short/mid-range improvement proposals. This will include consideration of engineering, cost, and other factors, including broad review of traffic, noise, and air quality impacts (from the standpoint of both CEQA and NEPA requirements). This would focus on identifying potential fatal flaws, or the likelihood that improvements could not be constructed within a 20-year time horizon.

The following proposed improvements will be defined and analyzed at a broad “sketch planning” level:

I-280 Freeway Area

- Decking over I-280 and Single Point Urban Interchange and one other re-configuration option. Explore feasibility of full deck, partial deck and elevated roadway alternatives at a sketch planning level. Review consistency with Caltrans policy and practice and basic feasibility. If the option is deemed feasible by Caltrans, prepare sketch level drawings, define pros and cons, and identify the Caltrans process and timeline (Project Study Report, Project Report, environmental review, project approvals, funding, design, obtaining right-of-way, and construction);.

Green Yard Area

- Decking over the Green Yard to support residential development;

General Station Area

- New Geneva Avenue Station entrances (e.g., new elevator and/or elevator relocations, including south of Geneva);
- New BART Ocean Avenue station entrance (as proposed in the BART Comprehensive Station Area Plan); And
- Conversion of the Upper Yard redevelopment into residential and mixed-use development.

For the Upper Yard and deck proposals, feasibility analysis will include limited, high-level assessment of infrastructure costs, joint development design and real estate issues that directly impact station area access and circulation plans.

The following improvement proposals will be examined in more detail:

I-280 Freeway Area

- Elevated roadway between I-280 and BART station (between Geneva and Ocean Avenues) to provide additional bus and kiss & ride loading, possibly adjacent to realigned light rail tracks;

Green Yard Area

- Evaluate desirability of renovation of Green administration building or rebuilding it elsewhere to provide more room for J and K platforms.
- New light rail terminals (J, K, M lines). Evaluate options, including a minimum of one assuming the 280 deck and a minimum of one assuming there is no 280 deck. Also evaluate desirability and/or phasing of new terminals in light of TEP recommended changes to J, M lines; examine improvements to accessible boarding and alighting needs; and
- Geneva transit plaza (over existing J/K loading area in front of Green admin building).

Other Areas

- Enhancement of the Ocean Avenue K-line stop at Geneva or relocation to Howth;

Consultant tasks include:

- Analysis and organization of data;
- Development of conceptual sketch level diagrams to show improvements, evaluating each from operational and technical perspective,
- Preparation of report and alternatives analysis;

- Documenting past environmental review of proposals, particularly for the Balboa Park Station Area Plan;
- Identification of potential CEQA and NEPA requirements or issues;
- Supervision and integration of work of technical specialists for critical subject areas only (e.g., traffic);
- Preparation of concept diagrams on aerial photos (100 scale);
- Provision of outreach materials; and
- Preparation of draft and final deliverables.

SFMTA role includes:

- Direct and manage consultant activities, provide data;
- Review consultant methodology;
- Integrate with relevant SFMTA studies as necessary (TEP, TPS);
- Review and approve consultant deliverables;
- Coordinate with Caltrans, BART and Planning Department; and
- Support community outreach processes.

Deliverables - Tech Memo 3: Short- and Long-Term Projects Analysis for the Balboa Park Station Area Plan proposals, with the required minimum level of engineering input and, where applicable, engagement from responsible agencies, to provide:

- a. Rough financial feasibility analysis of the entire plan;
- b. Overall feasibility analysis of select Area Plan sub-area projects, including development of feasible alternatives (or phases) and high-level cost estimates for each sub-area project;
- c. Recommendation of preferred alternative or alternatives; and
- d. Scope and priority for potential CER (Conceptual Engineering Report) tasks.

The Tech Memo shall include:

- Conceptual engineering diagrams (prepared using available aerial base maps)
- Meeting/workshop notes;
- Planning-level cost estimates and identification of potential funding sources for each project/alternative;
- Analysis of relevant Caltrans design policies and required processes;

- A table listing anticipated environmental clearance requirements for each improvement proposal; this should take into account what has already been cleared environmentally through the Better Neighborhoods EIR and what still must be cleared;
- A matrix of improvement proposals arrayed against cost, funding, and key benefit and impact types (e.g., traffic), with a qualitative rating of potential of significant adverse impacts (based on NEPA and CEQA criteria).

5. Preliminary Site Plan and Circulation/Access Plan for Balboa Park Station Area

This task will develop three alternative site, circulation, and access plans for the Balboa Park Station area, including the Upper Yard, Geneva Yard, and Green Yard and their interfaces with the surrounding streets. The task will evaluate these site plans and select a preferred plan to advance toward implementation. This task will use the requirements identified in Tasks 2 and 3, together with the project ideas from Task 4 that are deemed feasible and high-priority, as inputs to the plans. The alternative plans may reflect short-term and long-term phasing, rather than being mutually exclusive.

Tasks include:

- Study of internal and external multi-modal access and circulation needs at station entrances and the Upper Yard site, possibly with assembly of BART and SFMTA-owned parcels and joint development;
- Preparation of a conceptual plan identifying joint development opportunities; and
- Defining operating parameters compatible with potential mixed-use development and/or alternative transit uses, such as bus layover facility (pending findings of Task 2 above).

This task will incorporate recommendations from the Balboa Park Pedestrian and Bicycle Connection Project, especially related to short-range changes to or relocation of the kiss and ride facility. The joint development of the Upper Yard will take into account the findings of Task 4 and the BART-led Geneva Plaza Study. Site planning will be conducted for potential changes to station entrances (e.g., new entrances, changes in elevator locations, weather protection) and loading/kiss and ride facilities or curb zones. For the Upper Yard, the focus is on the integration of possible joint development and/or other transit uses into broad station/yard operations, and providing a basis for multi-agency stakeholder approval of new uses, rather than to duplicate more detailed design work that could be done at a later point by a developer.

Consultant tasks include:

- Circulation and site planning;
- Analysis and organization of data;

- Estimate of ridership changes, based on the ridership patterns gained from Task 2; this base will be modified by projecting growth factors likely to be realized by different levels of land development in the area; the objective would be to bracket the likely low and high levels that are likely within the next 15 years to serve as the basis of changes in the design of the station complex;
- Development of conceptual engineering plans and plan alternatives, evaluating each from operational and technical perspective;
- Preparation of draft and final deliverables (report and alternatives analysis);
- Provision of outreach materials in coordination with existing outreach processes.

SFMTA role includes:

- Jointly manage consultant activities with BART;
- Review Upper Yard assembly and potential plan for accommodating relocated functions;
- Review relationship to Muni maintenance, storage, and operations needs;
- Review site plan and circulation/access plan for station entrances; and
- Coordinate with planned SFMTA system-wide joint development 25-year plan.

Deliverables: Tech Memo 4: Site, circulation, and access plans for the Station and surrounding rail yards (for multiple phases, if deemed relevant) and any relevant development guidelines, appropriately detailed to seek multi-stakeholder approval.

6. Parking Analysis – Task includes:

- Review and recommendations for on-street parking changes in the area within 1500 feet of station entrances;
- Analysis of parking supply, regulations, loading needs, ADA issues, potential for metered parking, and compatibility with station plans and overall SFMTA parking policies, building on other studies such as the Balboa Park Pedestrian and Bicycle Connection Project (which is specifically looking at Ocean Avenue parking supply and demand near the station, as related to proposed bike lanes);
- Coordination with the SFMTA's SFPark program; and

- Review and summarize past analyses and issues regarding feasibility and impacts of BART acceptance of Fast Passes at Daly City.

Consultant tasks include:

- Coordinate with City's parking data collection effort;
- Conduct all technical data analysis;
- Prepare Technical Memo on parking analysis and improvements; and
- Provide outreach materials in coordination with existing outreach processes.

SFMTA role includes:

- Organize:
 - inventory of parking supply;
 - data collected on occupancy and turnover/duration in area at station and within 1,200 feet of station entrances; and
 - limited interviews with parkers to determine their origins and destinations (with data collection by SFMTA staff).
- Direct and manage consultant activities;
- Provide SFMTA policies and strategies (particularly SFPark);
- Perform field data collection (with intern assistance);
- Coordinate with other agencies;
- Review and approve consultant deliverables; and
- Support community outreach processes.

Deliverables – Technical Memo 5: Parking analysis, with maps and tables showing the parking supply/demand situation, and providing recommendations on changes.

7. Identify, Prioritize, and Prepare Selected Fast-Track Projects for Grant

Applications: This is a major task of the study and should receive a substantial share of budget and resources. Tasks include:

- Develop criteria for selecting and prioritizing 5 small to medium-sized (<\$5 million) "fast track" projects, and develop diagrams to provide a basis for detailed cost estimates and grant applications (with the number of projects depending in part on the size and complexity of the projects); criteria may include the degree of structural feasibility and risk, the potential payoff in terms of meeting project objectives, and cost-effectiveness.
- Address passenger amenities at stops, wayfinding and other signs (consistent with MTC guidelines and the draft Better Streets Plan), passenger information, lighting, weather cover throughout facility, fare machines, transit plaza improvements, new or relocated elevators, etc.;

- Develop concept for accessible, safe J/K line stop near station building and accessible path to stop;
- Review findings and recommendations from the Balboa Park Pedestrian and Bicycle Connection Project, filling in gaps where necessary; and
- Consider appropriate “packaging” of related improvements that can be funded and constructed jointly.

Projects may come from the Balboa Park Station Area Plan proposals or other needs identified in earlier tasks. Projects should complement, but not duplicate, the Balboa Park Pedestrian and Bicycle Connection Project.

Consultant tasks include:

- Documentation of project selection criteria in context with Study Goals;
- Preparation of grant-ready project definitions and concept drawings (narrative and with Illustrator or AutoCAD plan layouts and renderings);
- Schedules and “order of magnitude” cost estimates for the type of "fast track" projects described above;
- Identification of environmental impact issues to be assessed in later environmental review (based on CEQA and NEPA requirements); and
- Provision of outreach materials in coordination with existing outreach processes.

SFMTA role includes:

- Direct and manage consultant activities;
- Coordinate with BART, Planning Dept. and SFCTA to develop selection criteria and target select projects for near-term implementation;
- Review and approve consultant deliverables; and
- Support community outreach processes.

Deliverables:

1. Grant-ready description, scope, schedule and cost estimate of selected fast track projects appropriate to apply for design and implementation funding.
2. AutoCAD exhibits (11” X 17” prints) renderings identifying short-term concepts.

- 8. Funding and Implementation Strategy:** Analysis and recommendations for obtaining funding and agency responsibilities, and schedules for staging and linking “fast track” projects.

Consultant tasks: The consultant shall critique, refine, and include agency input in Tech Memo 5. Prepare draft and final deliverables, based on agency input: the outline and broad content of this memo.

SFMTA role includes:

- Prepare strategy, coordinated with SFMTA policies and strategies and input from other key agencies, particularly SFCTA and MTC;
- Provide a preliminary draft of Tech Memo 5 for refinement by the consultant; and
- Participate in the Interagency Planning Implementation Committee (IPIC) meetings on funding and implementation strategies.

Recommendations will initially be prepared in the form of tables and graphics for review in TAC meetings.

Deliverables – Tech Memo 5: Funding and Implementation Strategy, which includes:

- Matrix of funding sources with critical features, such as application schedule, project eligibility, local match requirements, etc. ; and
- Matrix of agencies/departments and their responsibilities for implementation.

Changes will be incorporated into the Draft Final Report.

- 9. Final Report:** The comprehensive project report will:

- Summarize findings from various reports and studies undertaken;
- Recommend next steps; and
- Recommend which elements to seek grant funding for within 1-2 years, and which elements are recommended for additional development.

The Project is not expected to develop a stand-alone plan document for adoption by any policy boards, but a technical report as project development input. It may result in amendments to the Balboa Park Station Area Plan or other adopted plans or projects.

Consultant tasks include:

- Development of draft and final deliverables (Final Report);
- Assimilation of data and content provided by relevant agencies, including project descriptions, schedules and cost estimate;
- Provision of outreach materials in coordination with existing outreach processes prior to report publication; and
- Attendance at meetings of the SFMTA Board and/or Planning Commission to provide information. For budget purposes, assume attendance at 3 policy board meetings.

SFMTA tasks include:

- Direct and manage consultant activities;
- Coordinate with BART and Planning Department to define content;
- Provide report input related to project development and implementation/funding strategies;
- Review and approve consultant deliverable; and
- Coordinate with other community outreach processes.

Deliverable – Final Report (Draft, Screen-check, and Final) summarizing all previous Tasks Deliverables.

For Draft Final Report, provide electronic file and 10 printed copies. Respond to comments, and provide single screen-check copy. After approval, provide electronic file and 40 printed color copies.

- 10. Technical Advisory Committee and Other Internal Meetings:** Meetings will be scheduled with the SFMTA, BART, and other agencies and departments to obtain information on their projects, and to coordinate review of study work products. In addition to an interagency TAC, SFMTA has formed an internal TAC to obtain input and guidance from Operations and Maintenance management (which may include selected BART staff as needed at specific meetings). Finally, consultant/project management meetings will be needed, as discussed above under Task 1, but may be “piggybacked” right before or after the above meetings.

Consultant tasks include:

- Attend selected meetings of the interagency TAC and meetings with the internal Operations/Maintenance TAC; and
- Prepare handouts and display boards or PowerPoint presentations as needed.

For budget purposes, it is assumed that the consultant will need to attend approximately one agency meeting per month or 15 agency meetings total. (This assumes meetings with the interagency TAC about every other month and meetings with the internal Operations/Maintenance TAC also about every other month.)

SFMTA role includes:

- Convene meetings;
- Set up logistics; and
- Prepare meeting agendas and summaries.

- 11. Public Outreach:** As the focus of this Station Capacity Study is primarily on technical questions, it is assumed there will be no stand-alone public outreach meetings necessary. However, the study will use public meetings for the Balboa Park Pedestrian and Bicycle Connection Project, the Geneva Corridor Transit Study, and other projects or organizations to obtain input and publicize progress and findings. This will be useful particularly in obtaining community support for grant applications for specific improvement projects. Additional public outreach may be needed for specific projects that are recommended for implementation as part of this study.

SFMTA role includes:

- Convene meetings, in coordination with other agencies;
- Set up logistics; and
- Prepare meeting agendas and summaries.

Consultant tasks: The consultant shall attend up to 5 selected public meetings, possibly sponsored by other projects. No additional handouts or display boards or PowerPoint presentations beyond those prepared for TAC meetings will likely be needed.

2. PROPOSED SCHEDULE OF TASKS

Task 1 Project Work Plan: The Project Work Plan shall include a firm schedule of the start and end times of each task, as well as target dates for each deliverable. Critical deadlines specified for Tasks 3 and 7 shall be noted on this schedule. Any changes to this schedule that do not extend the contract term shall be subject to approval in writing by the SFMTA Project Manager.

Completion Date: Within two (2) weeks after project Notice to Proceed (NTP). NTP is assumed to be on or about October 12, 2009.

Task 2 Station intermodal facilities functional analysis

Task started by staff.

Completion Date : Seven (7) weeks from NTP.

(Could be concurrent with Task 3).

Task 3 CRITICAL TASK: Functional analysis of Muni LRV maintenance and storage needs

Task started by staff.

Completion Date: December 7, 2009. This anticipated to be: Eight (8) weeks from NTP. (Could be concurrent with Task 2).

Task 4 Feasibility Report on Balboa Park Station Area Plan Proposals

Completion Date: Thirteen (13) weeks from NTP. (Could be partially concurrent with Tasks 2 and 3 above.)

Task 5 Preliminary Site Plan and Circulation and Access Plan

Completion Date: Seventeen (17) weeks from NTP. (could be partially concurrent with earlier tasks).

Tasks 6 Parking Analysis.

Completion Date: Six (6) weeks from NTP (could be partially concurrent with earlier tasks).

Task 7 CRITICAL TASK: Package grant-ready "fast track" projects identified in Task 4 to prepare for design and implementation.

Completion Date: March 22, 2010. Twenty-three (23) weeks from NTP (could be partially concurrent with Tasks 4-6)

Task 8 Develop Funding and Implementation Strategy and

Task 9 Prepare Draft Report.

Completion Date: Thirty (30) weeks from NTP.

Task 10 Prepare and present Final Report: Completion of consultant activities and full review and acceptance of documents by project management team and TAC. Possible informational presentations to SFMTAB, Transportation Authority Board, San Francisco Planning Commission, and BART Board.

Completion Date: Forty-nine (49) weeks from NTP.

**BALBOA PARK STATION CAPACITY STUDY:
APPENDIX B: CALCULATION OF CHARGES
BASIS FOR PAYMENT SCHEDULE FOR JACOBS
ENGINEERING**

Revised

8/25/2009 11:21

TASK	DELIVERABLE	DUE DATE: CURRENT SCHEDULE	PAYMENT	%
1. Project Management	Project Work Plan	Oct-09	\$ 20,000	5.4%
2. Intermodal Facilities Functional Analysis	Tech Memo 1	Nov-09	\$ 52,000	14.1%
3. LRV Maintenance & Storage	Tech Memo 2	Dec-09	\$ 34,000	9.2%
4. Feasibility Analysis	Tech Memo 3	Jan-10	\$ 58,000	15.7%
5. Site & Circulation Planning	Tech Memo 4	Feb-10	\$ 48,000	13.0%
6. Parking Recommendations	Tech Memo 5	Nov-09	\$ 4,000	1.1%
7. Fast Track Projects - prelim design, prioritization	Grant scopes, cost estimates, drawings.	Mar-10	\$ 124,000	33.5%
8. Funding & Implementation Strategy	Tech Memo 6	May-10	\$ 5,000	1.4%
9A. Draft Final Report	Draft	May-10	\$ 13,000	3.5%
9B. Final Report	Final	Sep-10	\$ 12,000	3.2%
PROJECT TOTAL			\$ 370,000	100.0%

NOTE: Task 1 Project Management occurs throughout, but payment shall be based on specific deliverable.

Compensation for Tasks 10 (TAC/Internal Meetings) and 11 (Public Outreach) is included in other tasks,

since these tasks do not have simple, discrete deliverables.

“PAYMENT” column refers to “AGREED PAYMENT UPON SUCCESSFUL COMPLETION OF DELIVERABLE”

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Requesting authorization for the Executive Director/CEO to execute Contract No. SFMTA 2008/09-35, Repair of Damaged LRVs, with Complete Coach Works to repair LRV No. 1451 and 1502, for an amount not to exceed \$217,634 and for a term not to exceed 18 months.

SUMMARY:

- On June 16, 2009, the SFMTA issued an Invitation for Bids to supply all materials, equipment, labor and supervision necessary to repair the damaged components of two light rail vehicles, Nos. 1451 and 1502.
- On August 3, 2009, the SFMTA received two responsive bids in response to the Invitation for Bids - from AnsaldoBreda, and Complete Coach Works.
- The bids were reviewed by SFMTA staff and it was determined that the lowest responsive and responsible bidder is Complete Coach Works.
- The contract shall be a firm fixed-price contract with progress payments and liquidated damages.
- The source of funds for this project is a grant from the San Francisco County Transportation Authority.

ENCLOSURES:

1. SFMTA Board Resolution
2. Contract Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO:

Elson Hao

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

The purpose of this calendar item is to request authorization from the Board for the Executive Director/CEO to execute a contract with Complete Coach Works to repair two light rail vehicles (LRVs) that sustained structural and cosmetic damage in two separate accidents. The cost of the contract will be \$217,634.

GOAL

This project will help the SFMTA to meet the following goals and objectives of the 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 1.5 Increase percentage of trips using more sustainable modes (such as transit, walking, bicycling, rideshare)

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

DESCRIPTION

The SFMTA operates a fleet of 151 AnsaldoBreda LRVs that were delivered to the agency from 1996 through 2003. Each car is 75 feet long and weighs 39 tons and has an estimated useful life of 25 years. During normal revenue service, LRV Nos. 1451 and 1502 sustained light to moderate damage in two accidents.

SFMTA issued an Invitation for Bids on June 16, 2009 to repair LRV Nos. 1451 and 1502. Three bidders submitted bids in response to the Invitation for Bids: There were three bidders, two of which were responsive: AnsaldoBreda and Complete Coach Works. Following is the result of SFMTA staff evaluation of the bids:

1. AnsaldoBreda: Submitted a responsive bid and met the minimum qualifications as specified in the Invitation for Bids. Bid amount: \$618,621.
2. Complete Coach Works: Submitted a responsive bid and met the minimum requirements as specified in the Invitation for Bids. Complete Coach Works' bid amount: \$217,634.

The Contractor will have 180 days from the notice to proceed to repair LRV No. 1451 and 270 days to repair LRV No. 1502. Liquidated damages of \$500 per day per LRV for late delivery are included in the contract.

The Contract Compliance Office has waived the LBE subcontracting goal for this project.

ALTERNATIVES CONSIDERED

SFMTA staff considered using in-house staff to repair these two vehicles. However, due to the volume of other body repair, it was determined that the SFMTA does not have the resources to repair these vehicles.

PAGE 3.

FUNDING IMPACT

This project will be funded from a \$2,600,000 grant from the San Francisco County Transportation Authority.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Civil Service Commission will have to approve this contract.

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

RECOMMENDATION

Staff recommends that the San Francisco Municipal Transportation Agency Board authorize the Executive Director/CEO to execute a contract with Complete Coach Works to repair LRV Nos. 1451 and 1502 for an amount not to exceed \$217,634.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On June 16, 2009, the SFMTA issued an Invitation for Bids to supply all materials, equipment, labor and supervision necessary to repair the damaged components of two light rail vehicles, LRV Nos. 1451 and 1502; and,

WHEREAS, On August 3, 2009, the SFMTA received three bids in response to the Invitation for Bids, two of which were responsive; and,

WHEREAS, The bids were reviewed by SFMTA staff and it was determined that the lowest responsive and responsible bidder is Complete Coach Works, 1863 Service Court, Riverside, CA, with a bid of \$217,634; and,

WHEREAS, The contract shall be a firm fixed-price contract with progress payments and liquidated damages; and,

WHEREAS, The source of funds for the project is a grant from the San Francisco County Transportation Authority; now therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute contract No. SFMTA 2008/09-35, Repair of Damaged LRVs, with Complete Coach Works to repair LRV No. 1451 and 1502, for an amount not to exceed \$217,634 and for a term not to exceed 18 months.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Contract Between the
City and County of San Francisco
and
Complete Coach Works
for
Repair of Damaged LRVs (Nos. 1451 and 1502)

Contract No. SFMTA 2008/09-35
CCO No. 09-1065

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Exhibits

Exhibit A	Project Delivery Schedule
Exhibit B	Price Schedule
Exhibit C	Payment Schedule

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness 7th Floor
San Francisco, California 94107**

**Agreement between the City and County of San Francisco and
Complete Coach Works**

This Agreement is made this _____ day of September, 2009, in the City and County of San Francisco, State of California, by and between: Complete Coach Works, a California Corporation, 1863 Service Court, Riverside, CA 92507 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

A. SFMTA wishes to obtain the services of a qualified firm to rehabilitate SFMTA's two damaged light rail vehicles ("LRVs").

B. An Invitation for Bids ("IFB") was issued on June 16, 2009, and City selected Contractor as the lowest responsive and responsible bidder pursuant to the IFB.

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

D. Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number [insert Personal Services Contract Number] on [insert date of Civil Service Commission action];

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 an authorized representative of 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.

Bid: The cost proposal submitted by Contractor pursuant to the Invitation for Bids.

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.

Conditional Acceptance; Conditionally Accepted: The condition of a repaired Vehicle that, in the SFMTA's determination, does not meet the requirements for full acceptance, but is authorized by the SFMTA to enter into revenue service, pending completion of all repairs.

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 IFB, Technical Specifications, all Conformed Contract Documents, Contractor's Bid, the Contract bonds or other security, and all supplemental agreements or modifications to the Contract.

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: Complete Coach Works

Controller: Controller of the City.

Corrective Action Plan: The plan submitted by Contractor to correct Defects that have been determined by the SFMTA to be Fleet Defects, as defined in Section 65.7(a).

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

Defect(s): Any condition or characteristic in any Material and/or Equipment or services furnished by the Contractor under this Contract that is not in compliance with the requirements of the Contract.

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

Invitation for Bids (IFB): The Invitation for Bids to Repair Damaged LRVs issued on June 16, 2009.

LRV or Vehicle: A light rail vehicle subject to repair under this Contract.

Material and/or Equipment: The end items, including data, furnished by the Contractor and related services required under the Contract.

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.

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

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.

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 begin on the Effective Date and end 18 months thereafter.

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 the IFB, including Volume 2 (Technical Specifications), according to the Project Delivery Schedule set forth in Exhibit A.

5. Compensation

In no event shall the amount of this Agreement exceed Two Hundred Seventeen Thousand, Six Hundred Thirty-Four Dollars (\$217,634). The breakdown of costs associated with this Agreement appears in the Price Schedule (Exhibit B) and Payment Schedule (Exhibit C), 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.

6. Guaranteed Maximum Costs

6.1. 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.

6.2. 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.

6.3. 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.

6.4. 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; Title

7.1. **Invoices.** 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.

No more than one invoice per month shall be submitted. Invoices shall be accompanied by appropriate supporting documentation. All amounts paid by City to Contractor shall be subject to audit by City.

7.2. Progress Payments. Progress payments shall be made as set forth in the Payment Schedule (Exhibit C). Progress payments shall be conditioned on either (1) transfer of title to the City for the portion of the components, equipment or material paid for by the progress payment (as provided in Section 7.3 below), plus a certificate of insurance required by Section 15.1(g) of this Agreement; or (2) for payments for Item 1b of the Payment Schedule made prior to delivery of the parts or assemblies, issuance of a letter of credit in conformance with the provisions of Section 15.3, in the amount of the progress payment. Progress payments shall be made by the City to Contractor at the address specified in the section entitled "Notices to the Parties." Letter(s) of credit will be released upon transfer of full title to parts or assemblies.

7.3. Title. Upon the earlier of payment or acceptance of any part, component, or assembly, Contractor warrants that title to said part, component or assembly shall pass to the City free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims and demands of any character.

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.

10. Taxes

10.1. 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.

10.2. 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:

(a) 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;

(b) 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.

(c) 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.

(d) 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 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.

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

14.1. 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.

14.2. 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; Bonds; Letters of Credit

15.1. Insurance

(a) 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:

(i) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, illness or injury; 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) Garage keepers' legal liability insurance, comprehensive form, with limits not less than \$1,000,000 each occurrence, including coverage for vehicles parked on the site as well as vehicles on the site for repair.

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

(b) Commercial General Liability, Business Automobile Liability Insurance, Garagekeepers' Legal Liability and Shippers Coverage policies must provide the following:

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

(ii) 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.

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

(d) All policies (and bonds, as described in Section 15.2 below) shall provide 30 days' advance written notice to City of cancellation or reduction in coverage for any reason, mailed to the following address:

San Francisco Municipal Transportation Agency
1 South Van Ness Avenue,
7th Floor San Francisco, CA 94103
Attention: Ms. Trinh Nguyen
Contract No. CCO 09-1065

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

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

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

(h) Before commencing any operations under this Agreement, Contractor shall do the following: (a) 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 coverage's set forth above, and (b) furnish complete copies of policies promptly upon City request.

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

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

15.2. Bonds

(a) 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 damaged LRV, the Contractor shall furnish to City a performance bond and a labor and materials bond, each in the amount not less than \$150,000, 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.

(b) From acceptance by City of both Vehicles, and throughout the warranty period (including paint/corrosion) of the Vehicles, Contractor shall supply a maintenance or warranty bond or irrevocable letter of credit in the amount of \$50,000 to guarantee Contractor's warranty of performance of the Vehicles.

(c) 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.

(d) 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.

15.3. Letters of Credit.

(a) **Requirements.** Any letter of credit submitted in lieu of a bond or other required security under this Agreement shall be a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation. It must have an original term of one year, with automatic renewals of the full amount throughout the term of the Agreement and throughout the performance of Contractor's obligations the under the Agreement. If Contractor

fails to deliver the letter of credit as required, City will be entitled to cancel this Agreement. The letter of credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Executive Director/CEO on behalf of the City and County of San Francisco.

(b) Financial Institution.. The letter of credit must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution must (a) be a bank or trust company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least \$25,000,000.00, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating.

(c) Demand on Letter of Credit. The letter of credit will constitute a security deposit guaranteeing faithful performance by Contractor of all terms, covenants, and conditions of this Agreement, including all monetary obligations set forth herein. If Contractor defaults with respect to any provision of this Agreement, SFMTA may make a demand under the letter of credit for all or any portion thereof to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty. Such loss or damage may include without limitation any damage to or restoration of City property or property that is required to be constructed, maintained or repaired pursuant to this Agreement, payments to City, and claims for liquidated damages; provided, however, that City will present its written demand to said bank for payment under said letter of credit only after City first has made its demand for payment directly to Contractor, and five full Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the letter of credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the letter of credit is so used or applied by City, Contractor, within 10 business days after written demand by City, shall reinstate the letter of credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

(d) Expiration or Termination. The letter of credit must provide for 60 Days notice to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business Days prior to its expiration. In the event the City receives notice from the issuer of the letter of credit that the letter of credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement letter of credit (in a form and issued by a financial institution acceptable to the City) within 10 Days following the City's receipt of such notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the letter of credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the letter of credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

(e) Return of Letter of Credit. The letter of credit will be returned within 90 Days after the end of the term of this Agreement, as defined in Section 15.1, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed

its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 18.8, City will return or release the letter of credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent letter of credit, as determined by City.

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

16. Indemnification

16.1. General Indemnity. 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 willful misconduct of the Contractor, any subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively, "Liabilities").

16.2. 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.

16.3. 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.

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. 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 LRVs by the times stated in the Contract.	\$500 per Vehicle per day
Failure to submit timely Corrective Action Plan (or required revisions)	\$500 per day (per Fleet Defect)
Failure to submit timely Work Program (or required revisions)	\$500 per day (per Fleet Defect)
Failure to timely complete Corrective Action Plan or Work Program	\$500 per day per Vehicle

20. Default; Remedies

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

(a) 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, 58, 61, 62, 63, 64, 65, or 66, and such default continues for a period of ten days after written notice thereof from City to Contractor

(b) 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.

(c) 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.

(d) 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.

20.2. **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.

21. Termination for Convenience

21.1. **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.

21.2. **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:

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

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

(c) Terminating all existing orders and subcontracts.

(d) 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.

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

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

(g) 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.

21.3. **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:

(a) 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.

(b) 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.

(c) 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.

(d) 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.

21.4. **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.

21.5. **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.

21.6. **Survival.** City's payment obligation under this Section shall survive termination of this Agreement.

22. **Rights and Duties Upon Termination or Expiration**

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

- | | |
|----------------------------|---|
| 8. Submitting false claims | 11. Payment does not imply acceptance of work |
| 9. Disallowance | |
| 10. Taxes | 13. Responsibility for equipment |
| | 14. Independent Contractor; Payment of Taxes and Other Expenses |

15.	Insurance	49.	Administrative Remedy for Agreement Interpretation.
16.	Indemnification	50.	Agreement Made in California; Venue
17.	Incidental and Consequential Damages	51.	Construction
18.	Liability of City	52.	Entire Agreement
24.	Proprietary or confidential information of City	55.	Disputes
26.	Ownership of Results	56.	Severability
27.	Works for Hire	57.	Protection of Private Information
28.	Audit and Inspection of Records	65.	Warranty Provisions
48.	Modification of Agreement.	66.	Repair Provisions

22.1. **Contractor Duties.** Subject to the immediately preceding subsection 22.1, 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 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.

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:

Municipal Transportation Agency

One South Van Ness 7th Floor
San Francisco, California 94107
Attn: Elson Hao
Phone: (415) 401-3196
Fax: (415) 401-3218
elson.hao@sfmta.com

To Contractor:

Complete Coach Works
1863 Service Court
Riverside, California 92507
Attn: Macy Neshati
Phone: (951) 684-9585
Fax: (951) 684-2088
macy@completcoach.com

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City.

If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. 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.

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 in the same manner as 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.

32.1. 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.

32.2. 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.

32.3. 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.

32.4. **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.

33. 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.

34. Nondiscrimination; Penalties

34.1. **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.

34.2. **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.

34.3. **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.

34.4. 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.

34.5. 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.

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 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.

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. 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 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.

43. Requiring Minimum Compensation for Covered Employees

43.1. 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.

43.2. 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.

43.3. 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.

43.4. 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.

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

43.6. 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.

43.7. 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.

43.8. 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.

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

44. Requiring Health Benefits for Covered Employees

44.1. 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.

44.2. 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.

44.3. 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.

44.4. 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.

44.5. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the

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

44.6. 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.

44.7. 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.

44.8. 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.

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

44.10. 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.

44.11. 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.

44.12. 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.

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

44.14. 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

45.1. **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.

45.2. 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:

(a) 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 may be 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) Set the term of the requirements.

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

(h) 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.

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

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

45.4. **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.

45.5. **Liquidated Damages.** Contractor agrees:

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

(b) 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;

(c) 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.

(d) 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;

(e) 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:

(i) 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

(ii) 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.

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

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

45.6. **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.

47. 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.

48. Modification of Agreement

48.1. 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%.

48.2. 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:

(a) 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.

(b) 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 whosoever shall in any manner or degree modify or otherwise affect the terms of this contract, which include the requirements of the Technical Specifications.

49. 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.

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. Disputes

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

55.2. 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.

55.3. 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.

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

55.5. 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.

55.6. 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.

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 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.

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

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

60. Time of Essence

Time is of the essence in this Agreement.

61. Technical Specifications

61.1. Fabrication. The LRVs shall be rehabilitated in accordance with the Technical Specifications, Volumes 2-A and 2-B.

61.2. **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 rehabilitate the LRVs as specified in the Technical Specifications and return the Vehicles in a condition that is complete and ready for service. 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.

61.3. **Priority.** In the event of any deviation between the description of these LRVs in the Technical Specifications and in this document, the Technical Specifications shall govern.

61.4. **Materials/Accessories Responsibility.** The Contractor shall be responsible for all materials and workmanship in the repair of the LRV systems required by the Technical Specifications 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.

62. Assumption of Risk of Loss

Prior to acceptance of the repaired LRVs, the Contractor shall bear risk of loss of the Vehicle, including any damage sustained during transportation to the delivery site or during acceptance testing. The City shall assume risk of loss of these Vehicles only after acceptance.

63. Repairs Prior to Acceptance.

63.1. **General.** The SFMTA may require the Contractor, or its designated representative, to perform repairs after non-acceptance, or the Contractor may request that the work be done by SFMTA personnel with reimbursement by the Contractor. Contractor shall inform SFMTA in advance of any modifications made to the Vehicle during the acceptance period.

63.2. **Repairs by Contractor.** If the SFMTA requires the Contractor to perform repairs after non-acceptance of the coach, the Contractor's representative must begin the repair within five (5) working days after receiving notification from the SFMTA of failure of acceptance tests. The Contractor shall provide, at its own expense, all spare parts, tools, and labor required to complete the repairs. At the SFMTA's option, the Contractor may be required to remove the Vehicle, at its own expense, from SFMTA property while repairs are being performed. The Contractor shall then provide a space to complete the repairs, shall diligently pursue the repairs, and shall assume risk of loss while the Vehicle is under its control.

63.3. Repairs by SFMTA.

(a) If the SFMTA agrees to a request by the Contractor for SFMTA to perform repairs on a Vehicle prior to SFMTA acceptance, SFMTA shall correct or repair the defect using parts supplied by the Contractor specifically for this repair. Monthly, or at a period to be mutually agreed upon, SFMTA shall submit to Contractor reports of all repairs covered by this procedure for actual cost reimbursement. The Contractor shall provide forms for these reports.

(b) If the Contractor supplies parts for repairs being performed by SFMTA before acceptance of the coach, Contractor shall ship these parts prepaid to SFMTA within 10 working days after receipt of the request for said parts. The Contractor may request that

defective components covered by this provision be returned to the manufacturing plant. Contractor shall bear all expenses for supplying such parts and for any associated costs.

(c) Contractor shall reimburse SFMTA for all costs of labor and materials (including taxes) for repairs made or caused to be made by SFMTA. If SFMTA performs the repairs itself, the amount shall be determined by multiplying the number of man-hours actually required to correct the defect by the current technician's hourly overtime wage rate, which includes fringe benefits and overhead, plus the cost of transporting the Vehicle if such action was necessary. If SFMTA requires the service of an outside repair shop, Contractor shall reimburse SFMTA for all such repair invoices. Contractor shall also reimburse SFMTA for administrative costs incurred in performing the repairs. The use of SFMTA labor will not relieve the Contractor from the responsibility to ensure that repairs are carried out in accordance with proper procedures.

(d) The City may deduct the cost of repairs from any monies due or that may become due to the Contractor under the Agreement, or if such monies are insufficient, the contractor or its surety shall pay to the City any deficiency.

64. Warranty Provisions

64.1. **Contractor Warranty.** Warranties in this document are in addition to any statutory remedies or warranties imposed on the Contractor. Warranties include 100 percent of parts and labor costs. Consistent with these requirements, the Contractor warrants and guarantees to the SFMTA each complete LRV, and specific subsystems and components repaired under this Agreement, to be free from Defects for two years, beginning on the date of acceptance of each LRV under Section 64.3(a) above and under the applicable provisions of either Volume 2A or 2B of the Technical Provisions. The warranty is based on regular operation of the LRV under the operating conditions prevailing in Muni service.

64.2. **Detection Of Defects.** If the SFMTA detects a Defect within the warranty period, it shall within 20 working days, notify the Contractor's representative. Within five working days after receipt of notification, the Contractor's representative shall either agree that the Defect is in fact covered by warranty, or reserve judgment until the subsystem or component is inspected by the Contractor's representative or is removed and examined at the SFMTA's property or at the Contractor's plant. At that time, the status of warranty coverage on the subsystem or component shall be mutually resolved between the SFMTA and the Contractor. Work shall commence to correct the Defect within 10 working days after receipt of notification and shall be conducted in accordance with "Repairs by Contractor" (Section 66.2).

64.3. **Scope Of Warranty Repairs.** When warranty repairs are required, the SFMTA and the Contractor's representative shall agree within five working days after notification on the most appropriate course for the repairs and the exact scope of the repairs to be performed under the warranty. If no agreement is obtained within the five-day period, the SFMTA reserves the right to commence the repairs in accordance with "Repairs by SFMTA" (Section 66.3).

65. Repair Procedures

65.1. **Repair Performance.** The Contractor is responsible for all warranty-covered repair work. To the extent practicable, the SFMTA will allow the Contractor or its designated representative to perform such work. At its discretion, the SFMTA may perform such work if it determines it needs to do so based on transit service or other requirements. Such work shall be reimbursed by the Contractor.

65.2. Repairs By Contractor

(a) Unless the time is extended by the SFMTA, the Contractor or its designated representative shall begin work on warranty-covered repairs within five calendar days after receiving notification of a Defect from the SFMTA. The SFMTA shall make the LRV available to complete repairs timely with the Contractor repair schedule.

(b) The Contractor shall provide at its own expense all spare parts, tools, and space required to complete repairs. At the SFMTA's option, the Contractor may be required to remove the LRV from the SFMTA's property while repairs are being performed. If the LRV is removed from the SFMTA's property, repair procedures must be diligently pursued by the Contractor's representative. Contractor shall bear all costs for transporting the LRV for repairs.

65.3. Repairs By SFMTA

(a) **Parts Used.** If the SFMTA performs the warranty-covered repairs, it shall correct or repair the Defect and any Related Defects utilizing parts supplied by the Contractor specifically for this repair. At its discretion, the SFMTA may use Contractor-specified parts available from its own stock if deemed in its best interest. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this warranty shall be submitted by the SFMTA to the Contractor for reimbursement or replacement of parts. The Contractor shall provide forms for these reports.

(b) **Contractor Supplied Parts.** The SFMTA may require that the Contractor supply new parts for warranty-covered repairs being performed by the SFMTA. These parts shall be shipped prepaid to the SFMTA from any source selected by the Contractor within ten (10) working days of receipt of the request for said parts. Parts supplied by the Contractor shall be Original Equipment Supplier (OEM) equivalent or superior to that used in the LRV original manufacture.

(c) **Return of Defective Components.** The Contractor may request that parts covered by the warranty be returned to the manufacturing plant. The total cost for this action shall be paid by the Contractor. Materials should be returned in accordance with Contractor's instructions.

(d) **Reimbursement For Labor.** Contractor shall reimburse the SFMTA for labor. The amount shall be determined by multiplying the number of man-hours actually required to correct the Defect by the current top mechanic's hourly overtime wage rate. The wage rate, and therefore, the warranty labor rate, is subject to adjustment each year. Through June 30, 2009, the warranty labor rate shall be based on the mechanic's wage rate of \$148.72/hour, which includes labor, fringe benefits, and overhead. Contractor shall also reimburse the SFMTA for the cost of transporting the Vehicle if such action was necessary. These wage and fringe benefit rates shall not exceed the rates in effect in the SFMTA's service division at the time the Defect correction is made.

(e) **Reimbursement For Parts.** Contractor shall reimburse the SFMTA for defective parts and for parts that must be replaced to correct the Defect. The reimbursement shall be at the current price at the time of repair and shall include taxes where applicable and 15 percent handling costs.

(f) Reimbursement Requirements. The Contractor shall reimburse the SFMTA for warranty labor and/or parts within 60 days of receipt of the warranty claim.

65.4. Warranty After Replacement/Repairs. If any component, unit, or subsystem is repaired, rebuilt or replaced by the Contractor, or by the SFMTA with the concurrence of the Contractor, the component, unit, or subsystem shall be assigned a new warranty period equal to the original manufacturer's warranty, effective the replacement date.

66. Delivery of Vehicles

66.1. Delivery Rate. Vehicle deliveries shall be in accordance with the Project Delivery Schedule, attached as Exhibit A to this Agreement and incorporated herein as though fully set forth.

66.2. Vehicle Delivery Conditions. All deliveries to SFMTA shall be to an SFMTA-specified Light Rail Vehicle 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.

67. Unavoidable Delays

67.1. Definition. An Unavoidable Delay is an interruption of the work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include and are limited to acts of God; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the work ordered by the City insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City of the Contractor's commencing or prosecuting the work. The duration of said Unavoidable Delays shall be limited to the extent that the commencement, prosecution, and completion of the work are delayed thereby, as determined by the City.

67.2. Notification of Delay. The Contractor shall notify SFMTA as soon as the Contractor has, or should have, knowledge that an event has occurred that will delay deliveries. Within five calendar days, the Contractor shall confirm such notice in writing, furnishing as much detail as is available.

67.3. Request for Extension. The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by SFMTA to make a decision on any request for extension due to Unavoidable Delays. SFMTA shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension and the duration of such extension. SFMTA shall notify the Contractor of its decision in writing. The granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or of any other rights to which the City is entitled.

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

CITY

Municipal Transportation Agency

Nathaniel P. Ford, Sr.
Executive Director/CEO

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robin M. Reitzes
Deputy City Attorney

SFMTA Board of Directors
Resolution No. _____
Adopted _____

Secretary, Board of Directors

Exhibits

Exhibit A: Project Delivery Schedule
Exhibit B: Price Schedule
Exhibit C: Payment Schedule

CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 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.

Macy Neshati
Vice-President Sales and Marketing
1863 Service Court
Riverside, CA 92507

City vendor number: 55030

EXHIBIT A
PROJECT DELIVERY SCHEDULE

DELIVERY MILESTONE	AFTER NTP
Car No. 1451	180 days
Car No. 1502	270 days

EXHIBIT B

PRICE SCHEDULE

Complete repair of LRVs including Site Support and Warranty (all sales taxes included)

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Price Each</u>	<u>Price Total</u>
1.1	• Car No. 1451	1	\$69,594	\$69,594
1.2	• Car No. 1502	1	\$98,540	\$98,540
2.	Shipment of LRVs	2	\$24,750	\$49,500
TOTAL CONTRACT PRICE				\$217,634

EXHIBIT C

PAYMENT SCHEDULE

Milestone	1451	1502
Completion of metal work	40% of price	25% of price
Complete installation of door and step components	N/A	30% of price
Delivery and acceptance of Vehicle	50% of price	35% of price
Satisfactory performance of repairs for three months after acceptance	10% of price	10% of price

NOTE: Payment for the repair work will occur upon completion of listed items on this Payment Schedule, upon proper receipt of an invoice requesting payment and acceptable completion of all contract terms.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Authorizing the acceptance of Contract Modification No. 19 to Contract No. MR-1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project, with Stacy and Witbeck, Inc.; approving increasing the Contract amount by \$9,838,541.33 for a Contract amount of \$140,612,034.20 and establishing the substantial completion date of February 20, 2009.

SUMMARY:

- Construction of the Muni Metro East Facility Project (“the Project”) is part of the Muni Third Street Light Rail Project. The Metro East Facility will operate, maintain and store up to 80 light rail vehicles on a 13-acre site located at 25th and Illinois Streets.
- On July 19, 2005, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 05-121, authorizing award of Municipal Railway Contract No. MR-1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project, to Stacy and Witbeck, Inc., the Contractor, for a contract amount of \$120,000,000 and Contract duration of 880 days from the date of commencement of work.
- Notice to proceed with the work was issued on August 22, 2005.
- Contract Modifications Nos. 1 through 18 have increased the Contract amount by \$10,773,492.87 to \$130,773,492.87.
- Contract Modification No. 19 adds \$9,838,541.33 to adjust quantities and to compensate the Contractor for additional work performed and impact damages due to delays and loss of productivity, for a final Contract amount of \$140,612,034.20, and establishes February 20, 2009 as the contract substantial completion date.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Finance Plan
3. List of Previously Approved Contract Modifications
4. Contract Modification No. 19

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO:

_____ Gigi Pabros

ASSIGNED SFMTAB CALENDAR DATE: _____

PURPOSE

Construction of the Muni Metro East Facility Project (“the Project”) is part of the Muni Third Street Light Rail Project. The Metro East Facility will operate, maintain and store up to 80 light rail vehicles on a 13-acre site located at 25th and Illinois Streets.

GOAL

SFMTA Contract No. MR-1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project, would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

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

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

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

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

DESCRIPTION

Bids and Bid History

The project was first bid in late 2001 under Contract No. MR-1182. All bids received exceeded the project budget and were consequently rejected.

In late 2003, the project was rebid using an alternative delivery method, Construction Manager/General Contractor (“CM/GC”), under Contract No. MR-1182R. McCarthy Building Companies, Inc. submitted the lowest responsive, responsible bid and was awarded the contract. However, the bids received by McCarthy for subsequent subcontract trade work exceeded McCarthy’s estimates and also exceeded the project’s budget. On that basis, the bids received for subcontract work were all rejected.

On December 7, 2004, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 04-178, which authorized the Executive Director to terminate Contract MR-1182R with McCarthy Building Companies, Inc. for the City’s convenience and to revise and issue plans and specifications to rebid the project under the traditional project delivery method.

On March 3, 2005, the SFMTA advertised the project for rebid under Contract No. MR-1182R1.

On May 18, 2005, a single bid was received from Stacy and Witbeck, Inc. (“the Contractor”). The Contractor bid \$130,891,500 for the base contract and \$16,585,000 for the additive alternates. The bid price for the base contract work exceeded the SFMTA’s project budget of \$114,960,400. In lieu of another rebid, the SFMTA elected to delete portions of the base contract work as well as all of the additive alternates and negotiated with the single bidder for a total contract price of \$120,000,000

without altering the Contract duration but with the stipulation that further scope items would be deleted during the course of construction if funding could not be added to make up the budget shortfall.

On July 19, 2005, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 05-121, authorizing the award of SFMTA Contract No. MR-1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project, to Stacy and Witbeck, Inc., for a contract amount of \$120,000,000.

SFMTA issued a Notice to Proceed for work to commence on August 22, 2005.

Scope of Work

San Francisco Municipal Railway Contract No. MR-1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project (“the Project”), is part of the Phase 1 Initial Operating Segment of the Muni Third Street Light Rail Project. The Metro East Facility will support the operation of the Third Street Light Rail Line and relieve the overcrowded conditions at Muni’s only other light rail facility, the Metro Green/Geneva Facility. The project involves constructing a new storage yard, maintenance shop and operations/dispatch facility for a fleet of about 80 light rail vehicles. The facility is located on a 13-acre site at 25th and Illinois Streets.

Contract MR-1182R1 included the following construction work: site demolition; earthwork and dewatering; corrosion control; underground utilities; handling and disposal of excess hazardous waste material; landscaping and irrigation work; track work; fences/gates; asphalt pavement; an on-site parking lot; an overhead catenary system; a communication system; traction power substations; procurement and installation of some shop equipment; a main shop building with mechanical and fire protection systems, electrical power and lighting systems, a fire alarm system, a security system, monorails; overhead bridge cranes, elevators; access roads; traffic signals; art enrichment work; signs and graphics; and testing and training.

Due to the complex nature of this project, its interface with many City agencies and private utilities, the need to add back the necessary scope items as funding became available, a number of changes have been necessary to complete the work. A listing of the previously approved Contract Modification Nos. 1 through 18 is presented in Enclosure No. 3. Executed Contract Modifications to date have increased the Contract amount by \$10,773,492.87 and extended the Contract term by 87 calendar days.

Specifically, the \$10.8 million of change order work in Contract Modification Nos. 1 through 18 were the result of:

- a) adding back previously deleted scope of work; this amounted to about \$5.6 million which included such items as in-ground car hoist systems, powered turntables, bridge cranes, build out of the interior finishes for the maintenance building, providing for track spare parts, procuring/installing trash compactor, operable partitions, etc;
- b) providing other enhancements to improve operations/maintenance functions and safety; this amounted to about \$700,000, which included items such as changing to Vital Processor Interlocking signal system for the tracks crossing the two street intersections, adding remote leak detection monitoring system for the emergency generator, and adding a Meet and Greet booth in the yard;

- c) unforeseen or differing site conditions; this amounted to about \$1 million, which included additional off-haul of hazardous soil material, additional underground water and sewer line work, additional foundation work and pile work;
- d) design changes to avoid conflicts or to upgrade required by changes in building codes; this amounted to a net of \$1.7 million (after an offset by value engineering savings of \$960,000), which includes adding 102 fire smoke and duct smoke dampers; grading changes at Cesar Chavez Street, additional fire proofing, changes in various structural steel and electrical work, changes in concrete pit work; relocation of a column, changes in coating of perimeter metal fences, changes in track flangeway drain work;
- e) work related to Third Street Rail Project; this amounted to about \$1.3 million which included work that was left over from line segment work, primarily involving construction or reconstruction of overhead catenary work at the two half-grand union intersections leading into the Metro East facility.
- f) other miscellaneous work of about \$300,000.

Contract Modification Nos. 1 through 18 has increased the Contract amount by \$10,773,492.87 for a revised contract value of \$130,773,492.87.

Contract Modification No. 19 compensates the contractor for costs arising from or related to additional changes to civil work; additional changes to electrical work; additional changes to mechanical work; additional changes to overhead and trackwork; delays or other impacts to the work; ineffectiveness; and loss of productivity (collectively "Delay Impact Cost") that may have been caused by the City or third parties for which the City may be liable.

ALTERNATIVES CONSIDERED

Not negotiating a contract modification for additional work performed by the Contractor could have resulted in filing of a formal claim by the Contractor and potential costly and disruptive litigation.

FUNDING IMPACT

Funding for this contract modification is proposed as follows and is subject to approval by the State and FTA as indicated:

\$5.2 million State Prop 1B I-Bond funds from Metro East 12KV Feeder Upgrade Project (subject to State approval)
\$0.6 million Funds remaining in Metro East project
\$0.4 million Funds remaining in Third Street project
\$2.7 million Federal funds from Flynn Division Ventilation Project (subject to FTA approval)
\$1.0 million Federal funds from Escalator Rehabilitation Project
\$9.9 million Total Funds

APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required for execution of this Contract Modification.

The City Attorney's Office has reviewed this calendar item. The Contract Compliance Office has determined that Stacy and Witbeck, Inc. has met the DBE participation goals established for this contract and has reviewed this calendar item.

RECOMMENDATION

Staff recommends authorizing the acceptance of Contract No. MR-1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project; approving the Contract Modification No. 19 increasing the Contract amount by \$9,838,541.33, from \$130,773,492.87 to \$140,612,034.20 and establishing the substantial completion date of February 20, 2009.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On July 19, 2005, the San Francisco Municipal Transportation Agency Board of Directors adopted Resolution No. 05-121, authorizing the award of Municipal Railway Contract No. MR-1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project, to Stacy and Witbeck, Inc. ("Contractor") for a contract amount of \$120,000,000; and,

WHEREAS, The SFMTA issued a written Notice to Proceed (NTP) for the work on August 22, 2005; and,

WHEREAS, Contract Modifications Nos. 1 through 18 increased the Contract amount by \$10,773,492.87 and extended the Contract by 87 calendar days; and,

WHEREAS, Contract Modification No. 19 adjusts quantities for unit price bid items to agree with actual quantities and provides an equitable compensation to the Contractor for additional work, inefficiencies, and loss of productivity for an additional cost of \$9,838,541.33; and,

WHEREAS, Contract Modification No. 19 establishes February 20, 2009 as the substantial completion date for the Contract; and,

WHEREAS, SFMTA Contract No. 1182R1 has assisted the 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 get customers where they want to go, when they want to be there; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors hereby: approves execution of Contract Modification No. 19, to Contract No. MR-1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project, with Stacy and Witbeck, Inc. which increases the Contract amount by \$9,838,541.33 for a Contract amount of \$140,612,034.20 and establishes February 20, 2009 as the project substantial completion date.

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
MUNI METRO EAST LIGHT RAIL VEHICLE MAINTENANCE AND OPERATIONS
FACILITY PROJECT
Budget and Financial Plan

Cost Center	(\$ Thousands)
Grantee Support Services	
Phase 1	\$17,435
Phase 2	\$28,302
Phase 3	\$72,878
Total Grantee Support	\$118,615
Consultant Services	
Phase 1	\$7,056
Phase 2	\$11,727
Phase 3	\$26,511
Total Consultant Services	\$45,294
Construction Contract Line Segments	\$266,811
Contract No. 1232, Metro East Wheel Truing Machine, Blowdown Equip, Rail Car Mover and Miscellaneous Equipment	\$4,533
Contract MR-1182R1	\$140,612
Other Construction Contracts for MME (incl. Soils Contract, CM/GC)	\$9,669
Total Construction	\$421,625
Right of Way Acquisition	\$27,028
Subtotal	\$612,562
15 Light Rail Vehicles	\$42,682
Total Initial Operating Segment Expense	\$655,244

Funding	(\$ Thousands)
Other Agency	\$18,753
Federal	\$129,536
State	\$183,270
Local	\$323,685
Total Initial Operating Segment Funding	\$655,244

Source: Third Street Light Rail Program Budget Funding Plan

ENCLOSURE 3
Previously Approved Contract Modification
Contract No. MR-1182R1, Muni Metro East Light Rail Vehicle Maintenance and Operations Facility Project

Item	Description	Change	Sum	Change	Sum	Approved
N/A	Original Contract Amount:		\$120,000,000.00		880 days	
CM 01	Delete Community Jobs, insert City Build Program	\$0		—		ED/CEO
CM 02	Modify sewer work at various locations	\$185,000.00	\$120,185,000.00	—		ED/CEO
CM 03	Revise Applicable Building Code	\$0		—		ED/CEO
CM 04	Substitution of subcontractor: Hernandez for Hidalgo	\$0		—		SFMTAB
CM 05	Perform additional earthwork and dispose of Class II	\$150,000.00	\$120,335,000.00	—		ED/CEO
CM 06	Substitution of subcontractor: BFP for Value Fire	\$0		—		ED/CEO
CM 07	Restore deleted scope of 2 nd floor interior build out	\$1,300,000.00	\$121,635,000.00	—		SFMTAB
CM 08	Substitution of subcontractor: Adams Security for Bay Area Security	\$0		—		SFMTAB
CM 09	PG&E changes, pendant light fixture mounting changes, etc.	\$216,478.00	\$121,851,478.00	—		ED/CEO
CM 10	Track spare parts & Credit for deleting track related items	(\$80,136.00)	\$121,771,342.00	—		ED/CEO
CM 11	Mechanical related changes	\$71,945.00	\$121,843,287.00	—		ED/CEO
CM 12	Electrical changes	\$137,000.00	\$121,980,287.00	—		ED/CEO
CM 13	Structural steel changes, signal changes & various VEs	(\$64,697.00)	\$121,915,590.00	—		ED/CEO
CM 14	Add back car hoists, truck repair hoists, turntables, 25-ton cranes	\$4,111,656.00	\$126,027,246.00	—		ED/CEO
CM 15	Various VEs, civil, architectural, electrical improvements	\$1,070,416.00	\$127,097,662.00	41 days	921 days	ED/CEO
CM 16	Construct OCS over 3rd/25th and 3rd/Cesar Chavez Street intersections	\$1,258,109.00	\$128,355,771.00	—		ED/CEO
CM 17	Add & test 102 fire smoke dampers and duct smoke detectors	\$1,300,000.00	\$129,655,771.00	46 days	967 days	ED/CEO
CM 18	Add miscellaneous mechanical and electrical work for utility requirements	\$1,117,721.87	\$130,773,492.87			ED/CEO
Total		\$10,773,492.87	\$130,773,492.87	87 days	967 days	



CONTRACT MODIFICATION NO. 19 (FINAL)
Contract No. MR-1182R1
Page: 1 of 3

CONTRACT MODIFICATION NO. 19

San Francisco Municipal Railway Contract No. MR-1182R1

MUNI METRO EAST LIGHT RAIL VEHICLE MAINTENANCE AND OPERATIONS FACILITY

Page: 1 of 3

Contractor: Stacy & Witbeck, Inc.
1320 Harbor Bay parkway, Suite 240
ALAMEDA, CA 94502

The Contract is hereby modified as follows:

1. Adjust estimated final quantities to agree with the actual quantities as noted on the attached Final Quantity Summary.

Lump Sum	(\$361,458.67)
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 2. Compensate the Contractor for costs arising from or related to additional changes to civil work; additional changes to electrical work; additional changes to mechanical work; additional changes to overhead and trackwork; delays or other impacts to the Work; ineffectiveness; and loss of productivity (collectively "Delay Impact Costs") that may have been caused by the City or third parties for which the City may be liable.

Lump Sum	\$10,200,000.00
----------	-----------------

 3. Add the following new Contract Pay Items:

CM 19 – 01, Final Pay Quantity	Lump Sum	(\$361,458.67)
CM 19 – 02, Additional Change Order Work and Impact Costs	Lump Sum	\$10,200,000.00
- | | | |
|---|----------|------------------|
| Total Amount of this Contract Modification: | Increase | \$9,838,541.33 |
| Previous Total of Contract: | | \$130,773,492.87 |
| New Revised Total of Contract: | | \$140,612,034.20 |

New Revised Substantial Completion Date:	2/20/09
--	---------



CONTRACT MODIFICATION NO. 19 (FINAL)

Contract No. MR-1182R1

Page: 2 of 3

4. This Modification is made in accordance with Article 75 of the Contract General Provisions.
5. Except as specifically provided in Paragraph 7, below, all terms and conditions of the Contract remain unchanged. This Contract Modification No. 19 shall not affect any terms and conditions of the Contract other than those specifically addressed herein.
6. As a prerequisite to the City's payment of the amounts stated in this Contract Modification No. 19, Contractor shall obtain releases from all parties having filed unreleased Stop Notices against the contract funds for Contract No. MR-1182R1. In the alternative, Contractor may present to the SFMTA a bond or bonds guaranteeing payment of every such unreleased stop notice, said bond being subject to the City's approval as to form and adequacy of coverage.
7. a. The City's payment of nine million eight hundred thirty-eight thousand five hundred forty one dollars and 33 cents (\$9,838,541.33) under this Contract Modification No. 19 constitutes a full, complete, and compromise settlement of any and all of Contractor's claims related to any and all work performed under this contract. Contract hereby releases the City, its officers, directors, employees, agents, successors and assigns, and all other persons and associations, known or unknown, and each of them from all claims and causes of action by reason of any fact or circumstance that relates to the Work.

- b. Contractor certifies that it has read and understands the terms of Section 1542 of the Civil Code of the State of California, which section reads as follows:

A general release does not extend to the claims which the creditor does not know or suspect to exist in his favor at the time of executing the Release, which if known by him must have materially affected his settlement with the debtor.

Contractor specifically waives all rights and benefits it has or may have under Section 1542 with respect to the Work.

- c. This Contract Modification 19 contains the entire agreement between the parties. The terms of this Contract Modification No. 19 are independent of any representations made by any other party or anyone acting on their behalf. The parties have memorialized their negotiations regarding this Contract Modification No. 19 to a Record of Negotiations. The parties agree that the Record of Negotiations is incorporated by reference into this Contract Modification No. 19. The parties agree that the Record of Negotiations may be used to interpret this Contract Modification 19, and that the provisions of Evidence Code Sections 1152 and 1154 shall not apply to the Record of Negotiations.
- d. The parties to this Contract Modification 19 acknowledge that they have fully read the contents of this Contract Modification 19 and that they have been advised by counsel of their choice, and that they have full, complete and total comprehension of the provisions contained in this document and are in full agreement with each and every one of the terms, conditions and provisions. As such, the parties agree to waive any and all rights to apply, in the interpretation of any and all terms, provisions or conditions of this Contract Modification 19, the rule of construction that ambiguities are to be resolved against the drafter of the agreement. For the purposes of this



CONTRACT MODIFICATION NO. 19 (FINAL)
Contract No. MR-1182R1
Page: 3 of 3

instrument, the parties to this Contract Modification No. 19 agree that ambiguities, if any, are to be resolved in the same manner as would have been the case if this instrument had been jointly conceived and drafted.

In Witness Whereof, the parties have executed this Modification in quadruplicate in San Francisco, California as of this _____ day of _____, 2009.

STACY & WITBECK, Inc.

By: _____
Signature *Date*
Ronald P. Wells, President
Stacy & Witbeck, Inc.

CITY AND COUNTY OF SAN FRANCISCO

By: _____
Signature *Date*
Nathaniel P. Ford Sr.
Executive Director / CEO SFMTA

Authorized By:

San Francisco Municipal Transportation Agency

Resolution No. _____

Adopted: _____

Attest:

By: _____
Roberta Boomer *Date*
Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

APPROVED AS TO FORM:

Dennis J. Herrera, City Attorney

By: _____
Signature *Date*
Robert K. Stone, Deputy City Attorney

THIS PRINT COVERS CALENDAR ITEM NO. : 10.10

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorize the Executive Director/CEO to extend the *SFpark* Agreement with Serco Management Services, Inc. ("SFpark Agreement") from July 1, 2008 to June 30, 2012, pending Board of Supervisors approval.

SUMMARY:

- On April 15, 2008, the SFMTA Board of Directors approved the *SFpark* agreement with Serco Management Services, Inc. for \$23 million. The contract term was for 2 years, and is due to expire on June 30, 2010.
- Because San Francisco Charter Section 9.118 requires Board of Supervisor's approval for contracts in excess of \$10 million, the Board of Supervisors (BOS) also approved the *SFpark* agreement. on June 24, 2008.
- The SFMTA did not receive the Program Supplemental Agreement needed to spend the US Department of Transportation (USDOT) Urban Partnership Program grant funding for the *SFpark* pilot projects until June 6, 2009.
- Given the funding delays, the SFMTA does not expect *SFpark* pilot projects to begin operation in most pilot areas until March 15, 2010.
- In order to operate the pilot projects for the full two-year period, the SFMTA seeks authorization to extend the *SFpark* Agreement until June 30, 2012.
- Since an amendment to San Francisco Administrative Code Section 21.5(e) is required to extend the *SFpark* pilot project term beyond the mandated two-year maximum, Board of Supervisors approval is also required.
- There are no funding or scope of work modifications to the agreement.

ENCLOSURES:

1. SFMTAB Resolution
- 2.. First Amendment to the *SFpark* Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Lorraine Fuqua

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2

PURPOSE

The purpose of the calendar item is to authorize the Executive Director/CEO to extend the *SFpark* Agreement with Serco Management Services, Inc. ("*SFpark* Agreement") from July 1, 2008 to June 30, 2012, pending Board of Supervisors approval.

GOALS

The completion of the *SFpark* pilot program would assist the SFMTA in meeting the following Strategic Goals:

- | | |
|-----------------------|---|
| Goal 2: | Customer Focus: To get customers where they want to go when they want to get there. |
| Objective 2.4 | Reduce congestion through major corridors |
| Objective 2.5 | Manage parking supply to align with SFMTA and community goals |
| Goal 4: | Financial Capacity: To ensure financial stability and effective resource utilization |
| Objective 4.1 | Increase revenue by 20% or more by 2012 by improving collections and identifying new sources |
| Objective 4.2 | Ensure efficient and affective resources |
| Goal 6: | Information Technology: To improve service and efficiency, the SFMTA must leverage technology |
| Objective 6.1: | Information and Technology Leadership: Identify, develop and deliver the new and enhances systems and technologies to support SFMTA's 2012 goals. |

DESCRIPTION

Background:

On April 15, 2008 the SFMTA Board approved the *SFpark* Agreement with Serco Management Services, Inc. (Resolution 08-067) for a two-year term and an amount not to exceed \$23 million.. Because San Francisco Charter Section 9.118 requires board of Supervisors approval for contracts in excess of \$10 million, the Board of Supervisors (BOS) also approved the *SFpark* Agreement on June 24, 2008 (Resolution 289-08).

The purpose of the agreement was to significantly improve the City's approach to parking management by implementing a series of parking pilot projects over a two-year period. The *SFpark* pilot projects would allow the SFMTA to test various meter, payment and sensor technologies along with implementation of real-time parking information as well as demand-responsive pricing. The results of these pilot projects will assist the SFMTA in writing a request for proposal for a long-term purchase of optimal parking meter technology and services to manage off-street and on-street parking supply more intelligently.

Availability of Funds and Modified Pilot Project Timeline:

In late 2007, the SFMTA anticipated receiving the US Department of Transportation Urban Partnership Program grant funding for the *SFpark* pilot projects by spring 2008. Staff based the pilot project's timeline on this anticipated grant award time period. However, the SFMTA did not receive the Program Supplemental Agreement from Caltrans, which allows the SFMTA to spend against these grant funds, until June 6, 2009.

Given the delays in funding, the SFMTA does not expect *SFpark* pilot projects to begin operation until March 15, 2010. In order to operate the pilot projects for the full two-year period, the SFMTA requests that the *SFpark* Agreement be extended until June 30, 2012. There are no funding or scope of work modifications to the agreement.

The amended schedule for the pilot projects is listed below:

- **June 6, 2009:** SFMTA receives Program Supplemental Agreement from Caltrans, allowing it to fully utilize project funding to deliver *SFpark* pilot projects
- **July – December 2009:** Preparation for pilot rollout, including finalization of planning, evaluation, and procurements for implementation
- **January 2009 – March 15, 2010:**
 - The SFMTA to install new parking meters in *SFpark* pilot areas and formally launch *SFpark*;
 - *SFpark* pilot project operation begins
- **April 2010:** Real-time information about parking availability via web, PDA, text message, and 511
- **Spring 2011:** Real-time information about garage parking availability via variable message signs
- **April 1, 2012:** Formal end to the *SFpark* pilot projects
- **April – June 2012:** Project wrap-up and evaluation

ALTERNATIVES CONSIDERED

The SFMTA could not let the *SFpark* Agreement expire in July 2010, because the pilot projects would not have been completed by that time. The agency could not go out to bid to other contractors because Serco's agreement is a sole source agreement. Therefore, staff concluded that extending the *SFpark* Agreement was the best course of action for the agency.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The San Francisco Administrative Code Section 21.5(e), "Acquisition of Commodities and Services – Other Purchases", limits the term of pilot projects to a maximum of two years. In order for the *SFpark* pilots to go beyond that term (which expires June 30, 2010), the code section must be amended by the Board of Supervisors to allow for this exception. Therefore, the BOS must amend the Code to include the following language:

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“The Municipal Transportation Agency is authorized to implement new and continue existing on-street parking meter and parking control pilot projects under the *SFpark* Program for a total term not to exceed 49 months. This subsection (1) shall expire on July 1, 2012. The City Attorney shall take such steps as are necessary to have this subsection (1) removed from this Code at that time.”

The City Attorney’s Office has reviewed the calendar item.

RECOMMENDATION

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Executive Director/CEO to extend the *SFpark* Agreement with Serco Management Services, Inc. and that the MTA Board of Directors also requests the San Francisco Board of Supervisors approve the accompanying Ordinance authorizing the Municipal Transportation Agency to extend the term of pilot projects under the *SFpark* Program for twenty-five months beyond the statutory 24-month term, for a total term not to exceed forty-nine months from the original date of the Agreement.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, On April 15, 2008, the SFMTA Board of Directors approved the *SFpark* Agreement with Serco Management Services, Inc. for a two-year term and an amount not to exceed \$23 million; and,

WHEREAS, Because San Francisco Charter Section 9.118 requires board of Supervisors approval for contracts in excess of \$10 million, the Board of Supervisors (BOS) also approved the *SFpark* Agreement on June 24, 2008; and,

WHEREAS The *SFpark* pilot projects performed under the *SFpark* Agreement would allow the SFMTA to test various meter, payment and sensor technologies along with implementation of real-time parking information and demand-responsive pricing under a two-year pilot project; and,

WHEREAS, The results of these projects will assist the SFMTA in writing a request for proposal for a long-term purchase of parking meter technology and services to manage the off-street and on-street parking supply more intelligently; and,

WHEREAS, The SFMTA did not receive the Program Supplemental Agreement from Caltrans, which allows the SFMTA to spend US Department of Transportation Urban Partnership Program's grant funds, until June 6, 2009; and,

WHEREAS, The funding delay also delayed the implementation of said pilot projects; and,

WHEREAS, San Francisco Administrative Code Section 21.5(e) must be amended to extend the *SFpark* Agreement beyond the mandated two-year maximum for pilot projects, which requires Board of Supervisors approval; and,

WHEREAS, There are no modifications to the funding amount or the scope of work of the agreement; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to extend the *SFpark* Agreement from July 1, 2008 to June 30, 2012, pending Board of Supervisors approval.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco

First Amendment

THIS AMENDMENT (this "Amendment") is made as of _____, 2009, in San Francisco, California, by and between **Serco, Inc.**, ("Contractor"), and the **San Francisco Municipal Transportation Agency ("SFMTA")**, acting by and through its Executive Director/CEO

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, SFMTA and Contractor desire to modify the Agreement on the terms and conditions set forth herein to test and evaluate as pilot projects new parking meter technologies, parking payment systems and other traffic regulations and control devices ("the Project"); and

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number **4154-0708** on **May 19, 2008**;

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

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

a. Agreement. The term "Agreement" shall mean the Agreement dated for convenience June 1, 2008 between Contractor and City, as amended by the:

First amendment, dated _____ 2009:

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

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

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

Subject to Section 1, the term of this Agreement shall be twenty-four month from the effective date of the Agreement, as stated in the Notice to Proceed first issued by the City to the Contractor under this Agreement. In no case shall the term of this Agreement extend beyond June 3, 2010.

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

Subject to Section 1, the term of this Agreement shall be **forty-nine months** from the effective date of the Agreement, as stated in the Notice to Proceed first issued by the City to the Contractor under this Agreement. In no case shall the term of this Agreement extend beyond **June 30, 2012**.

*

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after **the date of this amendment**.

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

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

CITY

CONTRACTOR

Approved:

Serco, Inc.

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

Dirk Smith
Vice President, Contracts
1818 Library Street
Reston, VA 20190

City vendor number: **7390801**

Municipal Transportation Agency
Board of Directors
Resolution No. 08-067

Adopted: _____

Attest:

Secretary, MTA Board

Approved as to Form:

Dennis J. Herrera
City Attorney

By:

Robert K Stone
Deputy City Attorney

THIS PRINT COVERS CALENDAR ITEM NO. 10.12

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Off-Street Parking

BRIEF DESCRIPTION:

Approving a Request for Qualifications (RFQ) for the design-build procurement and installation of a Parking Access and Revenue Control System (PARCS) for 20 parking facilities managed by the SFMTA, and authorizing the SFMTA Executive Director/CEO to advertise the RFQ, evaluate Proposals for responsiveness, issue a Request for Proposals (RFP) and evaluate bids, and negotiate a contract with the responsive and responsible Proposer that submits the lowest bid.

SUMMARY:

- The PARCS currently installed at 20 SFMTA managed parking facilities are outdated and require replacement. A 2007 report recommended that the SFMTA procure a new centralized system that will provide advanced auditing and reporting to give better oversight of parking transactions and operations.
- Staff has developed an RFQ to solicit qualifications from parking industry vendors interested in installing a new PARCS at SFMTA and Parking Authority parking facilities. The highest ranking firms will be invited to submit a cost proposal through a Request for Proposal (RFP) process.
- Staff has conducted extensive outreach that included discussions with key stakeholders and input from various SFMTA Divisions, the Office of the Treasurer and Tax Collector, the City Attorney's Office and the Controller's Office. Input from PARCS vendors and current parking facility operators has been incorporated into this RFQ.
- An outside consultant was hired to perform a peer-review of the RFQ to ensure that the PARCS specifications in the RFQ comply with industry "Best Practices."

ENCLOSURES:

1. SFMTAB Resolution
2. Request for Qualifications

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO:

_____ Amit Kothari _____

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

The purpose of this report is to seek the SFMTA Board of Directors approval of the design-build RFQ/RFP selection process for a new Parking Access and Revenue Control System (PARCS) at parking facilities managed by the SFMTA.

GOAL

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

- Goal 2: System Performance – To get customers where they want to go, when they want to be there
Objective 2.5: Manage parking supply to align with SFMTA and community goals
- Goal 3: External Affairs/Community Relations – To improve the customer experience, community value, and enhance the image of the SFMTA, as well as ensure SFMTA is the leader in the industry
Objective 3.1: Improve economic vitality by growing relationships with businesses, community, and stakeholder groups
- Goal 4: Financial Capacity – To ensure financial stability and effective resource utilization
Objective 4.1: Increase revenue by 20% or more by 2012 by improving collections and identifying new sources
Objective 4.2: Ensure efficient and effective use of resources

DESCRIPTION

Background

The SFMTA's Off-Street Parking Division manages 40 parking facilities, which generate over \$80 million annually in gross revenue. The mission of the Off-Street Parking Division is to provide clean, safe and convenient parking to visitors, employees and businesses in the downtown core, as well as to the commercial and residential districts. Through effective management of over 15,000 spaces in these facilities, it supports economic vitality in the City's downtown and neighborhood commercial districts. Various parking policies and programs administered by the Off-Street Parking Division supports the City's *Transit First* policy, help reduce traffic congestion on City streets and promote alternate modes of transportation. The staff monitors current and anticipated parking demands and evaluates the need for expansion and development of new parking facilities.

It is important that parking facilities are managed and operated in a manner that reflects the City's commitment to customer service, careful stewardship of the public's capital investments, adequate safeguards on the City's revenues, and professional management of the City's services.

Currently, three different PARCS, manufactured by DataPark, GMG and Secom, are installed at 20 parking facilities. The existing systems were installed at different times over the last 15 years.

The current systems have the following limitations:

- None of the parking facilities are networked and they cannot be accessed remotely. Staff does not have access to real-time data or adequate oversight of the systems.
- Since most of the facilities have different hardware and software, staff does not receive coherent/standard reports, requiring additional resources and time to reconcile revenue.
- Many critical reports needed to reconcile the revenue are simply not available.
- In some facilities, the PARCS hardware is so outdated (the oldest system was installed in 1994 at the 1660 Mission Street Garage) that the replacement parts are very difficult to find, causing longer downtime for out-of-service equipment and inconveniencing customers.

A new PARCS will address the above issues and offer many of the following advantages that will enhance the SFMTA's parking operations with much improved customer satisfaction:

- The new PARCS will be a centrally networked system that can be monitored remotely by anyone with the appropriate authority.
- The new PARCS will provide robust reporting functions that will provide standardized reports/data needed by parking operators, SFMTA's Finance & Information Technology Division, the Business Tax Division (for Article-22 related reports), and will allow SFMTA staff to reconcile the parking revenue reports and provide better oversight of parking facility operations.
- The RFQ requires the proposer to guarantee that any replacement part will be delivered onsite within 24 hours. The SFMTA will also maintain an inventory of recommended spare parts to be used in case of emergencies, significantly eliminating equipment downtime.
- The new PARCS will provide project-critical, real-time data to support SFpark initiatives, including demand-based pricing at parking garages.
- The new PARCS will also provide project-critical, real-time space-availability data to SFgo's Parking Guidance System (PGS) project. This data will be displayed on Variable Messaging Signs (VMS).
- The new PARCS will have the capability to support current and future SFMTA projects, including:
 - TransLink[®]
 - FasTrak[®]
 - SFMTA Parking Meter Debit Cards
 - Ticketless Parking (credit card to enter and exit the garage) and License Plate Recognition

The replacement of the existing systems with a new, centralized PARCS would combine acquisition of advanced software and hardware and related professional services with construction and installation activities of a public works project or activity. Administrative Code Section 6.61 authorizes contracting City departments, including the SFMTA, to contract for technology procurement and installation through a design-build, competitive selection process that utilizes an RFQ to identify qualified and responsible vendors. This is followed by an RFP to solicit cost proposals and select a vendor based on the lowest bid submitted by responsible and responsive Proposers. It is in the best interests of the public and the SFMTA to procure, install and maintain, through a design-build contract, a new PARCS that is centrally controlled, has enhanced reporting capabilities and provides real-time operations monitoring and rate setting capabilities that are not available with the current systems.

The project requires minor construction work, such as installing sensor loops, conduits and cabling, electrical wiring, concrete forming, and mechanical equipment installation. The Contract Compliance Office has established a five percent Local Business Enterprise (LBE) participation goal, applicable to the RFP process.

Scope of Work and Term

The vendor will install and configure the PARCS at 20 parking facilities managed by the SFMTA. For the ease of project management and budgetary reasons, equipment installation will be performed in several phases. Each phase of the project will consist of three to five parking facilities. Before the SFMTA will accept the system, all equipment must undergo a Factory Acceptance Test (FAT), a Site Acceptance Test (SAT) and an Operations Demonstration Test (ODT). The vendor will perform a FAT to verify the functionality of the equipment and make any needed adjustments before shipping the equipment to the parking facility. After completing the installation, the vendor will conduct an SAT to verify that the equipment performs according to the specifications set out in the RFQ. After completing the SAT for all facilities, the vendor will perform an ODT to demonstrate to the SFMTA that all parking facilities function independently within a centralized network. All

PAGE 4.

phases will go through the same system acceptance process. The RFP will provide details of each facility and their respective phase of implementation.

The procurement and installation of a new PARCS is estimated to be completed within four years of awarding the contract. The selected vendor will also provide Operator Training, System Monitoring and Reporting, and Total System Programming training to SFMTA staff and parking operators' staff.

Compensation

The PARCS project will be awarded as a Fixed-Price contract. Payments will be made on a milestone completion basis. Appropriate retentions and liquidated damages will be specified in the RFP that will assure the new system is installed and maintained as specified by the SFMTA.

Qualifications and Experience

It is critical that the SFMTA award the PARCS contract to the most qualified vendor that not only delivers the equipment that meets or exceeds SFMTA's needs, but also has the means and resources to provide maintenance and technical support. The RFQ clearly identifies the minimum qualifications and experience requirements that assure the following:

- A proposer must have five years of continuous, first-hand experience in installation of PARCS with at least three projects implemented in the United States that are similar in size and scope and share the same operational characteristics as the SFMTA managed facilities.
- A proposer must have the financial means and resources to complete this project in a timely manner without any negative impact on facility operations, maintenance or customer satisfaction.
- A proposer must demonstrate its capabilities and identify necessary resources to provide technical support to the SFMTA before, during and after system installation.

Proposal Submittals and Evaluation

Request for Qualifications (RFQ)

Upon approval by the SFMTA Board of Directors, the Agency will release the RFQ. Prospective PARCS vendors must satisfy the minimum qualification requirements set out in the RFQ. Each submittal must clearly describe the firm's qualifications and experience in the last five years providing, configuring and installing PARCS projects for parking operations similar in scope and size as the SFMTA public parking facilities. The vendor must confirm that the proposed PARCS complies with the Americans with Disabilities Act (ADA), Payment Card Industry Data Security Standard (PCI/DSS), and San Francisco parking tax and PARCS requirements (set out in Article 22 of the San Francisco Business and Tax Regulations Code), and provide required financial statements.

All responsive proposals will be evaluated by a diverse panel comprised of representatives of the SFMTA and other City departments, and may include external members with significant PARCS experience.

The proposals will be evaluated and scored on the following criteria:

Criteria	Maximum Points
1. Written Proposal	120
a. Qualifications & Experience of the firm and key personnel	60
b. Project Approach	40
c. Exceptions and justification	20
2. Oral Interview/Presentation & References	80
a. Oral Interviews & Presentation	40
b. Reference Check	40
Total Maximum (Step 1 & 2)	200

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Request for Proposals (RFP)

The completion of steps one and two will identify the three highest ranking proposals. These three firms will be provided with an RFP that further specifies and refines system requirements for each parking facility and central communication infrastructure requirements. These “short-listed” firms will be asked to submit price bids for the procurement and installation of a complete design-build contract that will include system hardware and software, installation, training and warranty. The SFMTA will invite the short-listed proposer, submitting the lowest cost proposal, to negotiate a contract. If an agreement cannot be reached, the SFMTA will invite the next lowest short-listed proposer to negotiate a contract.

Schedule

The anticipated schedule for the design-build procurement process is shown in the following table:

Milestone/Task	Date
Review and Approval of RFQ by SFMTA Board	September 15, 2009
RFQ advertised	September 18, 2009
Pre-proposal Conference	October 6, 2009
Qualifications/Proposals due	December 1, 2009
Selection Committee Review, Interviews, Ranking	January - February 2010
Civil Service Commission Approval	March 2010
RFP to solicit bids from the highest ranked firms	March 2010
Review of bids and contract negotiation	April 2010
SFMTA Board Approval of a design-build contract	May 2010
Commencement of Contract (NTP)	June 2010

The City Attorney’s Office has reviewed this item.

Public Outreach

To allow an opportunity for the business community to review and provide input in the RFQ/RFP process, a preliminary draft RFQ was sent to more than 25 parking equipment vendors, followed by an outreach meeting that was attended by more than 20 PARCS vendors. Additionally, the draft RFQ was shared with all current parking operators and non-profit corporation managers for their feedback. The attached RFQ incorporates input received from these extensive outreach efforts, as well as input received from the Controller’s Office and the Office of the Treasurer and Tax Collector.

ALTERNATIVES CONSIDERED

Staff considered the benefits and drawbacks of several alternatives to hiring a parking equipment vendor through a competitive RFQ/RFP process. The alternatives ranged from not updating the current parking equipment to updating equipment only at the facilities where the equipment is most obsolete. The recommended alternative of centralizing and standardizing the parking equipment provides the most effective parking facility management approach, which will result in improved efficiency, better oversight by the SFMTA, and reduced management expenses.

A June 2007 report titled “Assessment of Parking Authority Business Practices” prepared at the direction of the Parking Authority Commission by Chance Management Advisors provided an in-depth analysis of the Parking Authority’s administration of the SFMTA’s parking assets and recommended extensive changes to its current practices. The report recommended updating and centralizing the PARCS to achieve better control of the parking operation and greater oversight by the Parking Authority. This RFQ is consistent with the Chance Management recommendations.

The City Attorney’s Office has reviewed this item.

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FUNDING IMPACT

The procurement and installation of a new PARCS will cost approximately \$10 - \$12 million. The FY2009-10 Operating Budget includes \$400,000 required for initiation of Phase-I during the fiscal year. Additional funds will be allocated through the biennial budget process in future years.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

An approval of the Professional Services Contract by the Civil Service Commission is anticipated in March 2010. No other approvals are required at this time. Upon completion of the RFQ/RFP process, staff will present a contract with the responsible and responsive proposer that submitted the lowest bid proposal to the SFMTA Board for its consideration and award of contract.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors authorize the Executive Director/CEO, or his designee, to advertise the RFQ for the procurement and installation of a new, state-of-the-art PARCS at 20 parking facilities managed by the SFMTA.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEAREAS, The mission of the Off-Street Parking Division is to provide clean, safe and convenient parking to visitors, employees and businesses in San Francisco's downtown core and in the City's other commercial and residential districts where the City operates public parking facilities; and

WHEREAS, Through effective management of over 15,000 spaces at 40 parking facilities throughout the City, the Off-Street Parking Division supports economic vitality in the City's downtown and neighborhood commercial districts and various parking policies and programs administered by the staff, supports the City's *Transit First* policy, helps reduce traffic congestion on City streets and promotes alternate modes of transportation; and

WHEREAS, The majority of the parking facilities are equipped with outdated Parking Access and Revenue Control Systems (PARCS) from three different manufacturers that are not currently linked to a central control facility, have limited reporting capabilities, are unreliable and difficult to maintain and repair; and

WHEREAS, The safeguarding and accounting of gross annual parking revenues of over \$80 million is vital to the operations of the SFMTA; and

WHEREAS, In 2007, a comprehensive evaluation and a report prepared for the Parking Authority Commission by Chance Management Advisors, recommended procurement and installation of new parking equipment at all parking facilities; and

WHEREAS, The replacement of the existing revenue control equipment in the facilities with a new, centralized PARCS will provide the SFMTA greater ability to monitor and control the parking facility operations, will provide remote access to parking and revenue data in real-time, and will allow for rate changes based on real-time occupancies; and

WHEREAS, Replacement of the existing revenue control equipment in the facilities with a new, centralized PARCS would combine acquisition of advanced software and hardware and related professional services with construction and installation activities that constitute public works; and

WHEREAS, Administrative Code Section 6.61 authorizes contracting City departments, including the SFMTA, to contract for technology procurement and installation through a design-build competitive selection process that utilizes a Request for Qualifications (RFQ) to identify qualified and responsible vendors and, further, authorizes the SFMTA to solicit cost proposals through a Request for Proposals (RFP) issued to vendors short-listed through the RFQ, and to then select the responsive and responsive short-listed vendor that submits the lowest price; and

WHEREAS, The SFMTA's Executive Director/CEO has determined that the use of a design-build procurement for the acquisition, installation and maintenance of a new PARCS is necessary and appropriate to meet legal requirements for public works contracting, to maintain system warranty coverage, and to achieve cost savings and time efficiencies, and is therefore in the best interests of the public; now therefore be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to issue a Request for Qualifications to solicit qualifications from Parking Access and Revenue Control System vendors to furnish and install a new, centrally controlled PARC System at the Off-Street Parking facilities (garages and lots) under the jurisdiction of or otherwise operated by the SFMTA; and be it

FURTHER RESOLVED, That the SFMTA's Executive Director/CEO is authorized to: (1) evaluate and rank vendors' proposals based on quality of proposal, system functionality, vendor qualifications, and other criteria identified in the RFQ; (2) issue, in accordance with Administrative Code Section 6.61, a Request for Proposals soliciting cost proposals from the three highest ranking proposers that the SFMTA determines are responsible and are responsive to the aforesaid Request for Qualifications; and, (3) negotiate a design-build contract for the provision, installation and maintenance of a Parking Access and Revenue Control System that meets the requirements of the SFMTA for the aforesaid Off-Street Parking facilities.

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

Request for Qualifications for Parking Access and Revenue Control System (PARCS)

RFQ No. SFMTA 2009/10-03



Date issued: **[Insert date]**

Pre-Proposal Conference: October 6, 2009, Tuesday, 2:00 p.m. (PDT)

Qualifications Questionnaire Due: October 20, 2009, Tuesday, 4:00 p.m. (PDT)

Proposal due: December 1, 2009, Tuesday, 4:00 p.m. (PST)

Request for Qualifications for Parking Access and Revenue Control System (PARCS)

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PARKING TAX REGULATION

ARTICLE 22: PARKING STATIONS; REVENUE CONTROL EQUIPMENT	P-1
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List of Terms

Term or Acronym	Definition
ABC Loop Logic	Three Vehicle detection loops are installed in all Entrance Lanes. A loop will be activated if it senses the vehicle presence. Entering Vehicles must activate the Loops in a prescribed manner; loop “A” first and the Loop “B.” Once loop “A” and “B” are armed, either a ticket may be issued or an access card may be swiped to vend the gate. As the vehicle moves forward, loop “A” is deactivated first and as the vehicle continues to move forward loop “C” is activated. As the vehicle keeps on moving forward, loop “B” is deactivated and eventually loop “C” is deactivated, causing the arm barrier to go down. Any other sequence of loop arming or deactivation signifies an abnormal condition. The issued ticket should be voided and/or access card placed in violation mode.
Agency or Department	San Francisco Municipal Transportation Agency or SFMTA
Anti-passback	A function of the controlled access system that requires an access device (such as proximity access card) to be used in an entrance reader before it can be used in an exit reader and vice versa. This function will deactivate/block any access device (proximity access card) that is not used in the appropriate sequence.
Automatic Vehicle Counter	A mechanical or electronic device, such as electric eye, arming and/or triggering loop, or other automated counting device that records the passage of a vehicle.
Article 22	Parking Station Signage Requirements (Parking Tax Regulation No. 2006-1) and San Francisco Business and Tax Regulations Code, Article 22.
Backout Ticket/Movement	A “Backout Movement” occurs when a customer tries to enter the facility, receives the transient ticket, pulls the ticket from the ticket chute and backs out of the arming loop and does not enter the facility.
Category 5/6e (Cat 5/6e) Cable	The standard network cable for conduit runs of less than three hundred feet (300 feet).
Car Sharing Program	A Car Sharing Program rents vehicles on an hourly basis, and aims to reduce individual car ownership and to improve the environment. The City and County of San Francisco provides discounted rates for car sharing at several city parking facilities (examples include City CarShare and ZipCar).
Central Cashier	A centrally located fee computer, within a facility, where a transaction can be processed by the on-duty cashier. An Exit Grace is started on any transactions processed from a Central Cashier terminal.

List of Terms (cont.)

Term or Acronym	Definition
Central Management Computer (CMC)	A Computer located in Central Management Office that is able to monitor and control all the facilities within the System. Central Management Computer (CMC) will have the highest Network hierarchy.
Central Management Office	SFMTA, Information Technology Division, 1 So. Van Ness Avenue, 3 rd Floor.
Civil Work	Any project work other than PARCS equipment installation. Civil Work includes, but is not limited to, conduit run, islands and masonry work, cable pull, saw cut, drilling, and demolition of existing equipment/parts. Any cost associated with Civil Work, including, but not limited to, cost of cable, equipment rental, and labor will be considered as Civil Work cost.
Continuous Grace Time or Period	The amount of time allowed before the next increment of time is added to the parking fee. Also known as Continuous Grace Period. For example, if the fee structure is set to \$2 per 30 minutes, customer will pay \$4 for staying in parking facility between 30 minutes and one second to 60 minutes (1 hour), provided Grace Time (X) is set to 0.
Contract Compliance Office (CCO)	CCO is the SFMTA office that administers compliance with the City's Local Business Enterprise/Non-Discrimination Program. The CCO is a unit within the SFMTA's Diversity and Equal Opportunity Program.
Crashing * *Definition taken from PMBOK® of Project Management Institute (PMI)	A specific type of project schedule compression technique performed by taking action to decrease the total project schedule duration, after analyzing a number of alternatives to determine how to get the maximum schedule duration compression for the least additional cost. Typical approaches for Crashing a schedule include reducing schedule activity durations and increasing the assignment of resources on schedule activities.
Database Server	A database server is a computer (hardware and software) that provides database services to other computer programs or computers. Database Server is also used for data backup.
Day or Calendar Day	Any 24-hour period beginning at midnight (12am).
Day, Business (or Business Day)	Any Calendar Day other than Saturday, Sunday, or a SFMTA declared holiday.

List of Terms (cont.)

Term or Acronym	Definition
Demand-Based Pricing	A parking management program by the SFMTA that will use the different pricing structure throughout the day to manage the demand for the parking. For example, if the data supports that a parking facility is above a pre-defined threshold occupancy/availability level(s) on Mondays between 10 a.m.to 3pm, and on Fridays between 4 p.m. to 11pm, the SFMTA may charge a higher parking price on Mondays and Fridays between 10 a.m.to 3 p.m. and 4 p.m. to 11 p.m. respectively.
Event Log or Journal	The central database repository of all System messages and activity. The Event Log or Journal is immutable and maintained in a secure database that will record all transaction data, allowing the System to properly and accurately calculate, collect, and report revenue. The log will provide a central electronic audit trail so the accuracy and completeness of revenue reporting can be verified.
Exit Cashier	A cashier computer located at the Exit lane, where a transaction can be processed by the on-duty cashier. The action of successfully processing a ticket will result in a gate vend to permit the customer to exit.
Exit Grace Time (or Courtesy Time or POF Grace Time)	Exit Grace time applies to a paid ticket. A preset length of time programmed into the System to allow customers paying parking fees at the Central Cashier or POF devices to return to their vehicles and exit. Failure to exit prior to the expiration of the Exit Grace period would result in the accrual of additional parking fees payable at exit based on anniversary of entry time.
Express Exit	Exit lane where a customer can pay for parking by means of credit cards, validation coupons, TransLink [®] or the prepaid cards without interacting with a Cashier.
Facility Management System (FMS) or Facility Computer	The software and hardware components whose functions allow the implementation and control of all PARCS devices, components and activity within that facility. The FMS provides administrative controls, user management, and access security for all software modules and subsystems. The FMS also gets updates and related information from Central Management Computer (CMC). The FMS is capable of gathering, exporting, and printing individual facility reports, and monitoring PARCS equipment status.
Factory Acceptance Test (FAT)	The test performed by the supplier/Vendor at its factory to demonstrate the successful performance of PARCS hardware and software features/functionalities, before shipping to the owner's location for installation.

List of Terms (cont.)

Term or Acronym	Definition
Fail Over	The process by the PARCS that senses and automatically switches functionality from a primary to a secondary server or device in the event normal function, power or communication is lost.
Fast Tracking * *Definition taken from PMBOK® of Project Management Institute (PMI)	A specific project schedule compression technique that changes network logic to overlap phases that would normally be done in sequence, or to perform schedule activities in parallel.
Grace Time or Period	See Continuous Grace Time or Period
Graphic User Interface (GUI)	An interface for issuing commands to a computer by using a pointing device (such as a mouse) to manipulate visual or graphic images (icons) on a computer monitor screen.
Hosted Module	An application and/or module and/or service provided by a 3 rd party; including the hardware, software and maintenance to support the application.
Invalid Ticket	Also known as a “Stolen Ticket.” A ticket is flagged throughout the PARCS as Invalid if it has been removed from the Entry Device without the System detecting a normal entry into the parking facility.
ISO-Compliant	A product or service that conforms to the guidelines promulgated by the International Organization for Standardization.
Journal Tape	A printed record of every Transaction, in consecutive order, that is generated by PARCS not capable of producing an electronic Log File (e.g., a cash register or fee computer tape).
Local Business Enterprise (LBE)	A business that is certified as an LBE by the San Francisco Human Rights Commission (HRC) under San Francisco Administrative Code Section 14B.3.
Log File	An electronic read-only (but printable) record generated by the PARCS that is a consecutive record by data and time of every Transaction and the actions of the PARCS and ancillary devices (including, but not limited to Entry/Exit/POF).
Municipal Transportation Agency (SFMTA)	An Agency of the City and County of San Francisco established by San Francisco Charter Article VIIIA, or any successor Agency. Also known as SFMTA.
Network Operations Center (NOC)	A central location in the Central Management Office from which the SFMTA’s information technology staff manages the SFMTA networking resources and where all System servers must be located.

List of Terms (cont.)

Term or Acronym	Definition
Nested Area	A controlled access section/area of the parking facility within another controlled access area of the facility. For example, a parking facility with the transient and valet parking may have the valet operation performed within the nested area. The total capacity of the parking facility is the sum of nested and not-nested parking.
Non Revenue Parker (Parking)	Any SFMTA authorized parker not charged for the parking fee will be considered a “Non Revenue Parker.” The SFMTA may issue Non Revenue access card(s) to staff/team and other officials for site visits. The SFMTA may also allow other authorized non-revenue parkers to pull a ticket upon entering the parking facility and have their ticket processed as ‘Non Revenue’ at the cashier computer, after entering parker’s required credentials.
On-line Real Time System	A System or network that is interconnected to all the devices (including, but not limited to Entry/Exit/POF/ Facility Computer) and data transfer between the devices occur in a real time (synchronously, within 5 seconds). At the same time all the updates and status of devices is available to anyone who has access to the System (locally, at the central location(s) or over the Internet).
Open Data Base Connectivity (ODBC)	A database standard for data interchange among computer systems that allows compliant database information to be imported into standard Microsoft products such as Excel (spreadsheets) and Access (database management).
Operations * *Definition taken from PMBOK® of Project Management Institute (PMI)	An organizational function performing the ongoing execution of the activities that produce the same product or provide a repetitive service.
Operations Demonstration Test (ODT)	A required test designed to demonstrate, over a period of time (such as, 90 or 30 days), the successful performance of all aspects of the System at the completion of each phase. The Operations Demonstration Test shall encompass all equipment and Systems installed and operating under actual field conditions.
Parking Access and Revenue Control System (PARCS)	A centrally-managed group of hardware and software components or devices usually connected in a networked environment for the purpose of controlling access to and accounting for all revenues generated by a parking facility.

List of Terms (cont.)

Term or Acronym	Definition
Passback	Passback refers to access control measures taken to over-write the Anti-passback sequencing. A Passback proximity access card can be used at the entrance reader multiple times before using it at the exit reader and vice versa. A service technician's test card, for example, can be set as Passback; allowing the technician to test the entrance or exit lane functionalities.
Payment Card Industry Data Security Standard (PCI DSS)	A worldwide security standard assembled by the Payment Card Industry Security Standards Council (PCI SSC).
Proposal	For this RFQ Proposal means Statement of Qualifications.
Risk(s) * *Definition taken from PMBOK® of Project Management Institute (PMI)	An uncertain event or condition that, if it occurs, has a positive or negative effect on a project's objective.
Simple Naming Management Protocol (SNMP)	A standard Internet Protocol, developed to manage nodes or devices (including, but not limited to, computers and routers), present on an internet-based network.
Single Lane Test	A test designed to demonstrate the successful processing of all normal and exception transaction types, all modes of operation, all payment tender options and the proper functioning of all devices and any related subsystem (including, but not limited to, License Plate Recognition (LPR) and Parking Space Count) devices present in that particular lane.
Site Acceptance Test (SAT)	A required test designed to demonstrate the successful performance of an entire parking facility's equipment installation as a system to include all entry lane, exit lane, all other devices, software modules, all subsystems, and all communications and data transfers to and from the network switches and central servers. This test is also known as the "Facility Acceptance Test."
System	See PARCS above.
Time Synchronization (Master Clock)	A function or service provided by the Facility Management System or Software (FMS) that allows the System clocks for each device on the network to be updated to reflect the time of the Master Clock. This process allows for proper and consistent fee calculation and event reporting throughout the network. Master Clock should update daily with "Atomic Clock" at http://www.worldtimeserver.com/atomic-clock/ or http://tf.nist.gov/timefreq/service/its.htm or approved equal
Transfer Control Protocol/Internet Protocol (TCP/IP)	The standard protocol for communications between computers used to transmit data over the Internet or on internet-based networks.

List of Terms (cont.)

Term or Acronym	Definition
TransLink®	TransLink® is an automated fare collection program centered on smart card technology, which will be accepted for fare payment by nine Bay Area transit operators for intra/inter operator trips. The SFMTA is currently using the TransLink® card on SFMTA buses and trains.
Turn Around Grace Period	The amount of time (usually in minutes) a customer has to enter and exit a parking facility without incurring a parking fee. Turn Around Grace Period applies to unpaid tickets.
Universal Serial Bus (USB)	A standard for communications between a computer and external peripheral devices using bi-serial communications cabling.
Voided Ticket	A Parking Ticket that is not issued to an Occupant, but that is used in the course of the Operator's testing, repair or maintenance of the Revenue Control Equipment (RCE).

Terms and Abbreviations

ADA	Americans with Disability Act
BOARD	San Francisco Municipal Transportation Agency Board of Directors
CAPP	Certified Administrator of Public Parking
CIP	Capital Improvement Program
CCO	Contract Compliance Office
CCSF	City and County of San Francisco
CMC	Central Management Computer
CPP	Certified Parking Professional
DBI	Department of Building Inspection
DMZ	Data Management Zone/Demilitarized Zone
DSS	Data Security Standard
EEO	Equal Employment Opportunity
FMS	Facility Management System (computer)
HRC	Human Rights Commission
IPI	International Parking Institute
LBE	Local Business Enterprise
LPR	License Plate Recognition
NEC	National Electric Code
NEMA	National Electrical Manufacturing Association
NTP	Notice To Proceed
PAC	Parking Authority Commission
PARCS	Parking Access and Revenue Control System
PCI	Payment Card Industry
POF	Pay on Foot machine
PMP	Project Management Professional
RCE	Revenue Control Equipment
RFI	Request For Information
RCE	Revenue Control Equipment
RFP	Request For Proposal
RFQ	Request For Qualifications
SFMTA	San Francisco Municipal Transportation Agency
TCP/IP	Transfer Control Protocol/Internet Protocol
UL	Underwrites Laboratories, Inc
XML	Extensible Markup Language

I. Introduction

A. General

The San Francisco Municipal Transportation Agency (SFMTA) is a multi-modal transportation organization responsible for operating buses, rail, world-famous cable cars and an historic fleet of streetcars, as well as developing and implementing innovative transportation solutions to benefit auto drivers, transit riders, taxicab users, bicyclists and pedestrians. The SFMTA's programs and services promote safe, efficient and convenient mobility alternatives for San Francisco residents, commuters, businesses and visitors.

The SFMTA's Off-Street Parking Division manages 40 parking facilities generating approximately \$80 million in gross revenue annually. The mission of the Off-Street Parking Division is to provide clean, safe and convenient parking to visitors, employees and businesses in the downtown core, as well as to commercial and residential districts. Through effective management of over 15,000 spaces at 40 parking facilities throughout the City, the Division supports economic vitality in the City's downtown and neighborhood commercial districts. Various parking policies and programs, administered by the Division, support City's *Transit First* policy, help reduce traffic congestion on City streets and promote alternate modes of transportation. The Division monitors current and anticipated parking demands, and evaluates need for the expansion and development of new parking facilities.

For visitors, these parking facilities offer the first impression of San Francisco. It is very important to the City that the parking facilities are managed and operated in a manner that reflects the City's commitment to customer service, careful stewardship of the public's capital investments, adequately safeguards the City's revenues, and provides professional management of City's services.

The SFMTA is requesting Proposals from qualified firms for a new Parking Access and Revenue Control System (PARCS). This Request for Qualifications (RFQ) defines the requirements for a new state-of-the-art Parking Access and Revenue Control System (PARCS) that will replace the existing equipment at twenty (20) parking facilities managed by the SFMTA and the qualification requirements for the Proposing vendors.

The Parking Access and Revenue Control System (the "System") to be provided by the selected Proposer will be an On-line Real Time System that is centrally-controlled and monitored at the Facility Management Computer, and Central Management Computer (CMC) level. The System must be remotely accessible over an internet-based (TCP/IP) network with system(s) located on-site at each garage for local device control, transactions management and stand-alone capacity, when needed. The System shall improve the parking customer experience by making the PARCS user friendly and at the same time provide robust reporting and Operations auditing tools. The System will use machine readable tickets, ISO-Compliant cards (credit/debit cards, value added cards, and non-revenue cards) and proximity access cards. The System shall be PCI/DSS, Article 22, and Americans with Disability Act/Americans with Disability Act

Accessibility Guidelines (ADA/ADAAG) compliant. The System shall also provide comprehensive monitoring, control, reporting and auditing functionality to provide the SFMTA's parking customers the best possible customer service experience in the most efficient manner possible. To this end, the SFMTA desires to use reliable, proven technology for all components of the System while allowing the Proposers to propose new and innovative solutions configured on proven technology.

The System shall be flexible enough to accommodate different facility types and quantity, due to the diversity of each parking facility, their operating characteristics, and their primary customers.

B. Parking Facilities

Currently, the SFMTA has three different autonomous Parking Access and Revenue Control Systems in 20 parking facilities: DataPark, GMG, and Secom. The GMG system is installed at the Portsmouth Square Garage; the Secom system is installed at the 1660 Mission Garage; and the DataPark system is installed at the remaining garages. The existing systems were installed at different times over the last 15 years, causing the facilities to have different hardware and software versions, making it difficult to reconcile revenue, generate coherent reports, or cross check data, reports, and track operations.

The Portsmouth Square Garage, Japan Center Garage, Sutter Stockton Garage, Union Square Garage, Ellis O'Farrell Garage and 5th & Mission Garage are leased to City-owned corporations. The Board of Directors for each corporation manages Operations of each garage through a private operator (except the Portsmouth Square Garage) and an on-site corporate manager, hired by each Board. The remaining 14 facilities are managed by private operators through multi-year management agreements with the SFMTA. The SFMTA is in the process of awarding new management contracts through an RFP process that should result in new agreements in the spring of 2010. The management agreements for these facilities will be awarded to three different operators, each responsible for four to six parking facilities. Each facility is required to produce validation and discount coupons pursuant to the specifications in Section II.B.1.k. Merchant Validation Devices (on-line)/ Encoder.

Each Facility Computer shall be accessible remotely to audit or manage, at a minimum, monthly access cards, employee account information and generate reports.

C. Site Visit(s)

The SFMTA will not conduct any site visits during the RFQ process. All Proposers responding to this RFQ are directed *not* to include any Project Cost with their proposals. The RFQ process will identify three highest ranking proposals. These three firms/Proposers will be issued a Request for Proposal (RFP). During the RFP process short-listed firms will be invited for the site visit and will be asked to submit the PARCS Cost Proposal.

II. Scope of Work

A. General

This Scope of Work is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the Project. All Civil Work, including but not limited to Masonry, Electrical, Core Drilling, and Concrete Saw Cutting shall meet or exceed all San Francisco building codes and NEC code. The Civil Work may be contracted separately. Details on the Civil Work will be provided in the Request for Proposal (RFP) phase.

The main objective of the proposed System is to provide the following:

- * Centralized management control of the System.
- * Open Architecture System that can easily accommodate future modification or expansion.
- * Accurate and auditable fee computation through automation.
- * Integrated total control system (locally and globally from management computers).
- * Complete audit trail of revenue and control (in case of transient ticket, when and where the ticket was pulled, when and where it was paid, how it was paid, e.g., cash, credit, coupons, when and where the ticket was processed at the exit lane).
- * Secure Web/Internet Accessible System to view reports, and real-time facility status and activities. Virtual Private Network (VPN) will also be considered.
- * Ability to pay for monthly access cards over a secured Internet application, with customizable customer account interfaces.
- * Minimal transaction (ticket vending) time.
- * Consolidated operational and management reports per SFMTA specifications.
- * Revenue and occupancy trend analysis.
- * Management access to real time data and control.
- * Flexibility of rate change implementation and scheduling locally at the FMS or remotely.
- * Data security
- * Secure System that is not vulnerable to any “hacker” attacks.
- * Credit card PCI/DSS processing compliance (latest requirements).

Installation of new PARCS will be implemented in multiple phases. Phase-I installation shall start within 90 days from the issuance of “Notice to Proceed” from the SFMTA. Phase-I will also include installation and configuration of Central Management Computer (CMC) and a central Database Server to be used for automatic data backup of all the Facility Management System (FMS) and data storage of entire SFMTA PARCS. The Database Server will be located at the SFMTA’s main office located at One South Van Ness Avenue 3rd Floor, San Francisco, CA. The Proposer may suggest a fresh stand-alone Database Server installation or use an existing Database Server that the SFMTA is currently using for other production instances. Proposer must clearly state what option (fresh stand-alone or SFMTA Database Server) is included in the Proposal. After successful completion of the Phase-I including PARCS installation, Site Acceptance Test(s), Operator training, and successful completion of 90 day Operation Demonstration Test (ODT), the SFMTA will issue a Phase-I “Substantial Completion” letter. For the remaining project phases, ODT will last for 30 days. All the ODTs will be performed as the phase completion test, which means that the ODT for a phase will not start until all the garages within that phase has passed a “Site Acceptance Test.”

The SFMTA will monitor the System for 90 days during the Phase-I “Operation Demonstration Test” to confirm that all the PARCS functionalities, related reports and hardware are working according to the SFMTA’s specifications. After successfully completing the ODT for each phase, the SFMTA will issue a “Substantial Completion” for that phase and another NTP for the subsequent phase of the Project, until all the phases of the Project are completed. The SFMTA reserves the right to issue a NTP for subsequent phases at any time during the Operations Demonstration Test(s). During Phase-I, if the Proposer is unable to fully address SFMTA identified issues (identified during the 90-day operation demonstration test) within a reasonable time, the SFMTA reserves the right not to issue the “Substantial Completion” and/or a NTP and suspend/terminate any further work with the Proposer.

The System provided by the selected Proposer shall be flexible, scalable and modular in design. Flexibility refers to the ability of the SFMTA to modify the System and its components to meet its future needs (in the majority of cases without additional assistance from the Proposer). Scalability refers to the ability of the SFMTA to add volume in terms of transactions, devices, or facilities (up to 100%) to meet changing parking demands without significant modifications (other than the additional devices) to the PARCS. Modularity refers to the ability of the SFMTA to add functionality to the PARCS (especially to the System software) without causing measurable degradation to existing system functions and customer service. The modular design would allow addition or deletion of capabilities or devices by simply adding them to the Central Management Computer (CMC) and/or Facility Management System (FMS) software.

The System software shall control all network functions, shall be network-based (using TCP/IP protocol), shall be available to any authorized user on the SFMTA’s administrative network, and remotely accessible over the secured Web/Internet/VPN. The System shall include modules for public parking (transient, motorcycle, and monthly), valet parking, non-revenue parking, programmable validations modules,

Internet reservation programs (see details under Software and System Reports), prepaid parking programs, real-time data transfer to SFMTA Central Management Computer (CMC) and other functionalities as detailed in this Scope of Work. Each module shall be able to run independently on a separate server OS instance, such as on a dedicated server in a Data Management Zone (DMZ). The System software shall also be able to provide billing capabilities as appropriate for certain functions or user types including, but not limited to payment of monthly access cards over the Internet. The System software provided may include original Vendor-created software applications, third-party software and appropriate integration so that the entire System operates as a seamless whole.

The System shall provide enhanced customer service and payment options for parking customers, while simultaneously maximizing the benefits (in terms of cost, accountability and efficiency) of System automation. The System shall also provide a robust set of transaction, revenue, maintenance, and management reports that shall include the ability to sort and extract a copy of raw transaction data through the use of filters, check boxes and other reporting tools. These reports shall also be exportable to external media (including, but not limited to disks and USBs) in an agreed upon file format.

The System will be fully integrated and encompass all revenue control devices, data processing, central control, and communications functions throughout the entire SFMTA parking facilities. All the field devices (Entry, Exit, POF, Cashier stations) shall transmit data to the Facility Management System (FMS computer), FMS to the Center Management Computer (CMC) and vice versa.

PARCS network infrastructure (Fiber, T1-line, VPN, DSL) from each parking facility to the Central Management Office shall be provided by the SFMTA. However, the selected Proposer shall provide, configure and maintain the network related hardware and associated software within the facility.

Items not specifically mentioned or addressed in this Scope of Work that are necessary and integral for a new, complete, and operational PARCS as described herein, shall be provided by the Proposer at no additional cost and as approved by the SFMTA.

1. System Maintenance

- a. Provide equipment capable of meeting or exceeding the following maintenance requirements:
 - 1) Minimal maintenance, repair of failures, and verification of performance. Minimal maintenance means that the System will work without any intervention from the technician and any required preventive maintenance frequency shall not be less than three months. The Proposer, in their hands-on training program, shall include the suggested weekly/bi-weekly maintenance program (such as: dusting, cleaning of hardware) that shall be performed by the SFMTA's operators at their respective facilities on Proposer suggested frequency. Moreover, any required software upgrades and software patch installation for the System shall be limited to once a year (no Beta

version shall be allowed). This software upgrade does not include any security or PCI related upgrades, which shall be done within one week from the release of the software patch. If more than two service calls are made on the same device within a month, that device will not fall under the “minimal maintenance” category and the Proposer shall replace that hardware without any cost to the SFMTA.

- 2) Easy removal and replacement of components.
- 3) Easy access, with minimal removal of other items/hardware to gain access to a specific item.
- 4) Verifiable performance, failure detection.
- 5) Weather protection of components while performing simple maintenance.
- 6) No Pre/Post modifications shall be required for replacement of component items (hardware). All the swappable hardware shall be “plug-n-play” and should not require any software modifications. Spare parts shall be available “off-the-shelf” from multiple sources (locations) with at least one local source (a location within California, where parts can be shipped from and get to SFMTA facilities within 24 hours).

2. PARCS Major Components

Major components of the proposed System include ticket dispensers (entry lanes), ticket acceptor (exit lanes), control gate barriers, vehicle detection ground loops, customer fee displays, intercoms, proximity card readers, voice prompts – to guide the customers, cashier terminals, computer interfaces, monitors, and printers in the respective parking offices. A central Credit Card, central Database Server and Central Management Computer/server shall be installed at the SFMTA office located at One South Van Ness Avenue. All six non-profit facilities shall have the credit card server at their respective locations, locally, and the credit cards from the non-profit facilities will not be processed through the central credit card server.

Moreover:

- a. The System is expected to function, with normal upgrades, for a minimum of 10 years, from the date of Substantial Completion.
- b. Proposer shall provide new materials of current standard design that conform to the Underwrites Laboratories (UL) standards, and the requirements of all enforcing authorities having jurisdiction, and to applicable federal standards.
- c. Proposer shall provide equipment that complies with the current Americans with Disability Act (ADA) requirements. Proposer shall comply with the latest Americans with Disability Act Accessibility Guidelines (ADAAG) and California Access Compliance (CAC) requirements.

3. Outdoor Equipment/Enclosure General Requirements

- a. Outdoor components shall operate within the environmental conditions described below:

Component	Condition
Temperature:	-13 degrees F to 113 degrees F
Relative Humidity:	10 to 90 percent
Precipitation:	Blowing rain, 3.5 inches per hour
Noise Exposure:	130 dB
Shock and Vibration:	Seismic Zone 3
Sand, Dust, and Contaminants:	Intermittent industrial area exposures
Possible Hazards:	Vandalism, power disturbances

- b. Outdoor equipment housings shall be rain-tight (waterproof) and dust proof. Design and seal all doors and openings against environmental conditions. Equip each housing unit with a thermostatically controlled heater to control sweating of internal elements and to maintain proper equipment operating temperature.
- c. Provide sufficient openings to allow easy access to all components. Locate access doors and panels to meet access requirements of National Electric Code (NEC). Access shall allow maintenance personnel to work on the equipment without having to be in a traffic lane.
- d. Construct housing that is free of sharp edges, corners, or points capable of causing injury to maintenance personnel or public, or capable of damaging internal wiring. There shall be no externally tamperable fasteners or hardware whose loosening or removal could compromise rain tightness, dust tightness, structural integrity, or cause damage to housing contents.
- e. Equip each housing unit with an easily accessible threaded stud or tapped pad for grounding wire attachment; ground all metal not intentionally insulated from ground to this grounding point.
- f. Protect all ferrous metal from rust by galvanizing and/or rust-inhibiting primer.
- g. Housing shall be mountable to concrete islands with anchor bolts (or anchor bolts and flange clips) as specified by the equipment manufacturer. Design the cabinet bottom to allow installation utilizing underground conduits in the island.

4. Indoor Equipment/Enclosure General Requirements

- a. Supply all cabinets and other enclosures required to properly house and protect the control system equipment.
- b. All cabinets, racks, panels, and other support structures shall be metal that has been thoroughly cleaned, finished, treated to resist rust, and properly primed and painted.
- c. Provide floor-mounted cabinets. Provide computer room cabinets with bottom cable entry, front and back panels, and removable side panels except where bolted side-by-side.

- d. Design cabinets and enclosures in a manner that adequate ventilation for the equipment within the enclosure is available for heat dissipation. Air flow shall be from bottom to top.
- e. All computer equipment cabinets shall have a single power distribution system within the enclosures which provides a single power termination point for the incoming power, including a ground cable. Permit each cabinet bay to be powered down for maintenance without removal of power from the complete computer system (e.g., computer system “A” can be powered down for maintenance without affecting the performance of system “B”).
- f. Identify any special provisions for air conditioning of the central processing units.

5. Demand-based Pricing (rate structure)

The SFMTA is embarking upon a new parking management program known as *SFpark*. The SFMTA will be using the price of parking to manage demand for off-street parking (Demand-based Pricing) in SFMTA-managed parking garages to achieve the pre-defined availability targets. Demand-based Pricing will use the different pricing structure throughout the day to manage the demand for the parking. For example, if the historic data supports that a parking facility is at or above a pre-defined threshold occupancy/availability level on Mondays between 10 a.m. to 3 p.m., and on Fridays between 4 p.m. to 11 p.m., the SFMTA may use the Demand-based Pricing to charge a higher parking price on Mondays and Fridays between 10 a.m. to 3 p.m. and 4 p.m. to 11 p.m. respectively. This change of parking rate is not automatic, meaning that the System will not automatically change to a higher or lower rate based on the occupancy but the SFMTA will utilize the historic data of each garage and decide if the price should be adjusted at any particular facility based on the historic data. The SFMTA anticipates that the higher parking price will encourage the drives to take the alternate modes of transportation, such as Muni, instead of driving in the Downtown San Francisco during the peak traffic periods. To support the Demand-based Pricing the Proposed System shall be able to support a minimum of five “window of time” for each calendar day of the week. Window of time is defined as the time interval where the parking rate may be different in a given 24-hour day such as: 5 a.m. to 10 a.m., 10 a.m. to 2 p.m., 2 p.m. to 6 p.m., 6 to 10 p.m., 10 p.m. to 5 a.m.

The System shall accept new parking rate data for transient rate structure via an XML feed. The System shall also transmit special event rates and be able to accommodate off peak-period discounts for entering and/or exiting a garage during defined times. Transient parking rates may vary according to parking facility location, time of day, day of week, length of stay, or a combination of those pricing structures. The SFMTA will transmit (via XML feed) the new Price Schedule to the System at least 72 hours prior to the effective date of the Price Schedule. The finalized required format for the XML feed will be negotiated, but will be similar to the format found in Attachment: “Sample XML file format required for the *SFpark Price*”. Only SFMTA authorized users shall be able to implement the XML feed to change the parking rates.

6. Green Technologies

The SFMTA strives to make its parking Operations “Green” and environmentally friendly. Proposers are strongly encouraged to suggest any Green Technology that they offer for the PARCS. If a Proposer includes Green Technology, Proposer shall include that as a separate tab in their response to this RFQ with the heading Green Alternative. In this document, Proposer must identify why the suggested alternative is considered green or environmentally friendly. The Green Alternative must comply with all the requirements described in the Scope of Work of this RFQ.

B. New System Products

The following sections describe the minimum hardware and software functionality requirements for the PARCS. The proposed System must be secured and shall not be vulnerable to any malicious attacks (such as, but not limited to, Denial of Service (DOS) attack). If the System is affected by a malicious attack by a hacker, Proposer shall be fully responsible to fix any security glitches in the System and may also be responsible for any revenue lost due to the vulnerability of the System. Functionalities that are “optional” shall be stated in the specifications.

The SFMTA is working on a pilot project to implement the TransLink cards that will be used as part of the “Smart card” feature, where a customer can pay for their parking ticket using the TransLink card. Other “Smart Card” type technologies including but not limited to: FasTrak, SFMTA Parking Meter Debit Cards may also be considered for future use. The implementation of the TransLink, FasTrak, SFMTA Parking Meter Debit Card are not required deliverables. But, the proposed System must be able to accommodate future “smart card” technologies including but not limited to: TransLink, SFMTA Parking Meter Debit Cards, FasTrak, Pay by Phone (using Near Field Communication –NFC, where the customer swipes his/her cell phone in front of the reader to pay for the parking fee).

1. Hardware

a. Entry Lanes/Ticket Dispensers (TD)

- 1) Replace existing ticket dispensers with devices that only accept machine readable tickets. Entry shall also allow “credit card in/out” processing.
 - a) Provide the ability to monitor and manage gate movements from a FMS, and stations located at the parking supervisor’s office.
 - b) Replace/install the intercom system for all entrance gates with an Auto Dialer system that communicates directly with the facility parking office via localized line. This intercom system shall also be able to forward the calls to a cell phone/telephone line with no interaction from the operator if the initial call is not answered within four (4) rings or roll back to phone number 1 and restart the sequence of events until the call is answered. A Voice over Internet Protocol (VoIP) solution is preferred.
 - c) Provide an IP-based color camera, at all entry lanes that shall capture the vehicle license plate information (but not as License Plate Recognition – LPR). The camera shall be motion-sensor activated. The video feed from the camera shall be recorded in the facility

Digital Video Recorder (DVR). A list of triggered events will be specified by the SFMTA during the configuration of the System, by the selected Proposer. This video feed will be used to investigate any transaction dispute or event. The quality of video shall be good enough that at a minimum the vehicle license plate information is easily readable. The DVR must be capable of retaining/storing the videos for at least 30 days and append the data using “first-in, first-out (FIFO)” method. Live and recorded videos shall be able to zoom-in or zoom-out. The video feed (live and recorded) shall have the capability to be monitored/viewed locally and remotely on the PARCS network.

- d) All entry devices shall have a proximity card reader with the read-range of at least three inches (3”). The card reader shall deactivate ticket dispenser controls and open gates when activated. The System shall monitor and track all valid or invalid card reader events.
 - e) Any Proximity cards in a Violation mode (including, but not limited to Passback, Void, Time, Unpaid, Nest Limit Expired, Insufficient Funds on Account, or Unknown) shall not allow vehicle entry and entry lane arm barrier shall stay down until the violation has been addressed by facility operator. An audible alarm shall sound at the TD and computer (FMS) when the PARCS detects a proximity card in violation mode.
 - f) The SFMTA is currently using two subsurface inductive detector loops. For entry lanes the SFMTA requires three loop using the A, B, C Loop Logic. The SFMTA requires using new wiring for the loops.
- 2) Operate as an online, real time device that is networked to the Facility server (FMS).
 - 3) Shall be City and County of San Francisco Article 22 compliant.
 - 4) Shall be PCI/DSS compliant. The System shall read and process credit cards through a Magnetic Stripe and Contact-less (proximity type) card reader per PCI/DSS protocols.
 - 5) Equipped with a locking mechanism with the capability of being re-keyed to protect against tampering, and with a key system unique to the SFMTA.
 - 6) Shall have Thermostatically regulated heater/fan.
 - 7) Shall be programmable for the “Passback” and “Anti-passback” feature.
 - 8) Shall be able to detect any abnormal transactions (including, but not limited to, Backout ticket, Passback ticket, and stolen ticket) and put that transaction on an inactive cards list. An audible alarm shall sound at the

Ticket Dispenser and FMS when an abnormal transaction occurs and the alarm shall be recorded in the FMS report.

- 9) Shall have a remote alarm monitoring system that automatically alerts the server/FMS including, but not limited to whenever the door or cabinet is open or when tickets are low.
- 10) Shall provide customer guidance through audible messages, electronic message display, and illuminating lights indicating the button to press for the ticket. Audible messages and electronic messages shall be triggered to greet the customer and guide the customer through the ticket dispensing process.
- 11) Shall have an internal clock that stores the current time and date for at least 72 hours in the event of a network or power failure. Upon re-establishing the connection, device must synchronize its clock with the FMS master time.
- 12) All the transactions shall be recorded either to a Log File or to a Journal Tape, as required by Article 22.
- 13) Entry devices must provide a ticket to the transient customer. The printed transient ticket shall include the Time and Date that the customer entered the garage. This time shall be used by the PARCS to determine the fee charged to the customer for the stay in garage (Article 22 requirement).
- 14) All devices shall be uniquely TCP/IP addressable and networked to the FMS. In the event of a communications failure (such as network switch failure), the device shall continue to function in an offline/standalone mode and shall buffer a minimum of 2,000 transactions. Buffered data shall automatically forward to the FMS upon restoration of communication.
- 15) Shall have event based “Pre-pay” functionality at the Entry.
- 16) Shall not issue “Transient tickets” when the garage is full, however the monthly parkers shall still be able to enter the facility.
- 17) To discourage tailgating and obtain an accurate vehicle count, the System shall not issue “Transient tickets” or allow the proximity card reader to accept a proximity card when the arm barrier is in the up position.
- 18) Each Entry device shall be able to keep track of all the transactions, transaction types (including, but not limited to, pre-pay, proximity card, credit In/Out, coupons, and Voided Tickets), and transaction count (number of vehicles entered through that device).

- a) This information shall be accessible to authorized users in a report format.
 - b) User shall be able to defined time interval for the report.
 - c) This information shall be accessible from the FMS and CMC in a report format.
 - d) This information shall be exportable to an external media (including, but not limited to, USB and disk drive) in XML file format.
- 19) All other Entry device shift related information shall also be accessible from FMS and CMC.
- 20) All the Entry device shift related data, in the reports, shall be complied as: User defined interval (including, but not limited to, tickets issued each hour, day-to-now, monthly access), Daily, Weekly, Monthly, and Yearly.
- 21) Optionally, provide two ticket trays to dispense tickets, to be used as a backup when primary ticket tray run out of the tickets the secondary tray will automatically function as primary tray.
- 22) Propose a redundancy/backup procedure that will allow the device to recover to the normal operation, in case of hardware/software crash.
- b. Exit Lanes/Ticket Acceptors (TA)
- 1) Replace existing ticket acceptors with devices that only accept machine readable tickets, validations and/or coupons. Exit device(s) shall also allow “credit card in/out” processing.
 - a) Provide the ability to monitor and manage gate movements from a FMS.
 - b) The SFMTA is currently using two subsurface inductive detector loops. The SFMTA requires using new wiring for the loops.
 - c) Replace/install the intercom system for all exit gates with an Auto Dialer system that communicates directly with the facility parking office via localized line. This intercom system shall also be able to forward the calls to a cell phone/telephone line with no interaction from the operator if the initial call is not answered within four (4) rings or roll back to phone number 1 and restart the sequence of events until the call is answered. A Voice Over Internet Protocol (VoIP) solution is preferred.
 - d) Provide an IP-based color camera, at all the exit lanes that shall capture the vehicle license plate information (but not as License Plate Recognition – LPR). The camera shall be motion-sensor activated. The video feed from the camera shall be recorded in the facility Digital Video Recorder (DVR). A list of triggered events will be

specified by the SFMTA during the configuration of the System by the selected Proposer. This video feed will be used to investigate any transaction dispute or event. The quality of live video shall be good enough that the vehicle license plate information is easily readable. The DVR should be capable of retaining/storing the videos for at least 30 days and append the data using “first-in, first-out (FIFO)” method. Live and recorded videos shall be able to zoom-in or zoom-out. The video feed (live and recorded) shall have the capability to be monitored/viewed locally and remotely on the PARCS network.

- e) All exit devices shall have a proximity card reader with the read-range of at least three inches (3”). The card reader shall deactivate ticket verifier (exit device) controls and open gates when activated. The System shall monitor and track all card reader events.
 - f) Any Proximity cards in a Violation mode (including, but not limited to Passback, Void, Time, Unpaid, Nest Limit Expired, Insufficient Funds on Account, or Unknown) shall not be allowed to exit the facility and exit lane arm barrier shall stay down, until the violation has been addressed by facility operator. An audible alarm shall sound at the TA and computer (FMS) when this action occurs.
- 2) Operate as a real time device that is networked via TCP/IP to the FMS.
 - 3) Shall be City and County of San Francisco Article 22 compliant.
 - 4) Shall be PCI/DSS compliant. The System shall read and process credit cards through Magnetic Stripe and Contact-less (proximity type) card reader per PCI/DSS protocols.
 - 5) Equipped with a locking mechanism and key system unique to the SFMTA, with the capability of being re-keyed to protect against tampering.
 - 6) Shall recognize the “Turnaround Grace Period” and “POF Grace Time.”
 - 7) Users with level of access including, but not limited to Supervisor login shall be able to overwrite the “Turnaround Grace Period” and “POF Grace Time.” This overwrite shall be utilized in the event when there are several vehicles exiting at the same time and the time it takes a vehicle to exit the facility may be more than the programmed “Turnaround Grace Period” and “POF Grace Time.”
 - 8) Shall have Thermostatically regulated heater/fan.
 - 9) Shall be programmable for the “Passback” and “Anti-passback” feature.
 - 10) Shall be able to detect and trigger an alarm at the device and the FMS for any abnormal (including, but not limited to, Backout ticket, Passback ticket, and stolen ticket) transaction such as expired or blocked access card or a transient ticket that was put on an inactive cards list by the

entry device. A Customer shall not be able to exit the facility with an abnormal transaction.

- 11) Shall have a remote alarm monitoring system that automatically alerts the server/FMS (including, but not limited to, whenever the door or cabinet is open, when tickets are low, or when ticket collection bin is full—a minimum of 5000 tickets).
- 12) Shall provide customer guidance through audible messages, electronic message display, and illuminating lights. Audible messages and electronic messages shall be triggered to greet the customers and guide the customers through the exit verification process.
- 13) Shall have an internal clock that stores the current time and date for at least 72 hours in the event of a network or power failure. Upon re-establishing the connection, device must synchronize its clock with the FMS.
- 14) All devices shall be uniquely addressable using TCP/IP and networked to the FMS. In the event of a communications failure, the device shall continue to function in an offline/standalone mode and shall buffer a minimum of 2,000 transactions. Buffered data shall automatically forward to the FMS upon restoration of communication.
- 15) Shall recognize the “Pre-Pay” ticket issued upon entry.
- 16) Shall accept and process additional exit transaction methods such as credit cards, through the ticket slot and/or a “contactless” type method. The Ticket Acceptor must be capable of processing customer’s credit cards as an alternative to a machine readable ticket if the credit card was used at the Entry Device (Credit In/Out feature) and/or to pay for the parking ticket issued, and/or for overtime parking charges.

Exit device shall also accept other payment options, including but not limited to: Validation coupons, merchant validations, and other validations. Exit device shall also be able to process the mix-payment type that includes but not limited to validation coupons mixed with credit card.

- 17) Shall produce a receipt for payments made at the exit (an Article 22 requirement). The printed receipt shall include the time and date when the customer entered the garage, the time and date customer paid for the parking fee at the exit, the amount paid by the customer and the mode of payment (including, but not limited to, Visa, Master card, and validation coupon).
- 18) All the transactions shall be recorded either to a Log File or to a Journal Tape, as required by Article 22.
- 19) Shall accept validated tickets and send a vend signal to the barrier gates if ticket presented is within the programmed “Exit Grace Time.” If a

grace time is expired, customer shall be able to pay at the exit with a credit/debit card, coupon or Smart card.

- 20) Shall automatically void machine readable data of short-term transient parker tickets and/or coupons after processing so that the ticket cannot be reused.
- 21) Exit device shall be able to keep track of all the transactions, transaction types (including, but not limited to, pre-pay, proximity card, credit In/Out, coupons, and Voided Tickets), and transaction count (number of vehicles exited through that device).
 - a) This information shall be accessible to authorized users in a report format.
 - b) User shall be able to defined time interval for the report.
 - c) This information shall be accessible from the FMS, locally or remotely in a report format.
 - d) This information shall be exportable to an external media (including, but not limited to, USB and disk drive) in XML file format.
- 22) The Exit verifier shall be capable of processing discount tickets (including, but not limited to, validation coupons).
- 23) All the shift related information shall be accessible from FMS and CMC.
- 24) All the data in the reports shall be complied as: User defined interval (e.g. Fee breakdown interval – 30 minutes, etc.), Daily, Weekly, Monthly, and Yearly.
- 25) Optionally, provide two ticket trays to produce replacement tickets, receipts at the exit.
- 26) Propose a redundancy/backup procedure that will allow the device to recover to the normal operation, in case of hardware/software crash.

c. Pay-on-Foot and Credit Card only Stations

Following are the minimum requirements for the Pay Stations (POF and Credit Card only (CC) machines). Any cash related payment methods described below will only be applicable to the POFs and will not apply to the Credit Card only machines.

- 1) The Proposer shall provide Pay Stations (POF and CC) that only accept machine readable tickets that will allow customers to prepay their parking fees before arriving at the exit. Payment may be tendered using validations, credit/debit cards (readable through Magnetic Stripe and Contact-less type readers), currency notes (POF only) or combination thereof that would be processed by the Pay Stations.

- 2) The Pay Stations shall be an integrated part of a larger PARCS system that shall include all other transaction processing devices, all of which shall be monitored and controlled by the FMS software.
- 3) The Pay Stations shall be able to keep track of all transactions, transaction types (including, but not limited to, cash, credit, coupons, Smart Cards, and Voided Tickets), and transaction time (the time a ticket was paid).
 - a) Transaction information shall be accessible to authorized users in a report format.
 - b) User shall be able to define time interval for the report.
 - c) Transaction information shall be accessible from the FMS in a report format.
 - d) This information shall be exportable to an external media (including, but not limited to, USB and disk drive) in the XML file format.
- 4) Operate as an online, Real time device that is networked using TCP/IP to the host server.
- 5) All the field devices must be ADA compliant per ADAAG, CAC requirements.
- 6) Shall be City and County of San Francisco Article 22 compliant.
- 7) Equipped with a locking mechanism (for front door panel, all vaults, dispensers and hoppers) with the capability of being re-keyed to protect against tampering.
- 8) Shall recognize the “Turnaround Grace Period” and shall not encode the “Exit Grace Time” on that transient ticket if inserted in the POF reader, therefore not adding extra time to the “Turnaround Grace Period.” However, SFMTA shall be able to change the setup such that if a customer inserts/scans a transient ticket at a POF within “Turnaround Grace Period” the customer will be charged the first increment of the parking rate and the ticket shall be encoded with the “Exit Grace Time.”
- 9) Shall have thermostatically regulated heater/fan.
- 10) Shall be able to detect and trigger an alarm at the device and the FMS for abnormal transactions (including, but not limited to, Backout ticket, Passback ticket, stolen ticket) that were pulled from the entry device(s) and were put on an inactive cards/ticket list by the entry device. A Customer shall not be able to pay and exit the facility with an abnormal transaction.
- 11) Shall have a remote alarm monitoring system that automatically alerts the server/FMS (including, but not limited to, whenever the door or

cabinet is opened, when credit card receipt tickets are low, when change money is low, or when ticket/validation/coupon collection bin is full.

- 12) Shall provide customer guidance through audible messages, electronic message display, and illuminating lights. Audible messages and electronic messages shall be triggered to greet the customer and guide the customer through the payment process.
- 13) Replace/install the intercom system for all POFs with an Auto Dialer system that communicates directly with the parking office via localized line. This intercom system shall also be able to forward the calls to a cell phone/telephone line with no interaction from the operator if the initial call is not answered within four (4) rings or roll back to phone number one and restart the sequence of events until the call is answered. A Voice over Internet Protocol (VoIP) solution is preferred.
- 14) Provide an IP-based color camera that shall capture all the activities performed at the POF and shall be trigger activated (such as including but not limited to payment of parking ticket, opening of the POF door). The camera shall be motion-sensor and event trigger activated. This video feed shall be recorded in the facility Digital Video Recorder (DVR). A list of triggered events will be specified by the SFMTA during the configuration of the System by the selected Proposer. This video feed will be used to investigate any transaction dispute or event. The DVR should be capable of retaining/storing the videos for at least 30 days and append the data using “first-in, first-out (FIFO)” method. Live and recorded videos shall be able to zoom-in or zoom-out. The video feed (live and recorded) shall have the capability to be monitored/viewed locally and remotely on the PARCS network.
- 15) Shall have an internal clock that stores the current time and date for at least 72 hours in the event of a network or power failure. Upon re-establishing the connection, device must synchronize its clock with the FMS.
- 16) All devices shall be TCP/IP addressable and networked to the FMS. In the event of a communications failure, the device shall continue to function in an offline/standalone mode and shall buffer a minimum of 2,000 transactions. Buffered data shall automatically forward to the FMS upon restoration of communication.
- 17) Shall be able to produce receipt for all payments types (including, but not limited to, cash, credit/debit, and Smart Cards).
- 18) All the transactions shall be recorded either to a Log File or to a Journal Tape, as required by Article 22.
- 19) Pay Stations must be able to keep track of all the transactions and transaction types by user defined time interval. This information shall be accessible from the FMS and CMC in a report format.
- 20) All the shift related information shall be accessible from FMS and CMC.

- 21) All the data in the reports shall be complied as: User defined interval (e.g., Fee breakdown interval – 30 minutes, etc.), Daily, Weekly, Monthly, and Yearly.
- 22) Pay Stations shall be able to read discount coupon number/class on ticket and automatically apply discount to the parking fee.

Discount types are fee amount, time, % rate change and surcharge.
- 23) Shall be able to Read/write all tickets and coupons.
- 24) Shall be PCI/DSS compliant. The System shall read and process credit through a Magnetic stripe and Contact-less (Proximity type) card reader.
- 25) POFs shall have “Coin Accepters” that accept quarters (\$0.25) coins and reject any other coin types. Coin Accepters shall:
 - a) Recycle coins for change.
 - b) Hold/store minimum of 75 coins.
 - c) Provide a coin inventory status report.
- 26) POFs shall also have the following revenue related features:
 - a) Bill/Note Acceptor: Shall accept \$1.00, \$5.00, \$10.00 and \$20.00. A bill to bill (B2B) recycler will also be considered.
 - b) 1 Hopper (\$ 0.25) for dispensing change.
 - c) Change Dispenser: Shall have \$1.00 and \$5.00 vaults as change dispenser with a minimum capacity of holding 500 currency bills in each vault. A note escrow and/or B2B recycler will also be considered.
 - d) Shall have a coin vault that stores overflow coins from coin acceptor.
- 27) Receipt Printer: The pay station shall be equipped with a receipt printer and shall imprint all required Article 22 data on the receipt.
- 28) Display Panel: A flat panel graphic monitor shall display all user information in user selected languages.
 - a) Language selection options are: English (default), Spanish, and Chinese.
 - b) Shall be able to run a “slide show” when not in use for a pre-set time. For example, if POF is idle for three minutes (no one is using the POF) a “screen saver” will automatically start showing the “PowerPoint” type slides. The SFMTA shall be able to program and upload new slides, whenever required, without any assistance from the Proposer’s technical team. The SFMTA may use this PowerPoint slides feature to display any message.

- c) POF shall be programmable to display any custom message.
Including, but not limited to the following examples: “This POF is temporarily out of service, Please use the Pay Station at the Second Level.”
- 29) Journal Log: The Journal Log shall be written to a hard disk in the FMS and, the data shall be copied/exported to an external media –in an agreed upon file format.
- 30) A customer shall be able to cancel a transaction on the POF in the following manner:
 - a) A transaction may be cancelled at any time prior to completed payment of the parking fee (credit card authorization process if applicable). This action shall be included in the device report as “Cancelled transaction.”
 - b) Amount tendered, including validations and coupons shall be returned to the customers, as long as the full payment of the parking fee is not processed.
 - c) Once full parking fee payment is completed or a credit card authorization is in process; the transaction cancellation cannot be performed and refunds shall not be available.
- 31) POF shall have a “Lost ticket” soft key available for the customers who may have lost their tickets. When the “Lost Ticket” button is pressed, customer shall be connected to the attendant via intercom. At the same time, POF screen shall show a message: “You are being connected to an attendant to assist you with the lost ticket.”
- 32) All Front door panels exposed to the Public shall be secured by security locks (access system) that will allow only authorized personnel with the correct access right to open the POF doors and different vaults. Provide a key system that is unique to the SFMTA. If an unauthorized access is detected, system must trigger an alarm at the FMS and start the video recording. Any access violation shall also trigger a localized audible alarm.
- 33) As an optional feature, Customer shall be able to pay for their monthly parker account at the POF.
- 34) As an optional feature, provide two ticket trays to replacement tickets, coupons, production.
- 35) Propose a redundancy/backup procedure that will allow the device to recover to the normal operation, in case of hardware/software crash.

d. Cashier Stations

- 1) Central Cashier Stations. All Facility Management Systems (FMS) shall also be able to function as the “Central Cashier Stations” and shall be able to process all transaction types that can be processed at the “Exit Cashier Stations.”
- 2) Exit Cashier Stations. Each cashier terminal shall perform the following functions and at minimum include the following features:
 - a) Each cashier station shall have cash drawer(s) with different locking keys to prevent co-mingling of funds.
 - b) Shall support multiple payment types (cash, credit card, Smart Card, validation coupons) with the ability to combine different payment types.
 - c) Provide receipt printer, ticket reader, and integrated credit card and Smart Card reader.
 - d) Provide a cashier receipt printer that prints the exit date, time, rate, amount, and cashier identity on the ticket.
 - e) The PARCS shall track payments made at a Central Cashier register as well as an Exit register, at a minimum shall record/print the exit gate location, date, time, rate, fee amount, cashier identity, payment method, credit card type (if used), and transaction number at a minimum.
 - f) The information in “e” above shall be available in report format.
 - g) Fees shall be automatically calculated.
 - h) Cash received buttons shall be customizable (e.g., \$5 instead of \$10 on the cashier keyboard).
 - i) Provide links/keys for processing of lost tickets, validations, coupons, unreadable tickets, manual tickets, insufficient fund transactions, alternate rate processing, and split payment transactions. The SFMTA shall be able to enable or disable any of the processing features. A “Lost Ticket” processing will require the cashier to enter customer’s personal and vehicle information in the System, and verify vehicle information from an active over-night car inventory. System shall count for all the days a vehicle was in the parking facility when calculating a Lost ticket.
 - j) Operate only when a vehicle is present on the loop.
 - k) Operate only when the gate is in the down position.
 - l) The exit gate operation shall be triggered by transaction complete, or authorized card swipe.
 - m) The cash drawer shall remain closed for non-cash transactions.

- n) Shall not print a customer receipt, by default, but allow for one upon request.
- o) Shall work as Express Exit lane when the cashier is not logged on (un-manned cashier lane).
- p) Provide an IP-based color camera that shall capture all the activities performed at the Cashier computer. The video feed shall be recorded in the facility Digital Video Recorder (DVR). The recording of the video feed should be linked to the transaction and/or triggered event. A list of triggered events will be specified by the SFMTA during the configuration of The System by the selected Proposer. This video feed will be used to investigate any transaction dispute or event. The quality of video shall be good enough that the person processing the ticket is identifiable. The DVR should be capable of retaining/storing the videos for at least 30-days and append the data using “first-in, first-out (FIFO)” method. Live and recorded videos shall be able to zoom-in or zoom-out. The video feed (live and recorded) shall have the capability to be monitored/viewed locally and remotely on the PARCS network.
- q) Propose a redundancy/backup procedure that will allow the device to recover to the normal operation, in case of hardware/software crash.

e. Customer Fee Display

Each fee display, connected to the Central Cashier or Exit Cashier Computer, shall perform the following functions and include the following features:

- 1) Each Exit Cashier or Central Cashier lane shall have a fee display which is controlled by the cashier terminal.
- 2) The display shall show five digits for transactions, up to a \$999.99 dollars.
- 3) The display shall move from fee, to due, to change and denote those values on the display appropriately.
- 4) The display shall be visible to the driver from 8 feet in daylight or darkness.
- 5) The display shall be made to outdoor specifications and shall be damage resistant.

f. Control Gate/Arm Barrier

- 1) The control gate shall incorporate, in one housing, all necessary components for the functioning of the unit. Size the housing to accommodate additional control apparatus such as loop detectors, additional heating units, and relay logic packages. Basic unit shall include:

- a) A motor and drive mechanism. Motor and drive mechanism shall be able to process at least 200 transactions per hour (control gate going up/down) without over heating and/or malfunctioning.
 - b) Gate mechanism POWER and AUTO/MANUAL switches.
 - c) Power supplies, dust proof relays, and other gate control components.
 - d) Gate position UP and DOWN switches.
 - e) Seven-digit non-resettable counter which will increment by one each time the gate closes completely (from an Up position to a Down position). The Difference counting information at the FMS will be triggered by the loops at the Entry and Exit Lanes. This five-digit counter will be used as a tool to verify that the device transaction count matches with the FMS difference count and shift transaction report count.
- 2) Use bearings rather than bushings for movable parts.
 - 3) Gates should be a direct drive assembly and not belt or chain driven.
 - 4) The gate mechanism shall be field removable and replaceable in the housing. Provide field adjustable mechanism which will prevent the gate arm from dropping below the horizontal position and which shall stop at the vertical position. Protect all gears of the mechanism from dust and moisture.
 - 5) All electrical control components shall be supplied as plug-in modules to simplify exchange of components in the field. Provide connector configurations which prohibit improper circuit connection and prohibit the pins of a separated connector from being energized.
 - 6) Furnish each unit with a corrosion resistant connection box with terminal blocks for field wiring connections.
 - 7) Control Gate/Arm Barrier Operation
 - a) The gate arm shall retract quickly in a vertical plane on a command signal from the ticket dispenser, ticket acceptor, fee computer, or detector loops, and return to the lower position upon a signal from the gate reset loop detector.
 - b) If a closing gate meets an obstruction to its travel, the motor shall instantly reverse and return to open position for another try at closing. If the gate senses an obstruction in its travel, it shall generate an equipment malfunction message/alarm at the FMS. A non contact option will also be considered.
 - c) The control system shall allow the time interval for the gate to remain in the up (vertical) position to be changed within the software. If the

gate remains in the up position greater than the programmed time, an equipment malfunction message/alarm at the FMS will be generated and recorded in the device report.

- d) All control gates shall be remotely controllable from the computer station (FMS) located at the parking office.
- e) Furnish control gates with barrier arm, employing a break-away design that can be easily replaced when broken or damaged. Gate arm lengths shall be as required up to 12 feet in length.
- f) The SFMTA will consider gates that manually swing open in case of a power outage or other event to deter “breaking off” of the gates during an extended power outage to accommodate traffic flow.

g. Vehicle Detector/Loop Detector

All existing loops shall be tested prior to start of on-site construction. Loops shall be tested three ways: Resistance to ground, resistance and inductance of the loop. Submit readings. If any of the loops fail one of the tests, replace that loop with a new loop. Each detector loop shall be fed through a separate conduit from the curb to the control cabinet or gate operator (TA/TD/Arm Barrier). All the new loops shall be inspected and approved by the SFMTA prior to installation of the epoxy. Moreover,

- 1) Vehicle detectors shall be completely enclosed, solid state, fully modular plug in construction.
- 2) The detectors shall be easily removable for servicing and sized to fit in the ticket issuing machine, control gate housing, or appropriate location.
- 3) Shall be self-tuning to automatically maintain peak sensitivity regardless of weather or environmental conditions.
- 4) Shall be configured to variable frequencies so that adjacent loops do not interfere with each other (no cross-talk allowed).
- 5) Shall have readily replaceable power fuse.
- 6) Shall have lightning protection.
- 7) Shall have basic tuning controls from the detector housing.
- 8) Loop detectors shall be 100% accurate whenever powered up and detect all the arming/disarming of each loop and adjust the facility count (difference count) whenever a good entry/exit sequence is detected at the lane.

h. Facility Management System (FMS)

- 1) Facility Management System shall be Graphic User Interface (GUI) based. The Parking Access and Revenue Control System shall provide

transaction sorting, consolidated report generation, communication status monitoring, attendant sign-on/sign-off, and validation summary reporting to FMS. The System shall be a menu-driven software system through a computer or network of computers and/or servers that provides on-line monitoring and control of the parking revenue control with the following minimum requirements:

- a) Shall have multiple hard drives. At least once every 24 hours, some type of drive based local backup shall be made. This way, if a drive is corrupted or damaged, it can be replaced/swapped by another drive without losing any data.
 - b) Facility Management System, if used as Central Cashier station, shall have all the functionalities and payment methods that are available at the Exit Cashier stations.
 - c) FMS shall have password protection to provide multi-level access and protection to the System for a minimum of eight levels. The SFMTA to define the access levels before the installation. Access levels shall prevent unauthorized access to sensitive functions.
 - d) The PARCS shall support at least 50 or more concurrent users. System administrator must be able to add, delete, edit users profiles.
- 2) Credit card processing must be compliant with the latest PCI/DSS requirement. This compliancy must be system-wide not just to one or two components of the System and must be maintained during the warranty period and the optional service/maintenance contract.
 - 3) The PARCS software should include system alerts with the low, medium, and high priority alarms. These alarms shall be customizable to allow management to preprogram reports, alarms and statistics and shall be available at the FMS and CMC level. The SFMTA shall be able to program the System to forward the alerts to a PC (via e-mail), cell phone via SMS/text message, and accessible remotely via secured internet-based application. System shall be able to sent alerts to multiple recipients and at predetermined times and frequencies.
 - 4) Must be City and Country of San Francisco Article 22 compliant.
 - 5) All the software settings, information, data received or generated by the PARCS that is recorded to a Log File for that day must be replicated or backed-up to a data tape or digital storage medium in a readily accessible read-only format. System shall retain/store data for at least 5 years- an Article 22 requirement.
 - 6) As an Article 22 requirement, all employees and managers, and PARCS maintenance personnel, must be individually identified by the System, and each Transaction and the data entry, including but not limited to all payment received, Voided Tickets, Cancelled Transaction, and Discount

Parking fee charged, must be attributed to the individual responsible for an action, in a report.

- 7) As an Article 22 requirement, system must allow the operator to document and explain in writing any discrepancies or differences between the total number of Parking Tickets used and the number of vehicles counted by the Automatic Vehicle Counter (the System counter aka Difference counter). Different discrepancies can be categorized for the shift reports. Examples of discrepancies include, but are not limited to: Test tickets, lost tickets, or unreadable tickets.
- 8) The System must also record whenever any software program is altered and by whom.
- 9) System shall be able to “auto batch” SFMTA identified reports for printing. Printing shall be performed via local or networked printer.
- 10) System shall have a programmable “Turn around Grace Period”, “POF Courtesy Time”, and “Grace Period”.
- 11) The System must accommodate varying rate structures within a single and among multiple facilities, including but not limited to regular incremental rates, with a daily max, night incremental rates with night max, a 24-hour max, time of the day incremental rate, time of the night incremental rate, Saturday incremental day and night rates, Sunday day and night incremental rates, holiday rates, Saturday max, Sunday max, weekend max, early bird rates, valet parking rates, flat rates for day and/or night, different monthly parking rate. The proposed System, at a minimum, shall be able to accommodate the current fee structure. The System shall allow setting up the future parking rate changes with a scheduling program so that the new rate are in-effective as of the date and time scheduled by the SFMTA. The SFMTA shall be able to program, test and implement the current and/or the scheduled rates locally at the FMS and remotely from the CMC and over a secured Internet-based application. Proposer’s response to this RFQ confirms that the Proposer’s System is capable of implementing new rates instantly and via a scheduling module for the future implementation. If the selected Proposer’s System fails to implement the scheduled parking rates as of the scheduled date, Proposer will be charged the liquidated damages for the difference of previous and schedule parking rates for all the transactions occurred from the scheduled date and time until the actual implementation date and time of the new parking rates.
- 12) The System must be able to support different validation programs based on time, and/or dollar value, and/or a combination of time and dollar value and shall be able to limit the validations based on maximum time and/or dollar value allowed for validation on a given transaction, and also be able to accommodate any future validation programs.
- 13) All the FMS shall be accessible via remote computers over the secured Internet (web browser, VPN) and also at Central Management Computer.

- 14) The SFMTA office must be able to monitor and control all the field devices (Entry/Exit, POF, and Cashier Exits), facility counting information (difference counting), and view/print/export reports from any facility.

A vehicle count (difference count) shall be triggered from the loops, not by arm barrier going up or down.

- 15) The SFMTA and/or its designated operator shall be able to use the FMS and CMC to create/program global and/or local validations, global and/or local discount coupons, and global and/or local access cards.
- 16) Provide automatic daily backup of all system critical files, Article-22 required data and transactions to a SFMTA backup remote computer (Database server located at 1 South Van Ness).
- 17) Shall permit local facility backup by the Operator to a proven medium on demand, including, but not limited to, Flash Memory card, CD, and DVD.
- 18) The FMC must have the ability to:
 - a) Maintain minimum of 4,000 active access card file.
 - b) Support at least ten (10) separate rate schedules.
 - c) Support a minimum of eight (8) time zones for access cards.
 - d) Shall be ODBC compliant and shall permit access to Crystal Reports, Oracle Business Intelligence Enterprise Edition, or an equal reporting system, of all transactions to data tables. The data tables shall be part of the nightly automatic back-up procedure to the SFMTA data server.
 - e) Shall provide a data dictionary for data tables transaction headings.
 - f) All transactions, regardless of source, must have a minimum nine (9) digit non-resettable sequence assigned to the transaction that identifies both the lane and transaction, e.g., 007-123456 where the lane was identified as lane #7 and the transaction number was 123456; *or* any other way that will make sure the numbers are unique, traceable, in sequential order and are in-compliance with Article-22.
 - g) Proposer must propose a disaster recovery plan for the FMS.

i. Central Management Computer (CMC)

Central Management Computer located at 1 South Van Ness Avenue, 3rd Floor will serve as the management computer that the SFMTA will use to monitor and control all 20 facilities.

- 1) The System shall be Graphic User Interface (GUI) based. The first screen of the CMC shall have 20 icons, one for each facility, preferably in GoogleMap type layout. To access any facility related information user will click on that facility's icon. Once the icon is clicked, the user

will see all the control functions that are available for that facility at the FMS level. System shall be flexible enough that the SFMTA can group/regroup different facilities and allow individual operations Proposers to view and have access to only the facilities that they are responsible for.

- 2) CMC shall produce all the reports that are available at the FMS level on a per facility basis and shall also produce the same reports in a consolidated report format for all the 20 facilities.
- 3) The System shall be flexible enough that the SFMTA can group different facilities to get the group consolidated reports.
- 4) Proposer must propose a disaster recovery plan for the CMC.

j. Credit Card Server

All the Credit Cards shall be processed at a central credit card server in real-time. Central credit card server shall be located at 1 South Van Ness Avenue. All the six non-profit facilities will have their own credit card server and the credit cards from the non-profit facilities shall be processed separately at the respective facilities. Host based processing is preferred. Online, real-time credit card processing shall not exceed a total elapsed time of five (5) seconds from the swipe or tagging (for the Contact-less/proximity type readers) of the credit card until the return of the ticket to the customer and/or vending of the gate. Moreover,

- 1) The System shall be able to accept/process Master, Visa, Discover, American Express and debit cards (with the Visa/Master card logo) and get an online authorization for each transaction.
- 2) The System shall be compliant with the latest PCI/DSS requirements. This compliancy must be system-wide, not just to one or two components of the System, and must be maintained during the warranty period and any optional service/maintenance contract term.
- 3) The System must be able to search a credit card transaction, in the case of any dispute resolution effort, without violating any of the PCI/DSS compliancy.
- 4) The System shall produce a daily batch report of all the credit cards processed and compile a report on a per facility basis, without violating any of the PCI/DSS requirements.
- 5) In case of network outage between the individual facilities and the credit card server or between the credit card server and the clearing house, System shall be able to “batch” credit card transactions and process the batched transactions as soon as the network is reestablished.
- 6) The data backup shall be performed once every 24 hours.
- 7) Propose a redundancy/backup procedure that will allow the device to recover to normal operation, in case of hardware/software crash.

k. Merchant Validation Devices (off-line)

Proposer shall supply Validation Devices that meets or exceeds the following functional and performance requirements:

- 1) Shall operate normally as an off-line device.
- 2) Shall be fully portable; however, operator shall be able to tether the device to a fixed location.
- 3) Shall encode validations in machine-readable format on the customer's ticket.
- 4) Shall print specific validation information, in human readable format, to allow the proper validation to be applied in the event the customer's parking ticket becomes unreadable by the machine.
- 5) Shall include a non-reversible counter to keep track of the validation processed by the machine.

l. Merchant Validation Devices (on-line)/Encoder

This device shall also meet or exceed the following functional and performance requirements:

- 1) Shall operate normally as an on-line device connected to the Central Cashier computer and/or FMS to read and produce the tickets/coupons.
- 2) Shall encode validations in machine-readable format.
- 3) Shall print specific validation information, in human readable format, to allow the proper validation to be applied in the event the customer's parking ticket becomes unreadable by the machine.
- 4) Shall electronically read the ticket and apply any discount to the parking fee.
- 5) System shall keep track of the transactions (coupons produced or validation accepted) from each machine and produce a report on that.

m. Database Server

The Database Server shall be either an SQL or Oracle based server and centrally located at the SFMTA specified location. The SFMTA may provide the Database Server with Proposer's specifications.

Other minimum requirements include:

- 1) The data backup shall be performed once every 24 hours.
- 2) The Database Server shall be used to backup all individual FMS units within the SFMTA portfolio.
- 3) Server shall be able to retail data for 5 years and append the data using "First-in, first-out" (FIFO) method.

- 4) Propose a redundancy/backup procedure that will allow the device to recover to the normal operation, in case of hardware/software crash.

2. Software and System Reports

a. System Software

The System shall be a Graph User Interface (GUI) base system. At the CMC level the user, after authentication, shall see 20 facilities within the System with top-level status information such as: difference counting information and facility status (no event alarm or event alarm on device). If the user clicks on one of the icons, the System will show the icons of all the devices (such as: Entry/Exit Lanes, POFs, Cashier Stations) available in that facility. The System shall be flexible enough to allow the user to drill-down to each level and see all the device information, remotely, that are available at the FMS level. At the same time, if one of the “Non-Profit” facility manager logs-on to the System, he/she shall be able to see *only* the facility(ies) that he/she is responsible for, similarly, if one of the operators from any of the “Operator Groups” logs-on to the System, he/she shall be able to see *only* the facility(ies) that he/she is responsible for. The System shall be flexible enough that the SFMTA can group/regroup the facilities in the future by checking/unchecking the grouping boxes in the operator profile. At the FMS level, the System shall show the GUIs of all the devices in the facility with the top-level information such as: status of the device, any alarm on the device. The user shall be able to drill-down to get all the device related information, including but not limited to current status of the device, alarm on the device, transactions on the device. The System shall be able to provide and support all of the following:

- 1) Ability to support 50 or more concurrent users.
- 2) Security shall be identified by user group and by action type (inquire, add, change, delete) at a minimum.
- 3) Ability to handle multi-rate structure, including at least eight or more time zones per facility, including effective dates for each rate.
- 4) Ability to support time change from daylight savings to standard and back again. Transaction processing and fee determination shall be automatically adjusted for time changes.
- 5) Rules-based processing that includes situations where supervisor overwrites and approvals are required.
- 6) The System shall allow field prompts to be changed, error messages to be modified, and menu structure to be manipulated. Optionally allow for customizations by user group and the ability to add or hide fields.
- 7) Entry and exit reconfigurations, including additional lanes, shall be easily managed through the software interface without the need for complete reprogramming.
- 8) Upgrades shall not affect system modifications, as opposed to any customization the SFMTA may make outside the System. Upgrades shall not affect customized help text, account numbers, codes, or identifiers that are allowed by the System.

- 9) Provide the ability to enter notes or memos to selected transactions (including, but not limited to, Lost Tickets, Explanation on why the mechanical count and difference count is different, over night car inventory notes).
- 10) The data backup shall be performed once every 24 hours.
- 11) Propose a redundancy/backup procedure that will allow the device to recover to the normal operation, in case of hardware/software crash.
- 12) Validations

The System shall permit a minimum of 20 separate different types/classes of validations and the ability to track up to 999 separate Proposers on any single validation key. System shall permit a maximum of four (4) validations on one (1) ticket with correct accounting/billing to each separate validation. The SFMTA may also add a time limit and/or dollar value limit on some types of validations (maximum number of hours or minutes and/or dollar amount). For example, a customer may get a maximum of four different validations and the combined validation time shall not go over two hours and/or \$5.00 validation. System should be flexible enough to allow the end-user the ability to customize each validation type based on the time and/or the dollar amount and/or usage profile such as local, multi-location, and global-location. The SFMTA should be able to produce a local validation that is good only at one particular location or a multi-location validation that is good at multiple identified locations or a global validation that is good for all the locations within the system, irrespective of where the validation was initially produced. For example, if the System is consist of Garages A, B and C and if a coupon was produced to be used only at Garage A, it will be considered a local validation coupon. Similarly, if the same validation can be used at Garages A or B but not C, or B or C but not A, it will be considered a multi-location validation coupon. Consequently, if a validation can be used at Garages A, B or C then it will be considered a global validation coupon. Validation types, on a encoded coupon and/or on the cashier keyboard at a minimum, shall include:

- a) Free Forever: Validation coupon will allow one time free exit, irrespective of duration of parking.
- b) Time Validation: Free for HH:mm (HH:mm = hours and minutes, i.e. 2 hours free, 24 hours free)
- c) Flat Rate timed validation: A validation will use flat rate for first HH:mm, after that regular incremental rates will apply.
- d) Time off validation: A validation that will validate HH:mm from the final parking duration.

- e) Use Rate Record “X” to rate this ticket (Validation switches to an alternate rate structure)
 - f) Free Exit to Time Set: This validation will allow free exit to a set time (for example: 5am, 7PM) and will apply the regular rates, there after.
 - g) Free Exit after Time Set: This validation will allow free exit after a set time (for example: 5am, 7pm) and will apply the regular rates, before that time.
 - h) First HH:mm free, regular rates thereafter: This validation will validate first hour of the parker’s duration and apply regular parking rates after the first hour.
 - i) Money off : This validation will take-off (deduct) the programmed dollar value from the final parking fee.
 - j) Surcharge: This will be used as additional surcharge that customer may be paying. Examples of surcharge, includes but is not limited to, garage reopening fee.
 - k) Percent (%) discount
 - l) Daily Surcharge (Oversize vehicles, took two spaces)
- 13) Monthly Parker Accounts Receivable Invoicing permits the System to charge for monthly parking, generate invoices for all individuals, Companies, Tenants, and/or Group Accounts.
- a) Shall permit a minimum of 1,000 Tenant, Company, or Group Accounts for monthly invoicing.
 - b) Shall account for the City of San Francisco Parking Taxes.
 - c) Shall account for card deposit/activation fee.
 - d) Shall account for lost card fees.
 - e) Shall account for late fees.
 - f) Shall account for vehicle surcharge for oversize, luxury vehicles, or vehicles with service.
 - g) Shall permit pro rata invoicing by week, mid month or days remaining in month when opening a new account.
 - h) Optionally, shall permit card holder, Tenant, Company or Group Account to generate invoice online and print locally at their printer.
 - i) Shall require all active access cards in the System be invoiced even if the card is “Free” of charge. This functionality can be proposed as a hosted feature. Proposer must include the hosting cost with their price Proposal, if using the hosted option and any other associated

costs. SFMTA, at its sole discretion, may decide to manage the hosted module internally. Proposer must include the cost, if any, of managing the module as “in-house”.

- j) Shall permit automatic billing and electronic receipt generation to accounts with Credit Card or Bank Routing on file (EFT) with return email address on file. This functionality can be proposed as a hosted feature. Proposer must include the hosting cost with their price Proposal, if using the hosted option and any other associated costs. SFMTA, at its sole discretion, may decide to manage the hosted module internally. Proposer must include the cost, if any, of managing the module as “in-house”.
- k) Optionally, System shall permit customers to manage account data **online** such as address, vehicle data, license plate number, and/or change EFT function account. This functionality can be proposed as a hosted feature. Proposer must include the hosting cost with their price Proposal, if using the hosted option and any other associated costs. SFMTA, at its sole discretion, may decide to manage the hosted module internally. Proposer must include the cost, if any, of managing the module as “in-house”.
- l) Shall permit Group accounts to have multiple rates based on class of monthly parker and areas parked, i.e., Day, Night, Weekends, Reserved, unreserved.
- m) Optionally, System shall permit Group Account Manager for the account Owner to manage account data for assigned monthly parkers.
- n) Shall maintain waiting list of potential and existing customers for space or areas as it is available.
- o) Shall permit automatic increase to monthly rates based on Tenants lease obligations.

14) Automatic Daily Audit Exception

The System shall be able to generate an “Automatic Daily Audit Exception Report.”

The Automatic Daily Audit Exception function is used in conjunction with the Close of Day Business Reconciliation. It searches all transactions for a unique subset of Transactions called “Exceptions.” Exceptions may occur in five individual areas, which are:

- a) Lane equipment events.
- b) Ticket oriented events.

- c) Card oriented events.
- d) Administrative oriented events.
- e) Payment posting events where adjustments to the standard payments were made.

The exceptions should be enumerated and described from a primary pull down menu list. An Exception may be selected for examination by selecting it from the list. A detail of the transaction should appear with the details surrounding the particular transaction. At the same time as the details are displayed, a list should appear showing any Explanations that have previously been made for that Exception. An Explanation input box to require the operator to input their response to the Exception is necessary. Multiple Explanations should be allowed for any Exception and any secondary explanation should not overwrite the preceding explanation.

15) Close Day Reconciliation (CDR)

The System shall require the Operator to reconcile the System on a 24 hour basis which shall constitute the “Business Day” of the facility. All revenue adjustments, ticket adjustments, ticket Starting/Ending Inventory numbers (from the mechanical counter, and difference counter), Over night vehicle count shall be required. The CDR shall permit the Operator to adjust data to reflect the actual true numbers for that Business Day. The CDR reports shall show both the original source data and data manipulated to achieve the Closed Business Day numbers. These numbers shall be used for both GL (General Ledger) entries based on The SFMTA Accounting classifications and/or to comply with CCSF Article 22 requirements. The reconciled numbers, cash and credit cards are then available in the report format to be compared with bank statement reconciliation and when totaled shall reconcile to the amounts posted on the monthly statements submitted to the SFMTA.

Over night vehicle data (license plate number) shall be used when calculating a lost ticket. The System shall keep an active Over night vehicle “inventory” and shall search for the license plate number to calculate the number of days a vehicle was in the garage. For example, if a vehicle with license plate “LV2PARK” is in the active Over night vehicle “inventory” for previous two readings (inventory done for two continuous days/nights) the customer of that vehicle will pay three days worth of lost ticket amount, provided they go to the cashier the third day, for a lost ticket. However, the Over night “inventory” shall update the data such that if a vehicle license plate number was present in one “inventory” but the next “inventory” the same license plate number was not present, the Over night inventory must “drop” that vehicle from the active Over night “inventory”.

Any adjustments made to the count of vehicles currently occupying the garage as a result of the CDR shall adjust the number of vehicles reported to the *SFpark* Transactional system as required earlier.

16) Carpool

The SFMTA provides a discounted monthly parking rate for Carpool customers. A monthly customer entering the parking facility with at least two passengers (three occupants) in the vehicle will qualify for the Carpool rate. To eliminate any potential abuse of this feature, the SFMTA requires that the Proposer propose a mechanism/system that will enforce the minimum of two passengers per vehicle upon entry. To this end, the SFMTA envisions the following scenario; however, Proposers are encouraged to suggest any other solution that will be equal or better to enforcement of the Carpool feature than what is stated below:

The Carpool feature permits several access cards to be assigned to a Carpool account with a specific monthly fee. To ensure that a minimum number of riders are in the vehicle, successive cards (a minimum of three cards) must be scanned on entry until the permitted minimum number of cards have been scanned at the reader before the gate vend will occur. If a Carpool account has more than the minimum required (three) members in it, after reading the minimum required Carpool access cards and vending the gate, all the rest of the members within the Carpool account should be blocked for entry into the facility. All the scanned access cards status should be “in the garage” and the difference counter should be decremented by one for number of parking spaces available.

17) Event Prepay at TD

Event Prepay function permits the facility to collect money on entry either as a cash or credit card transaction. The ticket issued and associated with the prepayment is both electronically marked in the ticket file as having a prepayment made and associated with some rate schedule/validation. The ticket is also physically marked that a prepayment has been made. On exit, the customer can go directly to the exit lane and deposit their ticket in a ticket acceptor and exit the garage (assuming that the exit is within the parameter of the associated validation). If outside the Validation parameters, the dollar amount of the prepayment survives and is used as a Credit Balance against prevailing charges at exit. The SFMTA shall be able to customize the prepay expiration time on the ticket. Any prepay customer staying past the expiration time shall be charged regular parking rates from the expiration of the prepay ticket.

18) Limit by Account

A Company or Group Account may have an unlimited number of active access cards issued to their account. The account pays for a specific number of spaces. The System tracks the use of the access cards

assigned to the account at entry and exit maintaining a running count of cards “IN.” When the Limit of cards are reached to the Account Limit, any remaining customers will be denied access into the facility on their access card until such time when a cardholder exits the facility and the limit is decreased by that number of exits.

19) Time Zone Violator converts to Charge at exit

Time Zone Violator is used to control cardholders who are IN the facility OUTSIDE of their Time Zone (TZ) to which they are assigned. Upon exit, the access card will not vend the gate and the cardholder must pay the overtime parking fees for parking time used outside their TZ. Cardholders attempting to enter the facility outside their TZ will be denied entry on the card.

20) Nest Violator

Cardholders who are defined as having to nest are so identified in the System card file. If a nest cardholder violates the nest rules, The System will automatically place the card in a violation mode at the end of the Nesting Grace Period and generate an “Alarm” for the Operator to know that a Nest time-out violation has occurred. Once the access card is in violation, the cardholder must seek administrative assistance to remove the violation. An access card in violation shall not be allowed to enter/exit the parking facility.

21) Valet Parking

The following facilities currently provide Valet Parking, as well as transient parking and monthly parking. At these locations, all entry and exits lanes are mixed used, meaning that the transient, monthly and valet parkers use the same entry and exit lanes and there are no designated valet entry/exit lanes. Moreover, in some instances, valet employee valets a vehicle upon entry but directs the customer to the location where the vehicle was parked when the customer goes to the key Kiosk to pickups their vehicle keys.

- a) St. Mary’s
- b) Golden Gateway
- c) SF General Hospital
- d) Portsmouth Square
- e) Performing Arts
- f) 16th and Hoff
- g) Ellis O’Farrell
- h) Union Square

For the new PARCS, the SFMTA requires a valet system that will allow all the transient parkers (valet and non-valet) to pull a ticket at the entry. If the customer wants to use the valet parking service, they will pull into the valet parking area where the valet attendant will swipe/scan the

customer's transient ticket on a handheld type reader. This swiping/scanning of the transient ticket on the handheld type valet reader will produce a two-part ticket/receipt and link the customer transient ticket to the valet ticket. Moreover, the Lot Count (difference-counting) module will be adjusted to show the parker as Valet customer not a transient. The ticket that was pulled from the entry lane and swiped/scanned at the valet handheld unit will be returned to the customer and the two-part ticket/receipt produced by the handheld type machine will be used for the vehicle for identification, and the board stub for the key. The Valet parks the vehicle on a floor and after parking the vehicle, inserts/scans the portion of the remaining ticket/receipt at the "reader" on the floor and enters the space number where the vehicle is parked. The System knows the ticket/receipt number and the address of the reader and associates the ticket with the floor/area and space number where the vehicle is parked. Upon customer return, as s/he pays the ticket at the POF, the System alerts the Floor Valet that ticket Number "NNN-NNN" parked on floor/Area "Y" in space "ZZZ" has been paid and the customer is waiting. The Valet retrieves the board stub from the rack and reads the ticket to inform other Valets that someone is retrieving the vehicle. The System will also capture the transaction time from "paid" to "retrieved" to "exit" for statistical data mining. The System shall transmit the real-time count information to all the System devices that are keeping track of the parking facility capacity information, including but not limited to FMS, CMC, SFpark and PGS servers.

Proposer may suggest any other option that will achieve similar or better results of what is intended from the mixed used valet parking feature described above.

22) Virtual Validations

Virtual Validation is an optional feature. The System shall provide the capability of issuing a merchant validation remotely (preferably over the internet/web-based application). Proposers shall include a description on how their system will accomplish this feature. This feature may be proposed as a hosted module. Proposer must include the hosting cost with their price Proposal, if using the hosted option and any other associated costs. SFMTA, at its sole discretion, may decide to manage the hosted module internally. Proposer must include the cost, if any, of managing the module as "in-house". The SFMTA envisions the Virtual Validation feature to work as follows:

Virtual Validation shall allow the authorized merchant Account Holders (AH) the ability to validate parking tickets from any device with an internet connection. The AH logs into their account and enters their unique account code and the associated parking ticket number, or the AH can scan the ticket to process the validation using any internet capable device (including Handheld, Mobile Phones and PDAs). The

System will deduct from the AH's electronic purse the fixed amount for each validation or the total fee upon exit if the validation is a 100% Validation to the Parker based on predetermined fees and licensed validation. When the AH's account balance reaches a predetermined minimum threshold, the AH is notified electronically of the balance. The AH can electronically add funds to the account via credit card or bank transfer. Optionally, the AH can have a Credit Card on File and have the card automatically charged a preset amount when the threshold is reached.

The AH can review reports to see who provided the validation (by individual login password) and also view details on the ticket number, entry/exit times of the ticket, and the amount of money deducted for the validation. Additional fields for specific data can also be included with each validation (e.g. Customer name and reason for visit, for data mining purposes) which will also be reflected in the reports.

The Customer can insert their ticket at a POF unit and pay any overtime parking charges not validated or drive directly to the exit lane and use the credit card reader in the Ticket Acceptor to pay any outstanding balances.

23) Internet Reservation

Internet Reservation may be proposed as a hosted module/application, hosted by third part. The SFMTA, at its sole discretion, may choose to manage the hosted module internally. Proposer must include the hosting cost with their price Proposal, if using the hosted option and any other associated costs. Proposer must include a description of an Internet Reservation system for reserving a parking space at one of the SFMTA parking facilities, which may or may not be similar to what is described below. Customers may access the online reservation portion of the facility system over the internet web-browser, such as Microsoft Explorer and/or Mozilla Firefox. The customer will enter the approximate time of arrival, date of arrival, and duration of stay desired. The System will require customer's credit card number; the same credit card will be used at the entry lane to allow the customer to enter the garage. The System will produce a confirmation code for the customer to print out along with instructions on how to access the facility, and how to process the ticket before exiting. Additionally, if the customer enters a starting address, a map detailing the driving directions will be available.

The Facility System Lot Count (Difference count) screen shall show any reservations made that will enter during the next hour and ensure space is available for the customer. If the customer arrives at the facility when the facility is "Full" and transient parkers are blocked from entering, the customer can swipe/scan the credit card that was used when the

reservation was made and the System should issue a transient ticket to the parker and allow the parker to enter the facility. In the event that the credit card is not available and the garage is “Full,” the Customer will receive instructions at the time of the reservation that informs the customer to call on the TD intercom and supply a reservation number. The Facility Manager can override the “Lot Full” for that lane to issue one ticket.

Parking rates for Internet Reservation parker may be different than the regular parking rates implemented for the transient parker. As an option, customer may also elect to prepay their reserved parking online with their credit card. At the exit, the customer will insert his/her credit card and the System shall apply the prepayment amount to the outstanding time fees calculated based on actual elapsed time. Any overtime charges will be assessed at this time.

The System will generate a daily report of reservations made that day and generate a Cashier report for prepaid reservations collected on that Business Day. On a daily basis going forward, the System will automatically generate a report of all reservations being held for that Calendar Day.

24) Parking Guidance System (PGS)

The SFMTA is working on a Parking Guidance System (PGS) project that will inform the parkers throughout the City, by means of strategically located electronic displays, how many parking spaces are available in the different garages. Selected Proposer’s system shall be able to transmit the parking space information from the FMS to the CMC. This parking space information (Difference counter information) from the CMC shall be transmitted to the SFMTA PGS central server every 60 seconds, without any human interaction or input. XML file format must be used to export the parking space information to the PGS server. PGS server will be configured to use the Variable Messaging Sign(s) (VMS) to display the parking availability information (not a Project deliverable). Moreover, each garage will have a VMS at the ingress points showing number of spaces, “garage full,” “garage closed,” and/or a customizable message. System shall be flexible enough to allow the SFMTA to change the threshold number for “garage full” and other related counting number instantaneously. The SFMTA will provide the VMS; the SFMTA envisions using Daktronics displays.

25) SFpark

Selected Proposer’s system shall be able to transmit the following to the SFpark Transactional System (SFpark central server) via XML feeds. Following information shall also be available in the exportable report format:

- a) The number of occupied parking spaces and the current total parking spaces (capacity) in the garage of each garage from CMC every 60

seconds, without any human interaction or input. XML file format must be used to export the parking space information to the SFpark central server. A sample of XML file is attached in the Attachment section of this Document. The finalized required format for the XML feed will be negotiated with the selected Proposer and will likely be similar to the format found in Attachment G.

- b) Every day, for each garage, the rate schedule used that day. This information may be used to determine the parking rates were charged in a given day (including but not limited to Special event rates, Flat rates, and Transient rates). The finalized required format for the XML feed will be negotiated with the selected Proposer.
- c) Every day, for each garage, revenue per day by all non-monthly types, including but not limited to transient, daily maximum, early bird. The finalized required format for the XML feed will be negotiated with the selected Proposer.
- d) Every month, for each garage, monthly revenue by type including but not limited to reserved, and non-reserved. The finalized required format for the XML feed will be negotiated with the selected Proposer.
- e) Payment amount and type for each transaction, including but not limited to credit/Debit, cash, and System validations.
- f) The number of entries and exits at each garage every 60 seconds, by type of parker, including but not limited to transient, monthly, car pool parkers.
- g) A daily report that shows, in a table format, the length of parking sessions by parker type, and other information such as entry, exit, and stay duration of all parker type.

26) System Reports

- a) The software shall provide versatile report input screens to allow the user to design/select reports to fit specific needs. All the information for the reports shall be part of the PARCS report package. All the reports shall be accessible after providing the correct level of authentication locally at the FMS computer. All Reports available at the local FMS shall also be available at the CMC and remotely over the secured Internet connection (web-based application, VPN) with correct authentication. Any authorized user shall be able to print the Reports locally at the FMS and/or centrally at the CMC and/or at a remote location over the secured Internet.

System reports will include all the functions/features described in the “Hardware and Software” section of this Document. Other general requirements for the System reports include:

- (1) Report all transactions entered/processed during the reporting period.
 - (2) Reports can be directed to printer immediately after on screen review. Or exported to an external media (such as USB or disk drive) in an agreed upon file format.
 - (3) Ability to print to any local or network printer.
 - (4) Ability to use “check-boxes” for report generation. Consideration will also be given to use prompts and prompted lists for report generation.
 - (5) Ability to schedule when reports are run (off hours reporting and printing).
 - (6) Ability to interface with Excel and other ODBC compliant products.
 - (7) System must support Crystal Report writer. All necessary Tables and Data Dictionary is to be supplied by the Proposer. At the SFMTA’s discretion, the proposed System shall optionally be configured to use SFMTA instances of Crystal reports.
 - (8) Provide the ability to drill-down from summary level to detail data and to drill back up to the original transaction.
 - (9) Ability to apply filters (including, but not limited to, date and time).
 - (10) Ability to do what-if scenarios (including, but not limited to, changing parking rates or capacity).
 - (11) Ability to graphically display garage occupancy patterns.
 - (12) Perform revenue forecasting and budgeting in graphical formats.
 - (13) Ability to have the reports automatically run and delivered to assigned personnel via e-mail and other communication modes.
- b) Parking System must comply with San Francisco’s “Parking Tax Regulation No. 2006-1,” “Parking Station Signage Requirements” and “Article 22: Business and Tax Regulations Code.”

A copy of Article 22: Parking Stations; Revenue Control Equipment is included with this Document. Article 22 related information can also be obtained on the web at:

<http://www.municode.com/content/4201/14132/HTML/ch022.html>.

- c) Valet parking: A report showing the Valet parking activities, such as: how many vehicle entered the valet parking area, at what day/time,

how and when they paid for the parking and what day/time they exited the garage.

- d) Number of vehicles Entered/Exited from each device (Entry/Exit) within the user defined time interval. Also the total number of vehicle entered/exited the facility.
- e) As an Article 22 requirement, the System must record the following information and compile it in a report in a sequential order in which the events occur:
 - (1) Time and date of a Motor Vehicle's entry to the facility.
 - (2) Time and date of a Motor Vehicle's exit from the facility.
 - (3) Amount of the parking fee charged.
 - (4) Time and the Amount paid.
 - (5) Value of any discount applied to the parking fee.
 - (6) Amount of Parking Tax collected.
 - (7) In case of Central Cashier or Exit Cashier processing, the, identity or identification number of the Operator's employee who processed the Transaction.
 - (8) In case of paying the parking fee at the Pay Stations or the Express Exit devices (Entry for the Pre-pay), device number where the transaction was processed.
 - (9) Each transaction must be identified in the Log File or Journal Tape by a non-resettable sequential identification number assigned by the PARCS.
- f) Report with information on number of tickets issued at the Entry and collected at the exit and amount of Tax collected. Day shift report shall include the total number of vehicle that were parked over night, hence making the sum of entered, exited and overnight vehicle in the facility to zero (i.e. Entered vehicles = Exited vehicles + Overnight Vehicles).
- g) The System must be able to individually identify all employees and managers, and the maintenance personnel. All the transaction and the data entry, including all payment received, Voided Tickets or Cancelled Transactions, Discount Parking Fee charged must be attributed to such individual in a report; an Article 22 requirement.
- h) Report with number/quantity and type/class of discount validations/coupons utilized during a given shift, a day, month(s), and year(s).
- i) Report with Revenue reduction information by category/class due to the discount validations/coupon utilization.

- j) To encourage customers to safeguard their proximity cards, the SFMTA collects a “card activation deposit/fee” for all the newly issued access cards. When an account is closed, the SFMTA returns that deposit back to the customer after collecting the proximity card. In the report two separate line items shall show the proximity card deposit collected and card deposit returned to the customers (Shift/Daily/weekly, monthly, yearly reports).
- k) System shall keep track of all the different revenue types (Transient, Credit In/Out, Smart card – TransLink®, Carpool, Zip Cars, CarShare, Monthly, Motorcycle monthly, night monthly, Weekends, Taxed, Tax exempt, valet, discounted parking) and provide a separate line item of the different revenue types in the report.
- l) System must be able to retrieve reports based on the time frame (Shift report–of a particular cashier or device, day report, weekly report, monthly report, and yearly report) selected by the user. This report must include all the revenue transactions, revenue reduction (amount) per coupon type/class, number of revenue reduction coupons (quantity) used by type/class/category, credit card transactions by type, cash revenue collected, Taxed transactions (quantity and amount), Tax Exempt transactions (quantity and amount).
- m) In the case of the Pay Station/Exit/Cashier Station reports, System must also report how many revenue reduction tickets were used at any particular device and their type/classifications.
- n) In a separate report there must be entries of revenue movement – How much revenue, in respective denomination, was present in the POF at the start of the shift and how much of that revenue has been utilized and accepted during the shift.
- o) In a separate report, System shall also be able to tell the peak usage periods of the device by the number of transactions completed at that device.
- p) System must be able to allow users to locally format/modify the order of the report information and titles and edit, move, adjust column widths.
- q) As an Article 22 requirement, the System, at a minimum, must be able to reconcile (as an example: “Parking Ticket Analysis” report suggested below) the number of vehicles registered by the Automatic Vehicle Counter (mechanical counters at the Entry/Exits – to be manually entered by the cashier at the beginning and end of the shift, minus the difference counting information) with the number of Parking Tickets issued/collected, Voided Tickets, lost tickets, unreadable tickets, etc.
- r) “Parking Ticket Analysis” report. This report shall show any unaccounted tickets with the following columns:

- (1) Beginning Inventory – Number of vehicles in the facility at the beginning of the day/shift.
 - (2) Tickets Issued – Number of tickets issued by ticket issuing machines.
 - (3) Test Tickets – Tickets that were issued but not processed through exiting process (including, but not limited to, maintenance tickets, and “found” tickets after exiting). Proposer must propose a way that requires the operator to count and the System to keep track of all the “Test Tickets.”
 - (4) Collected Tickets – Tickets collected at the Exit lane and Cashier booth.
 - (5) Calculated Inventory – Amount calculated from the four previous fields.
 - (6) Actual Inventory – Actual Beginning Inventory at the beginning of the next day (to be entered by the supervisor).
 - (7) Unaccounted. Tickets –The difference between the calculated inventory and the actual inventory.
 - (8) Discrepancy remarks – User entered remarks on the discrepancy (250 characters).
- s) Parking Trend Analysis report showing how many vehicles stayed in the facility for user selected duration (20 min, 30 min, 60 min, etc.).
 - t) Provide at least 10 custom reports that are not part of selected Proposer’s standard reports package. SFMTA may request 10 custom reports anytime within five years of PARCS installation.
 - u) System shall be able to generate a report based on revenue and/or the activity of the company in the System (monthly customer).
 - v) System shall produce “Quarterly Parking Tax Return” report. A sample report is included in the Attachment sections with the title: “Quarterly Parking Tax Return.”

3. Testing and Acceptance

System testing (for each parking facility) shall be done in three phases: 1) Factory Acceptance Test; 2) On-site Acceptance Test; and 3) 30-Day Operation Demonstration Test (ODT). Note that for the project Phase-I, there will be a 90-Day ODT instead of a 30-Day ODT. Proposer must submit a hard copy and an electronic copy of all test procedures to the SFMTA 30 days prior to commencement of any phase of the test. SFMTA must approve the test documents before the test phase can start. The first phase of the testing plan shall consist of a Factory Acceptance Test prior to shipment of all the System components. The second test phase shall consist of onsite inspection and test immediately following complete installation and operation of the entire PARCS

at respective garages. The third phase shall consist of a 30-Day ODT (90 days for project Phase-I) following On-site Acceptance Test of that project phase.

Proposer is responsible to correct any deficiencies or problems found during these tests at no cost to the SFMTA. The Proposer must correct the problems identified in each testing phase before the acceptance of the System. All acceptance testing reports shall be submitted to the SFMTA and shall be approved before acceptance of these Systems.

All the test reports generated during FAT, SAT and ODT as a direct result of System tests shall not influence the SFMTA Daily, Weekly, Monthly, and Yearly report and the System shall be able to separate the test reports from the actual operation/production reports.

a. Factory Acceptance Test (FAT)

- 1) The Factory Acceptance Test shall be comprised of structured specific tests. Prior to shipment of the System, conduct a formal Factory Acceptance Test with the SFMTA designated representative in attendance. Notify the SFMTA in writing at least two weeks prior to the FAT that a dry run of the FAT has been successfully performed and that the System is ready for the formal testing. Also, certify in the notification that all documentation scheduled for completion prior to the Factory Acceptance Test is complete and ready for inspection.
- 2) In the event the first attempt to pass the Factory Acceptance Test is not successful, correct the faults and then notify the SFMTA in writing at least one week in advance, that the faults found earlier are corrected and the Proposer is ready for resumption of testing.
- 3) The test procedure shall:
 - a) Contain the test number, name and description for each test.
 - b) Define each step-by-step procedure, providing the expected response for each step and providing space for the actual response for each test.
 - c) Contain minimal reference to other documents.
 - d) Be structured so that simpler tests generally are run first.
 - e) Provide space, in the test documents, for approval/remarks by both the Proposer and the SFMTA representative for each test.
- 4) Testing shall include, but not be limited to, the following:
 - a) Verify correct inventory of hardware. This shall include all documentation and operator's manuals. Documentation shall include all drawings and as-built drawings.
 - b) Verify that all hardware is operational.
 - c) Demonstrate all hardware and software diagnostics.

- d) Demonstrate all software and its functions and capacity.
- e) Create and demonstrate proper handling of typical error and failure conditions, and power failure and System recovery.
- f) Demonstrate that all software is operational, including fee calculating, editing software, fee calculation changes, summary reporting, logon, logoff, exception transactions, data transfer, and security functions.
- g) Demonstrate the operation and performance of all Cashier Terminal, FMS, and CMC computers including, but not limited to:
 - (1) Quality control check on manufacturer.
 - (2) Proper wiring and cabling.
 - (3) Proper fee display.
 - (4) Fee calculation and accuracy for all transactions.
 - (5) Ticket reading.
 - (6) Diagnostics.
 - (7) Gate control.
 - (8) Receipt issuing.
 - (9) Summary reporting and format.
 - (10) Data transfer/export.
- h) Demonstrate the operation of the data collection device including, but not limited to, data collection, storage and transfer to the SFMTA's network, applications programs, editing functions and security software.
- i) Demonstrate all functions of the ticket issuing dispensers including ticket issuing, encoding, low and empty ticket alarms, and gate controls.
- j) Demonstrate entire system operation including interfacing to existing equipment (loop detectors, loops, and intercom system).
- k) Verify that the hardware and software documentation accurately represents the System supplied by the Proposer.
- l) Visual tests including, but not limited to, verifying the outer frame of the hardware is free of sharp edges, and wire management inside the device is done according to the industry standards.

b. Site Acceptance Test (SAT)

- 1) Upon installation of equipment, in each facility, perform a Site Acceptance Test –SAT that is similar to tests that were performed for FAT. The SAT will demonstrate every function of the equipment under test and verify the integrity of the equipment. SAT shall be performed on all the PARCS devices (Proposer supplied equipment and integrated equipment that were reused in the new PARCS, such as, Pedestrian warning buzzers, Video cameras) to make sure that the System at the facility under SAT performs as a whole and without any compatibility and/or interface issues.
- 2) The tests shall be witnessed by the SFMTA project manager and/or a designated representative. Notify the SFMTA in writing at least one week prior to the test that the equipment is ready for testing.
- 3) In the event that the test(s) are not successful in the first pass, correct deficiencies and notify the SFMTA at least two days in advance, that testing is ready to resume.
- 4) Promptly correct all problems encountered by providing field personnel appropriately trained to correct the problems. During any troubleshooting, no lane device shall stay out of service for more than 24 hours. If the Proposer suspects that repairs will take longer than 24 hours, it must swap the bad hardware with good hardware so that the lane does not stay out of service for more than 24 hours.

c. Operation Demonstration Test (ODT)

- 1) Perform a 30-day Operation Demonstration Test (90 days for project Phase-I). During this time PARCS will run on its own and demonstrate System functionalities without any interaction (including, but not limited to, fixing bugs, installing patches, and replacing hardware) from the Proposer or its employees.
- 2) In case of any modifications and/or troubleshooting to the PARCS, the SFMTA, at its own discretion, may require a reset of the ODT. In that scenario, the Proposer shall fix the issue within a reasonable time and after verification of the fix, ODT will resume from day one.
- 3) The test shall be unstructured and the SFMTA and/or its operator(s) shall be allowed to operate the System with the Proposer only observing. The System shall perform as specified and any deviations shall be corrected and re-tested.
- 4) During the ODT, all required data shall be accurately collected, stored, transferred to database, and accurately reported.
- 5) Upon repeated failure of the same problem in more than 30 percent of similar components or three times in individual device, the test shall stop until the problem is corrected and re-tested for 30 days (90 days for project Phase-I) unless waived by the SFMTA.
- 6) The Proposer may utilize the complement of spare parts from the SFMTA's inventory to minimize downtime during the test. All spare

parts used from the SFMTA's inventory shall be replaced at no charge/cost to the SFMTA.

- 7) Document and maintain, in a problem Log File, discrepancies found during testing. Describe the subsequent correction. The SFMTA will verify proper operation of the System and its equipment.
- 8) Faulty and/or incorrect operation of major functions may, at the discretion of the SFMTA, be cause for suspending or restarting of any test.

4. System Training

Selected Proposer will provide a structured training covering the knowledge areas described in the following subsections. Spot instruction will not constitute fulfillment of this portion of the contract. The selected Proposer must submit the training and Operations & Maintenance (O&M) manuals specific to the SFMTA System at least one month before the start of the first training session. The SFMTA must approve the submittals before the start of the training.

a. Operator Training

- 1) At minimum, perform training for three operator levels. Proposer may also suggest other levels of training:
 - a) Level 1: Cashier Training. Instruct operators on all features of new cashier terminals (or Central Cashier stations) and procedures for generating shift reports. This tract shall be scheduled as follows. The Cashier Training shall be presented once in each of Phases I and II of the installation (a total of 20 team member per Phase, with four to five members in each session, will participate in the Level 1 training). Proposer is not required to provide training for the remaining Phases of the project:

Session	Schedule
I	08:00 – 10:00
II	11:00 – 13:00
III	15:00 – 17:00
IV	18:00 – 20:00

- b) Level 2: System Monitoring and Reporting. Train operators on all parking management and monitoring features of the FMS and Central/Remote Management Computer(s). Include basic data display and interpretation of graphics, addresses, system alarm and status descriptions, all manual commands, program change Operations, generation of all shift and management reports for operator levels one and two.

This tract shall be a three part training session, each session covering a different portion of the software so that upon completion of all three sessions a facility manager/supervisor should be knowledgeable to manage the System. The schedule shall be presented once in

Phases I and II of Installation. Training Session I shall include a minimum of 60 minutes of onsite maintenance and equipment trouble shooting. Proposer is not required to provide training for the remaining Phases of the project. A total of 15 team members per Phase shall attend the Level 2 training.

Day 1:

Session I	Track 1	08:00 – 12:00
Session II	Track 1	13:00 – 17:00

Day 2:

Session I	Track 2	08:00 – 12:00
Session II	Track 2	13:00 – 17:00

Day 3:

Session I	Track 3	08:00 – 12:00
Session II	Track 3	13:00 – 17:00

- c) Level 3: Total System Programming. Train the SFMTA Operations and Management team on all System operating and monitoring features. Including, but not limited to, on-the-job “hands on” training on reports, system configuration, and system monitoring. This training tract will be advanced audit, accounting, and data mining procedures. This should be scheduled as two four hour sessions. This training will be conducted live on the Phase-I facilities as they are brought on line and have generated activity to review. A one session follow up four hour training tract will be provided in conjunction with the Phase-II start up of Systems. The SFMTA training sessions will include personnel from the Parking Authority, the SFMTA, Controllers Office, and Tax Department. Level 3 training shall be attended by 10 team members per Phase. Representatives from the Parking Authority will also attend all training sessions for Cashier and Manager/Operator.
 - 2) Training will be conducted by using the hands-on training methods and shall include demo(s) of the hardware and software features. A course syllabus, customized to the SFMTA System must be submitted thirty (30) days in advance of the first scheduled training session. After the Phase-I installation, modifications to the training program will be made to adjust subjects and dwell time on areas of the System that were commented upon from the Phase-I training sessions.
- b. Maintenance Training
- 1) Maintenance training shall be performed after the “Operator training” is completed. Proposer shall instruct the SFMTA designated staff on the proper maintenance and repair of all the parking revenue control equipment.
 - 2) Training shall cover normal Operations of equipment, common failures and repairs, detailed instruction of equipment Operations using Operations and maintenance manuals.

- 3) Train the SFMTA designated staff on equipment safety, preventive maintenance and other basic troubleshooting steps.

C. Project Execution Plan

Proposers must include a Project Execution plan with their response to this RFQ. The Project Execution plan shall include a detailed description on how the Proposer plans to execute SFMTA PARCS Project. The guideline for this plan shall be as following:

1. Lower traffic areas, in any phase of the project, shall undergo demolition and replacement before higher traffic areas.
2. No two adjacent devices (multiple adjacent Entry Lanes, Exit Lanes, and POFs) shall be powered up from the same power source (circuit). This is to avoid any possibility of losing more than one adjacent device in case of power interruption of one power source (including, but not limited to, circuit and circuit breaker).
3. No more than one entrance lane shall undergo demolition and replacement at one time.
4. Some phases of the Project may undergo demolition and replacement simultaneously. The Proposer/Proposer must include the proposed Project team's experience (especially proposed Project Manager's experience) in Project "Fast Tracking."

D. Warranties

1. System

Proposer shall fully warrant the entire Parking Access and Revenue Control System as specified, to be free from defects in materials and workmanship during the warranty period. Warranty and labor shall be for one (1) full calendar year following the successful completion of Operation Demonstration Test (ODT) for that phase and a letter of "Substantial Completion" is issued by the SFMTA. Moreover,

- a. The SFMTA shall have an option to extend the warranty for one extra year.
- b. During the warranty period, Proposer shall promptly repair and/or replace defective hardware components or software programs without additional charge for labor or materials within the times detailed herein.
- c. Proposer shall cause all third party warranties (on the parts utilized by the Proposer for the PARCS) to be transferred to Owner or its authorized representative. In the case of third-party warranties that are for periods of less than one (1) full year following ODT of the PARCS, Proposer shall be solely responsible for providing warranty coverage that is fully compliant with the requirements of this specification.
- d. Proposer shall install software updates not less than twice annually and firmware updates at least annually for the System server, lane equipment and facility management software upon release of revisions to the installed

software products, without charge, for not less than five (5) years. Proposer shall provide a pricing Option for this “Subscription” updates for years 6 – 10.

2. Response Time

- a. As part of the warranty, Proposer shall provide timely same day response for any service calls placed between 7 a.m.to 4pm, Monday through Friday regarding repair or replacement of any and all components of the Parking Control System which shall malfunction, covering both hardware and software.
- b. A factory trained technician must provide field service within four (4) hours of receipt of a service call placed between 7 a.m. to 4 p.m. Monday through Friday. All issues triggered from the service call shall be addressed/fixed within 24 hours of technician response time (the time technician first arrived onsite to respond to the service call). If an issue is expected to take longer than 24 hours or if a device is out of service for longer than 24-hours, Proposer’s technical team shall inform the SFMTA of the expected timeframe to fix the issue. To minimize any interruption to the SFMTA parking operation, the SFMTA, at its sole discretion, may require the Proposer to replace the defected part with a new one for the duration, that the Proposer is troubleshoot/fixing a defective part, in an “off-line” mode.
- c. If the Proposer’s technical staff is unable to respond to a service call, to actively work on the issue, within the specified time, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Liquidated Damages in this instance shall be calculated as \$150 for each hour after the fourth hour. For example, if an initial service call was made at 10 a.m. and the technician arrived onsite at 4pm, the technician is two (2) hours outside the four (4) hour window. Therefore, the liquidated damages would be calculated as: 2 hours x \$150 = \$300.00. A record of all the delay related LDs will be logged and the SFMTA, at its own discretion, may apply this LD amount to purchase the spare parts for the PARCS or use it for any other payments.
- d. Service calls placed after 4 p.m. or during weekends or holidays must be answered and field technician must be onsite no later than 9 a.m. the following Business Day, unless the service call is of emergency nature, in that case the technician shall be dispatched within 4 hours of the initial call.
- e. Selected Proposer shall have infrastructure to support emergency calls when required and shall provide the SFMTA with costs associated with this service after warranty period. Emergencies shall be defined and agreed upon by both the SFMTA and the Proposer at the time of contract negotiations.
- f. The Proposer must provide evidence of factory trained local staff and local sales/service office with the availability, accessibility, and capability to provide service 24 hours a day, 7 days a week.

- g. Proposer's standard procedures to provide such adequate and timely field service as specified herein shall be documented and submitted as part of the bid package. Failure to provide such documentation shall be grounds for bid refusal.
- h. If desired by the SFMTA, the Proposer must be willing to sign the optional Service Agreement for years three, four, and five. This service agreement must be identical to first two years' warranty.

3. Preventive Maintenance

Proposer must perform, at a minimum, quarterly preventive maintenance during the warranty period and clean/replace all the parts on as-needed basis without any cost to the SFMTA.

Proposer shall supply a full and complete schedule of preventive maintenance requirements for the entire Parking Access and Revenue Control System including all hardware and software components. The schedule of preventive maintenance shall be organized by device, or software component, and shall detail the following as the minimum requirement:

- a. Each required preventive maintenance activity.
- b. The procedures for performing each preventive maintenance activity.
- c. The frequency for performing preventive maintenance if less than 90 days. Proposer shall also include the recommended maintenance that shall be performed by SFMTA operators on daily, weekly, monthly basis.
- d. Any special tools or supplies needed for the performance of preventive maintenance activities.
- e. Proposer shall provide a fully detailed trouble-shooting guide/manual that can be used by on-site technicians in the performance of remedial, first echelon maintenance to be used to get a PARCS component or the PARCS returned to service with a minimum of delay.
- f. The trouble-shooting guide/manual shall contain sufficient details, in words and diagrams, to allow an on-site technician to perform the tasks outlined in the guide. The trouble-shooting guide/manual and all required accompanying materials shall be included in the Maintenance Manual, which is a required submittal to be provided by selected Proposer.

4. Spare Parts

- a. Proposer shall supply a complete roster of recommended spare parts and supplies that are necessary to be maintained "in stock" to assure the proper and uninterrupted operation of the PARCS.
- b. Proposer shall provide spare parts, in accordance with Proposer's recommended roster, that shall be included with the delivered PARCS and stored locally.

- c. Proposer shall utilize the on-site inventory of spare parts for performing warranty maintenance on the PARCS.
- d. Any spare parts used by Proposer in the performance of warranty maintenance shall immediately be replaced by Proposer to assure the on-site spare parts inventory is continuously maintained at the proper level.
- e. The SFMTA reserves the right to purchase the spare parts from the Proposer at the end of the warranty.

III. Project Schedule

Project Schedule is not required with the response to the RFQ. However, the Project Schedule description is included with the RFQ for the Proposers to understand the expectations SFMTA has with regards to the Project Schedule. Proposer must meet or exceed SFMTA's Project Schedule expectations.

A. Timing

Time is of the essence. Within thirty (30) days from receiving Notice to Proceed (NTP), the Proposer shall develop and submit a detailed cost loaded Critical Path Method (CPM) Project Schedule, and schedule of values in a format accepted by the SFMTA (Microsoft Project 2003 or compatible) for the approval.

B. Project Approach

1. Each project phase shall start after a Notice to Proceed (NTP) is issued from the SFMTA. Each phase shall be considered complete after the issuance of "Substantial Completion" letter from the SFMTA. The warranty period shall not start before the issuance of "Substantial Completion" letter.
2. SAT will start after the installation of the PARCS at individual parking facilities on facility by facility basis.
3. Unless approved by the SFMTA, installation of the PARCS at any subsequent facility shall not start until the SAT of the last installation has been successfully completed.
4. Phase-I will have a three-month Operation Demonstration Test (ODT) period; the remaining Phases will have only a one month ODT.
5. ODT will be performed as the last step for each phase. ODT for each phase will start after successful completion of Site Acceptance Test (SAT) of the last garage within that phase.

IV. Pre-Proposal Conference and Proposal Acceptance

Interested Proposers are strongly recommended to attend the pre-Proposal conference at the location and time identified in this RFQ. All questions will be addressed at this conference and any available new information will be provided at that time. If a Proposer has further questions regarding the RFQ, please contact the individual designated in this RFQ.

A. Pre-Proposal Conference

A pre-proposal conference has been scheduled for:

Tuesday, October 6, 2009 at 2:00 p.m. (PDT)
San Francisco Municipal Transportation Agency
One South Van Ness, 3rd Floor, Civic Center Conference Room #3074
San Francisco, CA 94103-5417

For the pre-proposal conference, please RSVP to Ben Kawamura at ben.kawamura@sfmta.com by 4:00 p.m. (PDT), Friday, September 25, 2009

Questions related to this RFQ may be addressed at this conference and any available new information may be provided at that time. Representatives from the SFMTA's Contract Compliance Office will be available to answer questions regarding the City's Local Business Enterprise (LBE)/Nondiscrimination in Contracting Ordinance.

Any requests for information concerning this RFQ submitted before or after the pre-proposal conference must be in writing, and any substantive replies will be issued as written addenda to all Proposers, who attended the Pre-Proposal Conference, and will be posted online at the City's website. 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 RFQ and will be distributed to all parties who attended pre-proposal conference, and posted on the City's website. **Any questions related to this RFQ, after the Pre-Proposal conference, must be submitted in writing via email to ben.kawamura@sfmta.com by 4:00 p.m. (PDT), Tuesday, October 27, 2009.** The SFMTA will provide responses to questions by **Tuesday, November 3, 2009.**

B. Deadline for the Qualification Questionnaire

Each Proposer must submit completed Qualification Questionnaire forms to Ben Kawamura, SFMTA, One South Van Ness Ave., 3rd Floor, **by 4:00 p.m. (PDT), Tuesday, October 20, 2009.** The Qualification Questionnaire, also known as Questionnaire Concerning Experience, Financial and Taxpayer Responsibility of Proposer is provided in Attachment F.

The Proposer must also provide reviewed financial statements for the previous three (3) years, prepared by a certified public accountant in accordance to generally accepted auditing standards, beginning with the most recent year, or three (3) years of notarized Federal Tax Statements. These documents may be marked as Proprietary or Confidential. Proposers should be aware, however, that under the City's Sunshine Ordinance, financial materials submitted by a successful proposer are subject to disclosure in response to a public records request. Should

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the SFMTA receive such a request, the Agency will notify the successful proposer upon receipt of the request.

The intent of the questionnaire is to evaluate whether the Proposer meets all of the minimum qualifications set forth in the RFQ. Upon receipt of the questionnaire, the SFMTA may require confirmation from financial institutions and the San Francisco Tax Collector. Such information will be used to determine whether Proposers are eligible for further consideration. If additional information is required, Proposers will be expected to assist in securing the information on a timely basis.

The Qualification Questionnaire and other required documents set forth herein must be received **by 4:00 p.m. (PDT), Tuesday, October 20, 2009.** The documents may be delivered in person or mailed to:

**Ben Kawamura
San Francisco Municipal Transportation Agency
One South Van Ness Ave, 3rd Floor
San Francisco, CA 94103-5417**

V. RFQ Schedule and Proposal Submission Requirements

The anticipated schedule for selecting the responsive and responsible Proposer is:

Schedule	Date	Time
Pre-Proposal Conference	October 6, 2009	2:00 p.m. (PDT)
Qualification Questionnaire Due	October 20, 2009	4:00 p.m. (PDT)
Deadline for submission of written questions or Requests for Clarification on RFQ	October 27, 2009	4:00 p.m. (PDT)
Response to questions from prospective Proposers	November 3, 2009	4:00 p.m. (PST)
Proposals and required documents due	December 1, 2009	4:00 p.m. (PST)
Selection Committee, Evaluation of Proposals, Interviews	January - February 2010	---
RFP to highest ranking responsive firms soliciting Cost Proposals	March 2010	---
Commencement of Contract	June 2010	---

The following information and documents are required with the Proposer response to this RFQ. Failure to do so may deem your Proposal non-responsive.

A. Time and Place for Submission of RFQ

Responses must be received at the SFMTA office (see address below) by 4 p.m., on December 1, 2009. Responses may be delivered in person or mailed to:

Ben Kawamura
San Francisco Municipal Transportation Agency
One South Van Ness Ave, 3rd Floor
San Francisco, CA 94103-5417
E-mail: ben.kawamura@sfmta.com

The outer envelope shall be marked:

Sealed Response
SFMTA PARCS RFQ Response (RFQ # SFMTA 2009/10-03)

Proposers shall submit ten (10) copies of the Proposal and two copies, separately bound, of required HRC Forms in a sealed envelope clearly marked **San Francisco Municipal Transportation Agency Parking Access and Revenue Control System (SFMTA PARCS RFQ# SFMTA 2009/10-03)** to the above location. Postmarks will not be considered in judging the timeliness of submission. Responses that are submitted by fax will not be accepted. Late submissions will *not* be considered.

Before submitting a Proposal, each Proposer shall make all investigations and examinations necessary to ascertain all conditions and requirements affecting the full performance of the contract.

Lack of knowledge of such conditions and requirements resulting from failure to make such investigations and examinations will not relieve the selected Proposer from any obligation to comply with every detail and with all provisions and requirements of the

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contract documents, and will not be accepted as a basis for any claim whatsoever for any monetary consideration on the part of the Proposer.

B. Format

Please use three-hole recycled paper, print double-sided to the maximum extent practical, and bind the Proposal with single staple, or submit it in a three-ring binder. Please do not bind your Proposal with a spiral binding, glued binding, or anything similar. Please use tabs or other separators within the document.

Provide a Letter of Interest indicating that the Proposer is responding to the SFMTA PARCS project. Provide a narrative which addresses the scope of work/services, the proposed approach to the work, and any other information called for by the RFQ, in the sequence followed in this RFQ.

Narrative should thoroughly address/describe in detail per the specifications/requirements of the RFQ, the proposed Parking Access and Revenue Control Equipment, computer hardware, computer software, server, and all essential devices/components requested in the RFQ. Also include in this section all the other equipment that were not included in this RFQ but are essential for the Operations.

The Proposer must be clear, concise and complete. The Proposal must total no more than 150 pages. All pages must be on 8-1/2 x 11 inch paper, minimum of a 12-point font size, except drawings, cut sheets, or otherwise noted in this RFQ.

Attachments, photos, and other reference materials may be included in the Response and will not be counted towards 150 pages limitations; however, reference materials not requested within this document will not be used by the Selection Committee in evaluating the Proposer's Qualifications.

For word processing documents, the department prefers that text be unjustified (i.e., with a ragged-right margin) and use a serif font (e.g., Times Roman, and not Arial), and that pages have margins of at least 1 inches on all sides (excluding headers and footers). Please include a Table of Contents at the beginning of the document.

Proposers must also submit an electronic version of the Proposal along with the ten copies of the proposal.

C. Submittal Documents - Content

Firms interested in responding to this RFQ must submit the following information, in the order specified below, please use tabs to separate each subsection, below:

1. Table of Contents

The table of contents must outline in sequential order the major areas of the Proposer's response. All pages must be consecutively numbered and correspond to the Table of Contents.

2. Introduction and Executive Summary

Submit a letter of introduction and executive summary of the Proposal. The letter must be signed by a person authorized by Proposer's firm to obligate the firm to perform the commitments contained in the Proposal. Submission of the letter will

constitute a representation by the Proposer's firm that the Proposer's firm is willing and able to perform the commitments contained in the Proposal.

3. Proposer's Qualifications

Provide information on your firm's background and qualifications which addresses the following. The Proposer must have been in parking equipment (PARCS) business for a minimum of five (5) years.

- a. Name, address, and telephone number of a contact person.
- b. Date Incorporated and/or licensed in the State of California.
- c. A brief description of firm, as well as how any joint venture or association would be structured.
- d. For this project, the SFMTA requires that the Proposer's firm have had work on at least three (3) similar projects (in size and scope), within the United States within last five years. Provide a description of at least three (3) projects similar in size and scope managed/installed by your firm including client, reference and telephone numbers, staff members who worked on each project, budget, schedule and project summary. Descriptions should be limited to three pages for each project. If joint ventures or subcontractors are proposed provide the above information for each.
- e. Provide references for the proposing firm, lead project manager, and all subcontractors, including the name, address and telephone number of at least three (3) recent clients, within last five years (preferably other public agencies).
- f. Provide a narrative indicating the firm's number of years of experience in providing and maintaining the type and manufacture of Proposed equipment.
- g. Submittals which do not contain such documentation may be deemed non-responsive.

4. Qualifications of Key Personnel

- a. Provide a list identifying:
 - 1) Each key person on the project team.
 - 2) The project manager.
 - 3) Role of each member in the team.
 - 4) A written assurance that the key individuals listed and identified will be performing the work and will not be substituted with other personnel or reassigned to another project without the SFMTA's prior approval.
- b. Provide a description of the experience and qualifications of the project team members, including brief resumes of each team member indicating education, experience, licenses and any other pertinent information.

- c. Provide any other documentation that demonstrates the ability to satisfy all of the minimum qualification.
- d. Statement that the Proposer has factory-trained local staff and local sales/service office with the availability, accessibility, and capability to provide service 24 hours a day, 7 days a week.
- e. Submittals that do not contain the documentation described in this section shall be deemed non-responsive.

5. Project Approach

Describe the tasks and services to be performed by the Proposer. Include the following information in your response:

- a. How the overall scope of work described in this RFQ will be achieved. Describe proposer's Project Execution Plan to complete SFMTA's PARCS Project.
- b. Describe, in detail, any "Green Alternative" suggested and why the suggested alternative is considered "Green" and environmentally friendly.
- c. Provide details on the proposed training for the SFMTA staff, facility managers and on-site operational staff. Proposers are encouraged to submit any training manuals along with their proposal.
- d. Provide product Cut sheets (shop drawings) on all proposed equipment.
- e. Proposer's plan to support the SFMTA's PARCS after installation (during the warranty and service maintenance period).
- f. Proposer's response must be complete and must include responses to all the requirements described in the RFQ.

6. Exception List from Scope of Work (SOW)

List all the exceptions in detail from Section II.: SOW that Proposer is not including with the response to this RFQ.

- a. Exception List must follow the sequence of SOW described in this RFQ. Include reference to the section and subsection number(s) of the exception from this RFQ.
- b. Include a justification for the exception.
- c. Include any alternative that will work as good as or better than what was included in the SOW.

7. Contract Related Document

Proposer shall be certified by the California State Department of Consumer Affairs Contractors State License Board for general contracting. Proposer must

submit a copy of their certification with response to this RFQ; failure to provide this document may render Proposal non-responsive and may cause the Proposer’s firm to be disqualified for the Project.

8. System Compliancy Statement

Proposer must include a letter with the following statement:

- a. The System is “San Francisco Business and Tax Regulation Code, Article 22” compliant.
- b. The System is compliant with the latest “PCI/DSS” requirements with a copy of the certification letter from Visa as proof of compliance.
- c. PARCS equipment are Americans with Disability Act (ADA) compliant per Americans with Disability Act Accessibility Guidelines (ADAAG), and California Accessibility Compliance (CAC) reference manual.
- d. The proposed System does not violate any patent or copyright, and the SFMTA shall not be liable for any claims of patent violations.

VI. Evaluation and Selection Criteria

To be considered for the project, a corporation or other legal entity or its managing members must meet or exceed each of the following minimum qualifications (the “Minimum Qualifications”). A Proposer that does not meet the Minimum Qualifications will not be considered. The SFMTA may, however, waive any inconsistencies or deficiencies which the SFMTA deems, in its sole discretion, to be minor or technical.

A. Qualifications and Experience

Any Response to the RFQ that does not demonstrate that the Proposer meets the Minimum Qualifications described in Attachment: “Qualification Questionnaire” of this RFQ by the deadline for submittal of Proposals (RFQ) shall be deemed non-responsive. All Proposers must qualify for this minimum qualification before they can proceed to the next step in the qualifications criteria.

B. Minimum Qualifications

Only Proposals submitted by firms that meet or exceed all the minimum qualification will be considered.

1. For this Project SFMTA required that the responding firm must be in PARCS installation, maintenance, and configuration business for at least last five years. The firm must have completed at least three projects in the United State, in last five years that are similar in size and scope as the SFMTA PARCS Project. Completed projects must consist of at least five parking facilities networked together to a centralized location.
2. Assigned personnel shall be factory-trained and shall have at least three years of experience in the PARCS installation and maintenance.
3. The Proposer must provide reviewed financial statements for the previous three (3) years, prepared by a certified public accountant in accordance to generally acceptable auditing standards, beginning with the most recent year, or three (3) years of notarized Federal Tax Statements. Financial documents may be marked as Proprietary and Confidential. Proposers should be aware, however, that under the City’s Sunshine Ordinance, financial materials submitted by a successful Proposer may be subject to disclosure in response to a public records request. Should the SFMTA receive such a request, the Agency will notify the selected Proposer upon receipt of the request.
4. Proposer must have all necessary licenses from the California State Department of Consumer Affairs Contractors State License Board to perform or subcontract installation of PARCS.

C. Minimum System Requirements

The proposal and/or the PARCS must meet the following requirements:

1. A PARCS with an Open Architecture System that will allow SFMTA to add features into the PARCS at a later date.
2. A PARCS that is TCP/IP based system.
3. Remote accessibility to PARCS over a secure web-based application.

4. Data must be exportable to remote servers, including but not limited to SFpark, Central Management Computer and Parking Guidance Servers.
5. A Proposer's PARCS must comply with Article 22 of the City And County Of San Francisco Business And Tax Regulations Code.
6. A Proposer's PARCS must comply with the latest Payment Card Industry Data Security Standard (PCI/DSS) requirement.
7. Proposed System must be Americans with Disability Act (ADA) compliant pursuant to Americans with Disability Act Accessibility Guidelines (ADAAG) and California Accessibility Code (CAC) requirements.

D. Evaluation Criteria

After passing the Minimum Qualifications criteria described in the above section, the Proposals will be evaluated by the selection Panel comprising of SFMTA staff and may contain external representatives.

The Panel will review and score all Responsive Proposals, based on the Written Proposal and the Oral Interview/Presentation. The breakdown is reflected in the following table:

Criteria	Maximum Points
1. Written Proposal	120
a. Qualifications & Experience of the firm and key personnel	60
b. Project Approach	40
c. Exceptions and justification	20
2. Oral Interview/Presentation & References	80
a. Oral Interviews & Presentation	40
b. Reference Check	40
Total Maximum (Step 1 & 2)	200

1. Written Proposal (Up to 120 Points)

The Selection Panel will review and score all responsive proposals based upon the following criteria:

a. Qualification and Experience of the firm and key personnel (Up to 60 Points)

Proposal must demonstrate, to the SFMTA's satisfaction that the Proposer has been in the PARCS installation, maintenance, and configuration business for at least past five years and the Proposing firm has completed at least three centralized PARCS projects within the United States in the past five years that are similar in size and scope as the SFMTA PARCS Project. Moreover, the Proposer must demonstrate that the Proposer's team proposed to work on the Project is factory-trained and has a minimum of three years hands-on experience in PARCS installation, maintenance, and configuration. Furthermore, Proposer must also demonstrate that the Proposer has the ability

and resources to provide technical support to the SFMTA, 24 hours a day seven days a week.

b. Project Approach (Up to 40 Points)

Proposer must describe in detail various tasks and services to be provided in completing the Project within the Project constraints (scope, time, resources). If proposed, the Proposer must provide details on any “Green Alternative” including their rationale and details on costs and benefits of any such technologies. Proposer must describe their training program and post-installation support services. Proposer’s response must be complete and must include responses to all the requirements described in the RFQ.

c. Exemption and justification (Up to 20 Points)

Written Proposal must include an Exemption List that details all the exemptions the Proposer is asking from the Scope of Work detailed in the RFQ. Exemption List must also include the justification to the exemption and an alternate that is equal or better than what is included in the Scope of Work.

2. Oral Interview/Presentation/Reference (Up to 80 Points)

a. Oral Interviews and Presentation (Up to 40 Points)

Proposers shall be required to appear, in no particular order, before the selection panel for an oral interview and presentation of the Proposal and detailed discussion of the various elements of their Response to the RFQ. It is required that the proposed Project Manager be present during the presentations and discussions at the oral interview. Questions from the selection panel may be directed to a specific member of the Proposer’s team.

b. Reference Check (Up to 40 Points)

The SFMTA will check the references submitted in Attachment F. The SFMTA reserves the right to contact any other firms/references where the Proposer’s firm has performed similar work but has not listed as a reference in Attachment F.

Steps 1 and 2 of the evaluation process described above will result in identifying three highest scoring proposals. These three proposers will be issued a Request for Proposals and will be invited for the Site Visit. After the Site Visit, these three Proposers will be asked to submit the Cost Proposal for the Project. A Best and Final Offer (BAFO) process may be used if deemed necessary.

Upon receiving the cost proposals and completing evaluations, SFMTA will select a Proposer with the lowest responsible cost proposal and shall commence contract negotiations. If a satisfactory contract can not be negotiated in a reasonable time, then the SFMTA, in its sole discretion, may terminate further negotiations with the Proposer that submitted the lowest bid and begin contract negotiations with the next lowest bidder.

The selection of any Proposal shall not imply acceptance by the City of all terms of the Proposal, which may be subject to further negotiations and approvals before the City may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time, then the SFMTA, in its sole discretion, may terminate negotiations with the Proposer that has the lowest responsible bid and begin contract negotiations with the Proposer that has the next lowest responsible bid.

The SFMTA reserves the right to reject any Proposal that is not deemed responsive and/or responsible. The SFMTA reserves the right to refuse and reject any and all Proposals.

This RFQ is a solicitation for Proposals; it is not an offer of a contract. Proposals and other responses to this RFQ are offers, which are not binding until unconditionally accepted by the SFMTA.

The selection of any Proposal shall not imply acceptance by the City of all terms of the Proposal, which may be subject to further negotiations 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.

The contract will not be awarded until approved by the SFMTA Board of Directors, and the San Francisco Board of Supervisors, if necessary.

VII. Fee Proposal

After the RFQ process, SFMTA will identify the three top ranked firms and put them in the short list. Only short-listed firms will be issued the Request for Proposal (RFP). After receiving the RFP, short-listed firms will be invited for the site visit of all 20 parking facilities. After the site visit, firms will be asked to submit the Project Price Proposal. Project contract will be negotiated with the firm with the lowest responsible and responsive cost proposal. The SFMTA intends to award this contract to the firm that it considers will provide the best overall program services. The SFMTA reserves the right to accept any offer other than the lowest responsible priced offer and to reject any Proposals that are not responsive to this request.

A. PARCS Equipment and Management Fee Proposal

PARCS Equipment and Management Fee Proposal is not required for the response to this RFQ. SFMTA will short list three top Responding firms. SFMTA will issue a Request for Proposal (RFP) to only three firms that are in the short list. Short-listed Proposers will be invited for a site visit and shall be required to submit their price proposals.

B. After Installation Service/Maintenance Program

With the response to the RFQ, Proposer must submit a plan describing how the Proposer is planning on supporting the SFMTA PARCS after installation. Provide a sample of “Service/Maintenance Contract” including what will be covered in the service and maintenance contract.

C. Spare Parts

All Proposers responding to this RFQ shall provide a complete roster of recommended spare parts and supplies that are necessary to be maintained “in stock” to assure the proper and uninterrupted operation of the PARCS.

VIII. Terms and Conditions for Receipt of Proposals

A. Errors and Omissions in RFQ

Proposers are responsible for reviewing all portions of this RFQ. Proposers are to promptly notify the Department, in writing, if the Proposer discovers any ambiguity, discrepancy, omission, or other error in the RFQ. Any such notification should be directed to the Department promptly after discovery, but in no event later than five working days prior to the date for receipt of Proposals. Modifications and clarifications will be made by addenda as provided below.

B. Inquiries Regarding RFQ

Inquiries regarding the RFQ and all oral notifications of intent to request written modification or clarification of the RFQ, must be directed to:

Ben Kawamura
San Francisco Municipal Transportation Agency
One South Van Ness Ave, 3rd Floor
San Francisco, CA 94103
E-Mail: ben.kawamura@sfmta.com

C. Objections to RFQ Terms

Should a Proposer object on any ground to any provision or legal requirement set forth in this RFQ, the Proposer must, not more than ten Calendar Days after the RFQ is issued, provide written notice to the Department 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.

D. Revision of Proposals

A Proposer may revise a Proposal on the Proposer's own initiative at any time before the deadline for submission of Proposal. The Proposer must submit the revised Proposal in the same manner as the original. A revised Response 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, the SFMTA may require a Proposer to provide oral or written clarification of its Proposal. The SFMTA reserves the right to make an award without further clarifications of Proposals received.

E. Errors and Omissions in Proposal

Failure by the SFMTA to object to an error, omission, or deviation in the Proposal will in no way effect a waiver or otherwise modify the RFP or excuse the Proposer from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

F. Financial Responsibility

The SFMTA accepts no financial responsibility for any costs incurred by any person or firm in responding to this RFQ. Submissions of the RFQ will become the property of the SFMTA and may be used by the SFMTA in any way deemed appropriate.

G. Proposer's 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:

1. The officer's re-election campaign
2. A candidate for that officer's office
3. 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 Proposer approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential Proposer about a contract. The negotiation period ends when a contract is awarded or not awarded to the Proposer. Examples of initial contacts include: (1) a Proposer contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a Proposer to propose that the Proposer 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:

1. 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.

2. 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.

3. 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 at (415) 581-2300.

H. Communications Prior to Contract Award

It is the policy of the SFMTA that only SFMTA staff identified in the RFQ as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the Vendor selection process or the award of the contract. This prohibition extends from the date the RFQ is issued until the date when the Vendor 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 RFQ are hereby notified that they may not contact any SFMTA staff member, other than a person with whom contact is expressly authorized by this RFQ for the purpose of influencing the Vendor selection process or the award of the contract from the date the RFQ is issued to the date when the contract award is approved by the Board of Directors of the 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 RFQ.

All firms and subcontractor(s) responding to this RFQ 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 RFQ.

Except as expressly authorized in the RFQ, 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 RFQ 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 RFQ or wishes to raise concerns about the competitive solicitation.

Additionally, the firms and subcontractor(s) responding to this RFQ 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 RFQ is issued to the date when the contract award is approved by the SFMTA Board of Directors of and if required, by the San Francisco Board of Supervisors.

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All lobbyists or any agents representing the interests of proposing prime Proposers 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 RFQ will be required to be submitted signed by all firms and named subcontractor(s) as part of the response to this RFQ. 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.

I. Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), Proposers' bids, responses to RFQs 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.

J. 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 S.F. Administrative Code, the Proposer must comply with Chapter 12L. 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 submissions shall be grounds for rejection of the Proposal and/or termination of any subsequent Agreement reached on the basis of the Proposal.

K. Reservations of Rights by the City

The issuance of this RFQ 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 RFQ, or the requirements for contents or format of the Proposals;
5. Procure any materials, equipment or services specified in this RFQ by any other means; or
6. Determine that no project will be pursued.

L. No Waiver

No waiver by the City of any provision of this RFQ 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.

M. Local Business Enterprise (LBE) Goals and Outreach

1. LBE Subconsultant Participation Goals

The Contract Compliance Office has established a five percent (5%) Local Business Enterprise (LBE) subconsultant participation goal that will be applicable to the RFP process.

2. LBE Participation

The SFMTA strongly encourages submittals from qualified LBEs. Pursuant to Chapter 14B, the following rating discount will be in effect in the selection process of this RFQ. Proposers who are certified by HRC as a LBE, or joint ventures where the joint venture partners are in the same discipline and have the specific levels of participation as identified below. Certification applications may be obtained by calling HRC at (415) 252-2500. The rating discount applies at each phase of the selection process. The application of the rating discount is as follows:

- a. A 10% discount to an LBE; or a joint venture between or among LBEs; or
- b. A 5% discount to a joint venture with LBE participation that equals or exceeds 35%, but is under 40%; or
- c. A 7.5% discount to a joint venture with LBE participation that equals or exceeds 40%; or
- d. A 10% discount to a certified non-profit entity.

If applying for a rating discount as a joint venture: The LBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the RFQ, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the LBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-LBE joint venture partner. The LBE joint venture's portion of the contract must be assigned a commercially useful function.

3. HRC Forms to be Submitted with RFQ: HRC Form 2A

- a. All proposals submitted must include the following Human Rights Commission (HRC) Forms contained in the HRC Attachment 2: 1) HRC Contract Participation Form, 2) HRC “Good Faith Outreach” Requirements Form, 3) HRC Non-Discrimination Affidavit, 4) HRC Joint Venture Form (if applicable), and 5) HRC Employment Form. If these forms are not returned with the proposal, the proposal may be determined to be non-responsive and may be rejected.
- b. Please submit only two copies of the above forms with your proposal. The forms should be placed in a separate, sealed envelope labeled HRC Forms.

If you have any questions concerning the HRC Forms, you may call **Maria Cordero, Contract Compliance Officer**, SFMTA Contract Compliance Office at **(415) 701-5239**.

N. City PARCS and Parking Tax Requirements

All Proposers must read and verify that their equipment is compliant with the San Francisco Parking Tax Regulation No 2006-1 and Parking Station Signage Requirements – San Francisco Business and Tax Regulations Code, Article 22. Said regulations are attached to this RFQ, under Parking Tax Regulation, and can also be downloaded from the Internet by visiting the Office of Treasure and Tax Collector’s website at:

<http://www.sfgov.org/tax>

and

http://www.sfgov.org/site/treasurer_page.asp?id=48498

IX. Contract Requirements

This section only applied to Request for Proposal (RFP).

A. Standard Contract Provisions

The selected Proposer will be required to enter into a contract substantially in the form of the Model Agreement attached to this RFP. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The SFMTA, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

Proposers are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§[insert section number of “Nondiscrimination; Penalties”] in the Agreement); the Minimum Compensation Ordinance (§[insert section number of “Requiring Minimum Compensation for Covered Employee”] in the Agreement); the Health Care Accountability Ordinance (§[insert section number of “Requiring Health Benefits for Covered Employees”] in the Agreement); the First Source Hiring Program (§[insert section number of “First Source Hiring Program”] in the Agreement); and applicable conflict of interest laws (§ [insert section number of “Conflict of Interest”] in the Agreement), as set forth in paragraphs B, C, D, E and F below.

B. Nondiscrimination in Contracts and Benefits

The selected 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.sfgov.org/sfhumanrights.

C. Compensation Ordinance (MCO)

The selected 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 Proposers 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 §[insert section number of “Requiring Minimum Compensation for Covered Employee” in the Agreement.]

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 Proposers will be required to pay any such increases to covered employees during the term of the contract.

D. Health Care Accountability Ordinance (HCAO)

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The selected Proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Proposers should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at www.sfgov.org/olse/hcao.

E. 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 Proposers 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.

Proposers 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/fshp.htm and from the First Source Hiring Administrator, (415) 401-4960.

F. Conflicts of Interest

The selected 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 selected 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 SFMTA on behalf of the selected 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 selected Proposer that the City has selected the Proposer.

X. Protest Procedures

A. Protest of Non-Responsiveness Determination

Within five working days of the City's issuance of a notice of non-responsiveness, any firm that has submitted a Proposal and believes that the City has incorrectly determined that its Proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day following the City's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFQ provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

The SFMTA reserves the right to proceed with the Proposal selection process with the responsive Proposers during the five-day protest period. The SFMTA will cease the Proposal selection process only if it receives a notification of decision that is in favor of the protester.

B. Protest of Contract Award

Within five working days of the City's issuance of a notice of intent to award the contract, any firm that has submitted a responsive Proposal and believes that the City has incorrectly selected another Proposer for award may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day after the City's issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFQ provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

The SFMTA reserves the right to proceed the contract negotiation with the highest scored Proposer during the five-day protest period. The SFMTA will cease contract negotiation only if it receives a notification of decision that is in favor of the protester.

C. Delivery of Protests

All protests must be received by the due date. If a protest is mailed, the protestor bears the Risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) will not be considered.

Protests must be delivered via email to Ben Kawamura at ben.kawamura@sfmta.com or via postal mail to:

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



ATTACHMENT A

**City & County of San Francisco
HUMAN RIGHTS COMMISSION**



HRC ATTACHMENT 2

(For accessible HRC forms, please visit: www.sfgov.org/sfhumanrights)

***Requirements for Architecture, Engineering, & Professional Services Contracts
For Contracts \$29,000 and over***

PART I. GENERAL

1.01 SAN FRANCISCO ADMINISTRATIVE CODE CHAPTERS 12B AND 14B

A. To be eligible for this contract award, prime Proposers must agree to comply with the Local Business Enterprise ("LBE") requirements sanctioned by San Francisco Administrative Code Chapter 12B, Section 12B.4 and Chapter 14B, and its implementing Rules and Regulations. Chapters 12B and 14B are administered and monitored by the San Francisco Human Rights Commission ("HRC").

B. Chapters 12B and 14B and their implementing Rules and Regulations are incorporated by reference herein as though fully set forth and provide that the failure of any Proposer or consultant to comply in good faith with these requirements shall be deemed a material breach of contract. Copies of both Chapters 12B and 14B and their implementing Rules and Regulations are available on the HRC website at www.sfgov.org/sfhumanrights.

C. Chapter 14B allows for a ten percent (10%) rating discount for firms and non-profit organizations certified by HRC on Architecture, Engineering, and Professional services contracts. The term "rating discount" hereafter shall be known as "rating bonus" in HRC Attachment 2.

D. Certification Application

LBE Certification Application

- a. Prime Proposers must be certified as LBEs on the Proposal due date to qualify for a rating bonus.
- b. Any Proposer who is in the process of appealing the Director's denial of certification or revocation of certification for other contracts shall not be considered an LBE.
- c. The Certification Application is available on the HRC website at www.sfgov.org/sfhumanrights.

For assistance with HRC Attachment 2, please contact the following number(s):

HRC Main Office (415) 252-2500 or LBE Certification Unit (415) 252-2537 or (415) 252-2530

For compliance and assistance with the Equal Benefits Program, please contact the HRC Main Office.



ATTACHMENT A (cont.)

1.02 SUBMISSION OF HRC FORMS

- A. Unless otherwise authorized by HRC, the prime Proposer must submit the following HRC forms in a separate sealed envelope marked “HRC Forms” with the Proposal. Failure to complete or submit any of the HRC Forms may cause the Proposer to be deemed non-responsive and ineligible for contract award.

Review the specific instructions and requirements on each HRC form.

1. **Form 2A: HRC Contract Participation Form:** Identify LBE subconsultants, vendors, and lower tier subconsultants listed on this form for LBE subconsultant credit. Check the appropriate box under Ratings Bonus.
2. **Form 2B: HRC “Good Faith Outreach” Requirements Form:** Document solicitation of LBE participation. This form must be submitted EVEN IF the LBE subconsultant goal has been met. Attach supporting documentation.
3. **Form 3: HRC Non-Discrimination Affidavit:** Must be signed by Proposer under penalty of perjury.
4. **Form 4: HRC Joint Venture Form:** Submit ONLY if the Proposer is requesting a rating bonus based on LBE participation in a joint venture partnership.
5. **Form 5: HRC Employment Form:** List the key personnel and responsibilities of the Proposer, Joint Venture partners, and Subconsultants.
6. **HRC 12B-101 Form:** Submit only if the Prime Consultant is not already in compliance with Equal Benefits Requirements. This form is available on the HRC website at www.sfgov.org/sfhumanrights.

- B. Note the following information:

1. HRC Attachment 2 forms are available on the HRC website at www.sfgov.org/sfhumanrights.
2. Except where the contract awarding authority has obtained a waiver from HRC, any Proposal submitted without a completed Form 2A and Form 2B may be deemed non-responsive and rejected.
3. The LBE subconsulting goal can only be met with HRC certified LBEs identified on the HRC LBE directory website at www.sfgov.org/sfhumanrights.

C. HRC Contract Performance Forms

The following HRC forms are submitted with progress and final payment requests.

Review instructions and specific information requested on each form:

1. **Form 7: HRC Progress Payment Form:** Submit to Contract Awarding Authority and to HRC for each payment request. *Note:* Page 2; column “A” of the form, ALL firms must be continuously listed including lower tier subconsultants for each payment request.
2. **Form 9: HRC Payment Affidavit:** Submit within ten (10) working days to Contract Awarding Authority and HRC following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN if there is no sub payment for this reporting period.
3. **Form 8: HRC Exit Report and Affidavit:** Submit with final Form 7. A separate Form 8 **must be** completed for each LBE subconsultant and vendor (including lower tier subconsultants & vendors).



ATTACHMENT A (cont.)

4. **Form 10: HRC Contract Modification Form:** This form shall be completed by the Consultant when any (all) amendments, modifications, or supplemental change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent modifications.

Failure to submit any HRC contract performance forms may result in sanctions under Section 14B.11.C including but not limited to withholding or delaying progress and final payments.

1.03 “GOOD FAITH OUTREACH” REQUIREMENTS

All Proposers shall achieve the LBE goal and undertake adequate good faith outreach as set forth in Section 14B.8(C) of the ordinance to select subconsultants to meet the LBE goal. Under 14B.8(A) of the ordinance, Proposals that do not meet the LBE goal set will be rejected as non-responsive unless the HRC Director finds that the Proposer diligently undertook adequate good faith efforts required by the Ordinance and that the failure to meet the goal resulted from an excusable error. A Proposer shall have contracted an LBE before listing that LBE as a subconsultant in the Proposal. A Proposal that fails to comply with this requirement will be rejected as non-responsive. Proposers are required to submit Form 2B and supporting documentation EVEN IF the LBE subconsulting goal has been met.

1.04 NON COMPLIANCE AND SANCTIONS

A. Non-Compliance with Chapter 14B

1. A complaint of discrimination or non-compliance concerning LBE participation initiated by any party after contract award will be processed in accordance with Chapter 14B and its implementing rules and regulations.
 - a. If the HRC Director determines that there is cause to believe that a consultant has failed to comply with any of the requirements of the Chapter 14B, HRC Rules and Regulations, or contract provisions pertaining to LBE participation, the HRC Director shall notify the contract awarding authority and attempt to resolve the non-compliance through conference and conciliation.
 - b. If the non-compliance is not resolved through conference and conciliation, the HRC Director shall conduct an investigation and, where the Director so finds, issue a written Finding of Non-Compliance.
 - c. The Director’s finding shall indicate whether the consultant acted in good faith or whether noncompliance was based on willful or bad faith noncompliance with the requirements of Chapter 14B, HRC Rules and Regulations, or contract provisions pertaining to LBE participation.
2. Where the Director finds that the consultant acted in good faith, after affording the consultant notice and an opportunity to be heard, the Director shall recommend that the contract awarding authority take appropriate action. Where the Director finds willful or bad faith noncompliance, the Director shall impose sanctions for each violation of the ordinance, HRC rules and regulations, or contract provisions pertaining to LBE participation, which may include:
 - i) reject all Proposals;
 - ii) declare a Proposal non-responsive;
 - iii) suspend a contract;
 - iv) withhold funds;
 - v) assess penalties;
 - vi) debarment;
 - vii) deny HRC certification;
 - viii) revoke HRC certification; or



ATTACHMENT A (cont.)

- ix) pursuant to 14B.7(H)(2), assess liquidated damages in an amount equal to the consultant's net profit on the contract, 10% of the total amount of the contract or \$1,000, whichever is greatest as determined by HRC.
3. The Director's determination of non-compliance is subject to appeal pursuant to HRC Rules and Regulations.
4. An appeal by a consultant to the Commission shall not stay the Director's findings.
5. The HRC Director may require such reports, information and documentation from consultants, subconsultants, contract awarding authorities, and heads of departments, divisions, and offices of the City and County as are reasonably necessary to determine compliance with the requirements of Chapter 14B.
- B. Procedure for the collection of penalties is as follows:
 1. The HRC Director shall send a written notice to the Controller, the Mayor and to all contract awarding authorities or City and County department officials overseeing any contract with the Proposer or consultant that a determination of bad faith non-compliance has been made and that all payments due the Proposer or consultant shall be withheld.
 2. The HRC Director shall transmit a report to the Controller and other applicable City departments to ensure that the liquidated damages are paid to the City.

PART II. RATING BONUS

2.01 APPLICATION

- A. **Eligibility for the LBE Rating bonus:** Certified Local Business Enterprises (LBEs) and non-profit organizations are eligible for an LBE rating bonus on Architecture, Engineering, or Professional Service contracts that have an estimated cost that exceeds \$10,000.
- B. **Application of the Rating bonus:** The following rating bonus will apply to all Proposals for Architecture, Engineering, or Professional contracts estimated to cost over \$10,000. The rating bonus shall apply at each stage of the selection process, i.e., qualifications, Proposals, and interviews. After Proposers have been scored at each of the stages, the rating bonus will be applied to the scores as follows:
 1. 10% for HRC certified LBEs.
 2. 10% for each joint venture, which is composed of only LBEs.
 3. 5% for each joint venture which includes at least 35% (but less than 40%) prime participation by certified LBEs.
 4. A maximum of 7.5% for each joint venture that includes 40% or more in prime participation by certified local LBEs.
 5. The rating bonus will be applied by adding 5%, 7.5%, or 10% (as applicable) to the score of each firm eligible for a bonus for purposes of determining the highest ranked firm.



ATTACHMENT A (cont.)

- C. The Rating Bonus does not apply for contracts estimated by the Contract Awarding Authority to be \$10 million and over.

2.02 JOINT VENTURE/PRIME ASSOCIATION

- A. The LBE joint venture partner must be responsible for a clearly defined portion of the work to be performed. The ratings bonus is applied only when the LBE partner has sufficient skill, experience, and financial capacity to perform the portion of the work identified for the LBE. This portion must be set forth in detail separately from the work to be performed by the non-LBE JV partner. The joint venture partners must be of the same or similar discipline in order to be eligible for a rating bonus. The joint venture partners will be jointly responsible for the overall project management, control, and compliance with 14B requirements.
1. The LBE JV partner's work must be assigned a commercially significant dollar value of the prime work and use its own employees and equipment.
 2. Each member of the joint venture partner must perform a "commercially useful function" as that term is defined by Section 14B.2 of the Ordinance. An LBE that relies on the resources and personnel of a non-LBE firm will not be deemed to perform a "commercially useful function."
 3. Unless permission is granted by the HRC Director for good cause shown, the following actions are prohibited: a) the non-LBE partner performing work for the LBE partner; b) leasing of equipment or property by the LBE partner from the non-LBE partner; and c) the hiring of the non-LBE partner's employees by the LBE partner.
 4. The LBE JV partner must share in the ownership, control, management and administrative responsibilities, Risks, and profit of the JV in direct proportion to its stated level of JV participation.
 5. The LBE JV partner must perform work that is commensurate with its experience.
 6. A JV must submit an executed JV agreement and management plan detailing each JV partner's responsibilities and tasks.
 7. A joint venture must obtain a Federal ID number for that entity.
 8. A tax registration certificate must be obtained from the City Tax Collectors Office for that entity.
- B. A prime association or partnership is considered the same as a joint venture and will need to comply with all the requirements stated above.
- C. The Proposal items to be performed by LBE joint venture partners must be identified separately and all work must be accounted for, including subconsulting work.
- D. The cost of the work to be performed by the LBE JV partners is to be calculated as a percentage of the work to be performed by the joint venture partners. The joint venture should deduct the amount of work to be performed by subconsultants from its total contract amount. This percentage is used to determine whether or not the joint venture is eligible for a rating bonus.

EXAMPLE:

Step 1. Calculate total JV partner work:

Total Contract Work	=	100%
Percentage of Total Contract Work Performed by Subconsultants	-	40%
Percentage of Total Contract Work Performed by JV partners	=	60%

**ATTACHMENT A (cont.)**

Step 2. Calculate LBE JV partner work:

	A	B	C
Description of JV Partners' Scopes of Work	JV Partners' Work as a % of the total contract	% of Task by Non-LBE JV Partner	% of Task by LBE JV Partner
TASK 1	5%	3%	2%
TASK 2	20%	11%	9%
TASK 3	25%	12.5%	12.5%
TASK 4	10%	6%	4%
TOTAL JV Partner %	60%	32.5%	27.5%

Step 3. Calculate LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total LBE JV %	27.5%	÷	Total JV %	60%	=	45.8%
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The LBE JV partner's participation is 45.8%. The JV is therefore eligible for a 7.5% rating bonus.

PART III. SUBCONSULTANT PARTICIPATION**3.01 SUBCONSULTING GOAL**

- A. All Proposers shall achieve the LBE subconsulting goal and undertake adequate good faith outreach as set forth in Section 14B.8(C) of the Ordinance to select subconsultants to meet the LBE goal. Where there are LBEs available for doing portions of the work normally performed by the Proposer with its own staff, the Proposer will be expected to make good faith efforts to make portions of such work available for LBEs.

Proposals that do not meet the LBE participation goal set under 14B.8(A) of the Ordinance will be rejected as non-responsive unless the HRC Director finds that the Proposer diligently undertook adequate good faith efforts required by this Ordinance and that the failure to meet the goal resulted from an excusable error.

- B. Proposers must identify on Form 2A the particular LBE subconsultants and lower tier subconsultants to be utilized in performing the contract, specifying for each the percentage of participation, the type of work to be performed and such information as the HRC reasonably shall require to determine the responsiveness of the Proposal.

The Proposer must contact LBE subconsultants prior to listing them. LBEs must be certified with HRC by the Proposal due date to receive LBE subconsulting credit. Failure to comply with this requirement will render a Proposal non-responsive.

Additionally, subconsultants should not enter into any agreement that limits their ability to be listed or utilized by more than one Proposer.

For a directory of certified LBEs, please go to www.sfgov.org/sfhumanrights.



ATTACHMENT A (cont.)

- C. Any subconsultant who is in the process of appealing the Director's denial of certification or revocation of certification shall not be considered an LBE.
- D. The awarding Proposer shall submit performance reports on LBE participation at 30%, 50%, 70%, and 90% completion to the Contracting Awarding Authority and HRC.
- E. Determination and calculation of LBE subconsultant participation:

- 1. The LBE subconsultant shall be listed to perform a specific task, which is described in the RFP or RFQ.
- 2. If the LBE subconsultant forms a joint venture with a non-LBE subconsultant, the LBE subconsultant joint venture partner will be credited only for its portion of the work, as follows:

EXAMPLE:

If the total subcontract amount = \$ 1,000,000 of which
\$510,000 is the LBE subcontract amount and \$490,000 is the non-LBE subcontract amount, then
\$510,000 is credited toward the LBE goal.

- 3. All work done by lower-tier LBE subconsultants will be credited toward meeting the goal.

EXAMPLE:

If the total subcontract amount = \$1,000,000,
of which \$200,000 is the lower-tier LBE subconsultant's portion,
then \$200,000 is credited toward the LBE goal.

- 4. The work provided by the LBE subconsultant must be the same or similar type of work performed by the LBE in the normal course of its business.
- 5. If a Proposer owns or controls more than one business that is HRC certified as an LBE, the Proposer will not receive credit if it lists its other firms to meet the LBE subconsulting goal when submitting as a prime. In determining ownership of a business, a business owned by Proposer's spouse or domestic partner shall be deemed to be owned by the Proposer.
- 6. It is the responsibility of the Proposer to verify the subconsultant's LBE certification status.
- 7. A certified LBE can only be utilized in the discipline(s) for which it is certified by HRC.
- 8. The LBE subconsultant must be utilized on the contract to perform a commercially useful function. No credit will be given for a LBE that serves as a pass-through or conduit.
- 9. An LBE Prime Proposer (whether submitting a Proposal on its own or as part of a joint venture) cannot count its participation towards meeting the LBE subconsultant goal.

F. Substitution, removal, or contract modification of LBE:

No LBE subconsultant listed on Form 2A shall be substituted, removed from the contract or have its contract, purchase order or other form of agreement modified in any way without prior HRC approval. Additionally, no new subconsultants shall be added without prior HRC approval.



ATTACHMENT A (cont.)

**PART IV. EMPLOYMENT NON-DISCRIMINATION AND ECONOMICALLY
DISADVANTAGED WORKFORCE HIRING PROVISIONS**

4.01 GENERAL

As a condition of contract award, Consultants and subconsultants shall comply with the nondiscrimination in employment provisions required by Chapter 12B of the Administrative Code and the hiring of economically disadvantaged persons as required by the City's First Source Hiring Program, Chapter 83 of the Administrative Code.

4.02 NONDISCRIMINATION PROVISIONS

- A. Prior to the award of the contract, the consultant must agree that it does and will not, during the time of the contract or any contract amendment, discriminate in the provision of benefits between its employees with spouses and employees with domestic partners.
- B. The consultant and subconsultants on this contract will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of this Code. The Consultant, Vendor or Subconsultant/Subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

C. Non-Compliance with Chapter 12B Prior to Contract Award

The consultant and any subconsultants must be in compliance with the nondiscrimination provisions of Chapter 12B, on all existing City contracts prior to award of this contract.

Prior to the award of any City contract, the HRC has the authority to review the consultant's and subconsultant's prior performance to ensure compliance with the nondiscrimination provisions of Chapter 12B.

If the HRC determines that there is cause to believe that a consultant or subconsultant is not in compliance with the nondiscrimination provisions of Chapter 12B, the HRC shall notify the contract awarding authority and attempt to resolve the non-compliance through conciliation.

- 1. If the non-compliance cannot be resolved, the HRC shall submit to the consultant or subconsultant and the contract awarding authority a written Finding of Non-compliance.
- 2. The HRC shall give the consultant or subconsultant an opportunity to appeal the Finding.
- 3. The HRC may stay the award of any contract to a consultant where the consultant or any subconsultant is the subject of an investigation by written notice to the contract-awarding SFMTA.

D. Complaints of Discrimination after Contract Award

- 1. A complaint of discrimination in employment initiated by any party after contract award shall be processed in accordance with the HRC Rules of Procedure, adopted pursuant to Chapter 12B of the San Francisco Administrative Code.
- 2. A finding of discrimination may result in imposition of appropriate sanctions, including:



ATTACHMENT A (cont.)

- a. There may be deducted from the amount payable to the consultant or subconsultant under this contract a penalty of \$50 for each person for each Calendar Day the person was discriminated against in violation of the provisions of the contract.
- b. The contract may be canceled, terminated or suspended in part by the contract awarding authority.
- c. The consultant, subconsultant or vendor may be determined ineligible to perform work or supply products on any City contract for a period not to exceed two years.

4.03 TRAINEES – FIRST SOURCE HIRING PROGRAM

- A. **Trainee Requirements:** Consultants are required to comply with the City's First Source Program, Administrative Code Section 83, which fosters employment opportunities for economically disadvantaged individuals. Consultants are required to notify the First Source Program of all open, entry-level positions and consider all program referrals fairly and equally. In addition the City requires consultants to hire a minimum number of professional service trainees in the area of the consultant's expertise. These hires count toward the First Source Hiring requirements. Trainees may be obtained through the City's One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

Number of Trainees	
Project Fees	To Be Hired
\$0 – \$499,999	0
\$500,000 – \$899,999	1
\$900,000 – \$1,999,999	2
\$2,000,000 – \$4,999,999	3
\$5,000,000 – \$7,999,999	4
\$8,000,000 – \$10,999,999	5
\$11,000,000 – \$13,999,999	6
(> = \$14M, for each additional \$3 million in consultant fees, add one additional trainee)	

2. The trainee must be hired by the prime consultant or by any subconsultant on the project team.
3. No trainee may be counted towards meeting more than one contract goal.
4. A trainee must meet qualifications for enrollment established under the City's First Source Hiring Program as follows:
 - (i) "Qualified" with reference to an economically disadvantaged individual shall mean an individual who meets the minimum bona fide occupational qualifications provided by the prospective employer to the San Francisco Workforce Development System in the job availability notices required by the Program, and
 - (ii) "Economically disadvantaged individual" shall mean an individual who is either: (1) eligible for services under the Workforce Investment Act of 1988 (WIA) (29 U.S.C.A 2801 et seq.), as determined by the San Francisco Private Industry Council; or (2) designated "economically disadvantaged" for the First Source Hiring Administration, as an individual who is at Risk of relying upon, or returning to, public assistance.



ATTACHMENT A (cont.)

5. On-the-job Training (to be provided by the consultant): The consultant shall hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months, with prior approval offering him/her on-the-job training which allows the trainee to progress on a career path.
6. A summary of a job description and training for the trainee with the rate of pay should be submitted for approval.
7. The trainee's commitment does not require that he/she is used only on this project, but also on other projects under contract to the Architect, Engineering, or Professional firm, which is appropriate for the trainee's skill development.

**ATTACHMENT A (cont.)****FORM 2A: HRC CONTRACT PARTICIPATION FORM**

Section 1: This form must be submitted with the Proposal or the Proposal may be deemed non-responsive and rejected. Prime Proposer, each Joint Venture Partner, Subconsultants, Vendors, and lower sub tiers must be listed on this form. Only HRC certified LBEs can be used to meet the LBE subconsultant goal. An LBE Prime Proposer (whether submitting a Proposal on its own or as part of a joint venture) cannot count its participation towards meeting the LBE subconsultant goal.

Be sure to check box for Rating Bonus. If more space is needed, attach additional copies of this form. This form is also completed and submitted for all contract modifications which exceed the original contract amount by more than 20%.

Contract:		RATING BONUS	
		<input type="checkbox"/> LBE 10%	<input type="checkbox"/> Joint Venture 7.5%
Firm:		<input type="checkbox"/> Joint Venture 5%	<input type="checkbox"/> Joint Venture 10% (LBEs ONLY)
Contact Person:		<input type="checkbox"/> No Rating Bonus Requested	
Address:		LBE Goal %	
City/ZIP			
Phone			

*Type: Identify if prime (P), JV partner (J), Subconsultant (S), or Vendor (V)

TYPE *	Firm	PORTION OF WORK (describe scope(s) of work)	% OF WORK	INDICATE LBE YES/NO	If an LBE, Identify MBE, WBE, or OBE **	% OF LBE SUBWORK
			%			%
			%			%
			%			%
			%			%
Total % of Work: 100%				Total LBE Subconsulting%		%

I declare, under penalty of perjury under the laws of the State of California, that I am utilizing the above Consultants for the portions of work and amounts as reflected in the Proposal for this Contract.

Owner/Authorized Representative (Signature): _____ Date: _____

Print Name and Title: _____

** MBE = Minority Business Enterprise, WBE = Women Business Enterprise, OBE = Other Business Enterprise. See HRC website (http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm) for each firm's status.



ATTACHMENT A (Form 2A cont.)

Section 2. Prime Proposer, Joint Venture Partners, Subconsultant, and Vendor Information

Provide information for each firm listed in Section 1 of this form. Firms which have previously worked on City contracts may already have a vendor number. Vendor numbers of LBE firms are located in the HRC LBE website at www.sfgov.org/sfhumanrights. Use additional sheets if necessary.

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____

FIRM NAME:	_____	VENDOR #:	_____
ADDRESS:	_____	FEDERAL ID #:	_____
CITY, ST, ZIP:	_____	PHONE:	_____
SERVICE:	_____	FAX:	_____



ATTACHMENT A (cont.)

FORM 2B: "GOOD FAITH OUTREACH" REQUIREMENTS FORM

This "Good Faith Outreach" form, along with the required supporting documentation must be completed and submitted per the instructions in this form EVEN IF the LBE subconsulting goal has been met (*Section 14B.8 of the San Francisco Administrative Code*). Proposers may obtain a list of certified LBEs from the HRC website:
http://sfgov.org/site/uploadedfiles/sfhumanrights/directory/vlistS_1.htm

A Proposer must achieve at least 80 points, as determined by HRC, to be deemed compliant with the "good faith outreach" requirements. A Proposer who fails to achieve at least 80 points will be declared non-responsive, and the Proposal will be rejected. Please check yes or no for each item listed below.

<p>1. Did your firm attend the pre-Proposal meeting scheduled by the City to inform all Proposers of the LBE program requirements for this project? If the City does not hold a pre-Proposal meeting, all Proposers will receive 15 points.</p>	<p><input type="checkbox"/> Yes (15 Points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>2. Did your firm advertise, not less than 10 calendar days before the due date of the Proposal, in one or more daily or weekly newspapers, trade association publications, LBE trade oriented publications, trade journals, or other media, such as: Small Business Exchange, or the Bid and Contracts Section of the Office of Contract Administration's website (www.sfgov.org/oca)? If so, <u>please enclose a copy of the advertisement</u>. <i>The advertisement must provide LBEs with adequate information about the project.</i> If the City gave public notice of the project less than 15 calendar days prior to the Proposal due date, no advertisement is required, and all Proposers will receive 10 points.</p>	<p><input type="checkbox"/> Yes (10 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>3. Did your firm identify and select work types (as categorized in HRC's LBE Directory) to meet the LBE subcontracting goal? If so, please identify the work types below:</p> <p>_____</p> <p>_____</p> <p>_____</p>	<p><input type="checkbox"/> Yes (10 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>4. Did your firm contact LBE firms (LBE firms include MBEs, WBEs and OBEs) for the identified work types (see #3 above), not less than 10 calendar days prior to the due date of the Proposal? If so, <u>please include documentation (i.e. phone logs, emails, faxes, etc.) to verify that contacts were made</u>. The purpose of contacting LBE firms is to provide notice of interest in proposing for this project.</p> <p>A Proposer who contacts those LBE firms certified in the identified work types, not less than 10 calendar days prior to due date of the Proposal, will receive up to 45 points. If a Proposer does not comply with paragraphs a. & b. below, one point will be deducted for each LBE firm within each identified work type that is not contacted.</p> <p>a. If there are less than 25 firms within an identified work type, a Proposer should contact all of them.</p> <p>b. If there are 25 or more firms within an identified work type, a Proposer should notify at least 25 firms within such identified work type.</p> <p>If a Proposer does not contact any LBE firms, the Proposer will receive no points.</p> <p>When contacting LBEs, you should provide adequate information about the project.</p> <p>If the City gave public notice of the project less than 15 calendar days prior to the Proposal due date, the allocation of points above still applies, except that the Proposer may contact those LBE firms certified in the identified work types less than 10 calendar days prior to the due date of the Proposal.</p>	<p><input type="checkbox"/> Yes (Up to 45 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>



ATTACHMENT A (Form 2B cont.)

<p>5. Did your firm follow-up and negotiate in good faith with interested LBEs? If so, <u>please include documentation (i.e. phone logs, emails, faxes, etc.) to verify that follow-up contacts were made</u>. If applicable, your follow-up contact with interested LBEs should provide information on the City's bonding and financial assistance programs.</p> <p>For each interested LBE firm that the Proposer does not follow-up with, a point will be deducted.</p> <p>A Proposer who does not perform any follow-up contact with interested LBEs will receive no points.</p> <p>*"Interested LBE" shall mean an LBE firm that expresses interest in being a subconsultant to the Proposer.</p>	<p><input type="checkbox"/> Yes (Up to 20 points)</p>	<p><input type="checkbox"/> No (0 Points)</p>
<p>6. A Proposer shall submit the following documentation with this form:</p> <ul style="list-style-type: none">(1) Copies of all written Proposals submitted, including those from non-LBEs;(2) If oral Proposals were received, a list of all such Proposals, including those from non-LBEs. The work type and dollar amounts for each such Proposal must be specified; and(3) A full and complete statement of the reasons for selection of the subconsultants for each work type. If the reason is based on relative qualifications, the statement must address the particular qualification at issue.		

Contract Name: _____

Contract No.: _____

Signature of Owner/Authorized Representative: _____

Owner/Authorized Representative (Print): _____

Name of Firm (Print): _____

Title and Position: _____

Address, City, ZIP: _____

Email: _____

Date: _____



ATTACHMENT A (cont.)

FORM 3: HRC NON-DISCRIMINATION AFFIDAVIT

1. I will ensure that my firm complies fully with the provisions of Chapter 14B of the San Francisco Administrative Code and its implementing Rules and Regulations and attest to the truth and accuracy of all information provided regarding such compliance.
2. I acknowledge and agree that any monetary penalty assessed against my firm by the Director of the Human Rights Commission shall be payable to the City and County of San Francisco upon demand. I further acknowledge and agree that any monetary penalty assessed may be withheld from any monies due to my firm on any contract with the City and County of San Francisco.
3. I declare and swear under penalty of perjury under the laws of the State of California that the foregoing statements are true and correct and accurately reflect my intentions.

Signature of Owner/Authorized Representative: _____

Owner/Authorized Representative (Print) _____

Name of Firm (Print) _____

Title and Position _____

Address, City, ZIP _____

Federal Employer Identification Number (FEIN): _____

Date: _____



ATTACHMENT A (cont.)

FORM 4: HRC JOINT VENTURE FORM

This form must be submitted ONLY if the Proposer is requesting a Joint Venture partnership with an LBE firm for the rating bonus. The Joint Venture partners must submit a joint venture agreement and management plan with the Proposal. All work must be accounted for including subconsulting work.

SECTION 1: GENERAL INFORMATION

1. Name of Contract or Project: _____

2. Name of all JV partners: (Check LBE if applicable)

	LBE <input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

Attach a copy of Joint Venture Agreement and Management plans.

4. The management plan must include the following information:

- Describe in detail how decisions will be made for work distribution and compliance of LBE Joint Venture participation.
- Provide each Joint Venture partner's specific duties and responsibilities (include organizational chart)
- Identify the Location of Joint Venture Office.
- Provide in detail how decision will be made for work distribution to LBE subconsultants and/or vendors.
- Submit copies of bank signature cards with authorized names, titles, and address/city of the bank (required after award of contract.)

5. Calculation of the Rating Bonus. See §2.02D of HRC Attachment 2 for an example.

If the joint venture partners are dividing the work according to a different formula than that described below, please contact HRC staff and describe the arrangement in detail prior to submittal of Proposal.

Joint venture partners are encouraged to meet with HRC regarding their joint venture prior to submitting their Proposal.

The rating bonus is awarded based on the LBE JV partner tasks calculated as a percentage of the total JV partner tasks.

Step 1. Calculate total JV partner tasks.

Total Contract Tasks	=	100%
Percentage of Total Work to be Performed by Subconsultants	-	%
Percentage of JV partner tasks	=	%



ATTACHMENT A (Form 4 cont.)

Step 2. Calculate LBE JV partner tasks:

	A	B	C
Description of JV partner Scopes of Work (Specific details of work)	JV Partners' Work as a % of the total project	% of Task by Non-LBE JV Partner	% of Task by LBE JV Partner
	%	%	%
	%	%	%
	%	%	%
	%	%	%
	%	%	%
TOTAL JV %	%	%	%

Step 3. Calculate LBE JV partner work as a percentage of the total JV partner work for the rating bonus.

Total LBE JV Partner %		÷	Total JV %		=	%
------------------------	--	---	------------	--	---	---

JOINT VENTURE PARTNERS MUST SIGN THIS FORM

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name and Title (Print)

Name and Title (Print)

Firm Name

Firm Name

Telephone

Date

Telephone

Date



ATTACHMENT A (cont.)

FORM 5: HRC EMPLOYMENT FORM

This form is to be submitted with the Proposal.

1. Indicate key personnel designated to work on this project for the entire project team (prime Proposer, joint venture partners, subconsultants, and vendors).

The employees listed should include all those listed in other sections of the Proposal.

NAME OF FIRM	NAME OF EMPLOYEE	PROJECT ROLE	RACE	SEX

Indicate the Number of disadvantaged individuals that will be hired as on -the-job-trainees by the entire project team. See §4.03 of HRC Attachment 2.

a. Estimated Project Fee: \$ _____

b. HRC on-the-job training goal: _____

c. Number of on-the-job-trainees that will be hired by the project team _____

d. If less than HRC goal,
explain: _____

e. Length of training: _____ If less than 12 months,
explain: _____

Sign below including each joint venture partner.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name and Title (Print)

Name and Title (Print)

Firm Name

Firm Name

Telephone

Date

Telephone

Date



ATTACHMENT A (cont.)

FORM 7: HRC PROGRESS PAYMENT FORM

To be completed by Consultant and submitted to the Contract Awarding Authority and HRC with its monthly progress payment application (transmit to the following):

TRANSMITTAL

TO: Project Manager/Designee

COPY TO: HRC Contract Compliance Officer

Firm: _____

Date: _____

SECTION 1. Fill in all the blanks

Contract Number: _____ Contract Name: _____

Reporting Period From: _____ To: _____ Progress Payment No: _____

The information submitted on Sections 1 and 2 of this form must be cumulative for the entire contract as opposed to individual task orders. Additionally, the information submitted on Sections 1 and 2 of this form must be accurate for the progress payment period immediately preceding that of the current payment application attached herewith.

- | | |
|---|----------|
| 1. Amount of Prime Contract: | \$ _____ |
| 2. Amount of Amendments and Modifications to Date: | \$ _____ |
| 3. Total Contract to Date including Amendments and Modifications (Line 1 + Line 2): | \$ _____ |
| 4. Sub-total Amount Invoiced this submittal period: Professional Fees | \$ _____ |
| 5. Sub-total Amount Invoiced this submittal period: Reimbursable Expenses | \$ _____ |
| 6. Gross Amount Invoiced this submittal period (Line 4 + Line 5): | \$ _____ |
| 7. All Previous Gross Amounts Paid to Date: | \$ _____ |
| 8. Total Gross Amounts of Progress Payments Requested to Date: | \$ _____ |
| 9. Percent Completed (Line 8÷ Line 3): | _____ % |

Consultant, including each joint venture partner, must sign this form.

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name (Print)

Name (Print)

Title (Print)

Title (Print)

Firm Name

Firm Name

Telephone

Fax

Telephone

Fax

Date

Date

ATTACHMENT A (Form 7 cont.)

SECTION 2. For column "A," list the Prime Consultant, each joint venture partner and ALL subconsultants and vendors including 2nd and 3rd tier subconsultants. Make copies if more space is needed. Attach copies of all invoices from primes/subconsultants supporting the information tabulated for this progress payment.

- Notes:* 1) ALL firms must be CONTINUOUSLY listed on column "A" regardless if a firm is not requesting payment and
2) Failure to submit all required information may lead to partial withholding of progress or final payment.

Identify LBE Goal of this contract: %

A	B	C	D	E	F	G	H
Name of Firm. List prime consultant, including each JV partner, and all subconsultants including lower tier LBE subconsultants & vendors. Indicate if the firm is an LBE	Service Performed	Amount of Contract or Purchase Order at Time of Award	Amount of Modifications to Date	Total Amount of Contract or Purchase Order to Date +/- Modifications (C + D) or (C-D)	Amount Invoiced this Reporting Period	Amount Invoiced to Date, including Amount Invoiced this Reporting Period (F).	Percent Complete to Date (G÷E)
							%
							%
							%
							%
							%
							%
							%
LBE Sub-Totals							%
Professional Fees							%
Reimbursable Expenses							%
CONTRACT TOTALS							%



ATTACHMENT A (cont.)

FORM 8: HRC EXIT REPORT AND AFFIDAVIT

Prime Consultant must complete and sign this form (Sections 1 and 3) for each LBE subconsultant (incl. each lower tier LBE subconsultant). LBE Subconsultants must complete and sign Section 2 of this form. These forms should be submitted to the Contract Awarding Authority with the final progress payment request.

TRANSMITTAL

TO: Project Manager/Designee

COPY: HRC Contract Compliance Officer

FROM (Consultant): _____ Date Transmitted: _____

SECTION 1. Please check this box if there are no LBE subconsultants for this contract: ☐

Reporting Date: _____ Contract Name: _____

Name of LBE: _____ Portion of Work (Trade): _____

Original LBE Contract Amount: \$ _____

Change Orders, Amendments, Modifications \$ _____

Final LBE Contract Amount: \$ _____

Amount of Progress Payments Paid to Date: \$ _____

Amount further subbed out to non LBE firms: \$ _____

Amount Owning including all Change Orders, Amendments and Modifications \$ _____

Explanation by Consultant if the final contract amount for this LBE is less than the original contract amount:

SECTION 2.

To be signed by the LBE Subconsultant or vendor:

☐ I agree ☐ I disagree

Explanation by LBE if it is in disagreement with the above explanation, or with the information on this form. LBE must complete this section within 5 business days after it has received it from the Prime. It is the LBE's responsibility to address any discrepancies within 5 business days concerning the final amount owed. If the LBE fails to submit the form within 5 business days, the Prime will note this on the form and submit the form as is with the final progress payment:

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Date



ATTACHMENT A (Form 8 cont.)

SECTION 3.

If this form is submitted without the subconsultant's signature, the Prime must enclose verification of delivery of this form to the subconsultant.

I declare, under penalty of perjury under the laws of the State of California, that the information contained in Section 1 of this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within three (3) days after receipt of the City's final payment under the Contract.

Owner/Authorized Representative (Signature)

Name and Title (Print)

Firm Name

Telephone

Date



ATTACHMENT A (cont.)

FORM 9: HRC PAYMENT AFFIDAVIT

Consultant or Joint Venture partners must submit this form to the Contract Awarding Authority and HRC within ten (10) working days following receipt of each progress payment from the Contract Awarding Authority. This form must be submitted EVEN if there is no sub payment of this reporting period and until completion of the contract.

TO: Project Manager/Designee

COPY TO: HRC Contract Compliance Officer

Firm: _____

Date: _____

List the following information for each progress payment received from the Contract Awarding Authority. Use additional sheets to include complete payment information for all subconsultants and vendors (including lower tiers utilized on this Contract. Failure to submit all required information may lead to partial withholding of progress payment.

Contract Number: _____ Contract Name: _____

Contract Awarding Department: _____

Progress Payment No.: _____ Period Ending: _____

Amount Received: \$ _____ Date: _____ Warrant/Check No.: _____

☐ Check box and sign below if there is no sub payment for this reporting period.

Subconsultant/Vendor Name	Business Address	Amount Paid	Payment Date	Check Number
		\$		
		\$		
		\$		
		\$		
		\$		
		\$		

I/We declare, under penalty of perjury under the laws of the State of California that the above information is complete, that the tabulated amounts paid to date are accurate and correct.

Prime consultant, including each joint venture partner, must sign this form (use additional sheets if necessary)

Owner/Authorized Representative (Signature)

Owner/Authorized Representative (Signature)

Name (Print)

Title

Name (Print)

Title

Firm Name

Firm Name

Telephone

Date

Telephone

Date



ATTACHMENT A (cont.)

FORM 10: HRC CONTRACT MODIFICATION FORM

Consultant must submit this form with the required supporting documentation when processing amendments, modifications or change orders that cumulatively increase the original contract amount by more than 20%, and then for all subsequent amendments, modifications or change orders. This form must be completed prior to the approval of such amendments, modifications or change orders. (This provision applies only to contracts originally valued at \$50,000 or more).

Name of Project/Contract Title: _____

Original Contract Amount: _____

Contract Amount as Modified to Date: _____

Amount of Current Modification Request: _____

REQUIRED ATTACHMENTS:

1. Revised Form 2A reflecting the new overall contract amounts for the prime consultant, joint venture partners, subconsultants, and vendors.
2. A list of all prior contract amendments, modifications, supplements and/or change orders leading up to this modification, including those leading up to the amendment which increased the original contract amount by more than 20%.
3. A spreadsheet showing each firm's participation for the overall contract, including each firm's participation to date and proposed participation under the modification.
4. A brief description of the work to be performed under this amendment, modification, or change order.

Owner/Authorized Representative (Signature)

Name (Print)

Title

Firm Name

Telephone

Date

Owner/Authorized Representative (Signature)

Name (Print)

Title

Firm Name

Telephone

Date

ATTACHMENT B

STANDARD FORMS

The requirements described in this attachment are separate from those described in Attachment A.

Before the City can award any contract to a Vendor, that Vendor must file three standard City forms (items 1-3 on the chart). Because many Vendors have already completed these forms, and because some informational forms are rarely revised, the City has not included them in the RFP package. Instead, this Appendix describes the forms, where to find them on the Internet (see bottom of page 2), and where to file them. If a Vendor cannot get the documents off the Internet, the Vendor should call (415) 554-6248 or e-mail Purchasing (purchasing@sfgov.org) and Purchasing will fax, mail or e-mail them to the Vendor.

If a Vendor has already filled out items 1-3 (see note under item 3) on the chart, **the Vendor should not do so again unless the Vendor's answers have changed.** To find out whether these forms have been submitted, the Vendor should call Vendor File Support in the Controller's Office at (415) 554-6702.

If a Vendor would like to apply to be certified as a Local Business Enterprise, it must submit item 4. To find out about item 4 and certification, the Vendor should call Human Rights Commission at (415) 252-2500.

Item	Form name and Internet location	Form	Description	Return the form to or For more info
1.	Request for Taxpayer Identification Number and Certification www.sfgov.org/oca/purchasing/forms.htm http://www.irs.gov/businesses/small/international/article/0,,id=96696,00.html	W-9	The City needs the Vendor's taxpayer ID number on this form. If a Vendor has already done business with the City, this form is not necessary because the City already has the number.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702
2.	Business Tax Declaration www.sfgov.org/oca/purchasing/forms.htm	P-25	All Vendors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702

ATTACHMENT B (cont.)

Item	Form name and Internet location	Form	Description	Return the form to or For more info
3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits www.sfgov.org/oca/purchasing/forms.htm – In Vendor Profile Application	HRC-12B-101	Vendors tell the City if their personnel policies meet the City’s requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the answers on this form. Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.	Human Rights Commission 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500
4.	HRC LBE Certification Application www.sfgov.org/oca/purchasing/forms.htm – In Vendor Profile Application		Local businesses complete this form to be certified by HRC as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by HRC by the Proposal due date.	Human Rights Commission 25 Van Ness, #800 San Francisco, CA 94102-6059 (415) 252-2500

Where the forms are on the Internet

Office of Contract Administration

Homepage: www.sfgov.org/oca/

Purchasing forms: Click on “Required Vendor Forms” under the “Information for Vendors and Vendors’ banner.

Human Rights Commission

HRC’s homepage: www.sfgov.org/sfhumanrights

Equal Benefits forms: Click on “Forms” under the “Equal Benefits” banner near the bottom.

LBE certification form: Click on “Forms” under the “LBE” banner near the bottom.

ATTACHMENT C

**ATTESTATION OF COMPLIANCE ON
COMMUNICATION PRIOR TO CONTRACT AWARD**

To be completed by all Proposing Firms and All Individual Subcontractors

(Please check each box, sign this form and submit it with your Proposal.)

Name of individual completing this form:

The form is submitted on behalf of firm:

Title of RFP and RFP No: **Parking Access and Revenue Control System RFP no. SFMTA
2009/10-01**

1. I attest that I and all members of the firm listed above will and have complied to date with Section IX. J. of the RFP. ___Yes

2. I understand that if my firm or any members of the firm listed above are found to be in violation of Section IX. 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: _____

ATTACHMENT D

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

By signing and submitting its Proposal, the Proposer or proposed subcontractor certifies as follows:

(1) _____
(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 SFMTA;
 - 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 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 Name (print)

Authorized Representative Title (print)

ATTACHMENT E

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”) SFMTA 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 Vendor, 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

ATTACHMENT F

QUALIFICATION QUESTIONNAIRE

QUESTIONNAIRE CONCERNING EXPERIENCE, FINANCIAL AND TAXPAYER RESPONSIBILITY OF PROPOSER FOR THE PARKING ACCESS AND REVENUE CONTROL SYSTEM (PARCS)

PROPOSERS MUST SUBMIT THE COMPLETED PREQUALIFICATION QUESTIONNAIRE TO THE SFMTA NO LATER THAN 4PM. (PDT) ON December 1, 2009.

The intent of the questionnaire is to evaluate whether the Proposer meets all of the Minimum Qualifications set forth in the RFQ. Upon receipt of the questionnaire, the SFMTA may require confirmation from financial institutions and the San Francisco Tax Collector. Such information will be used to determine whether Proposers are eligible for further consideration. If additional information is required, Proposers will be expected to assist in securing the information on a timely manner.

The following statements as to experience, financial and taxpayer responsibility qualifications of the Proposer are submitted with the Proposal along with a waiver authorizing the City Tax Collector to confirm the status of the Proposer with respect to payment of local business taxes and fees ("Taxpayer Responsibility"), as a part thereof; and any material misstatement of the information submitted herein must be grounds to prohibit the Proposer from submitting a bid.

1. NAME: _____

(Print name of corporation, individual or firm name)

Tel. No.: () _____ Fax No.: () _____

2. MAILING ADDRESS: _____

St. Address/P.O. Box City State Zip Code

3. PROPOSER INTENDS TO DO BUSINESS AS A (type of entity as it appears on the Agreement):

___ Corporation ___ Co-Partnership ___ Joint Venture ___ Individual

4. PROPOSER'S SAN FRANCISCO BUSINESS TAX REGISTRATION CERTIFICATE NO. _____

A copy of the current year's certificate must be submitted with the questionnaire. If a joint venture Proposal is to be submitted, provide certificate numbers and submit copies of certificates for each joint venture partner.

5. FULL NAME, TITLE AND ADDRESS of all of the principal personnel of Proposer: If an individual, the name of the party responding; if a co-partnership or joint venture, the members of the co-partnership or joint venture; if a corporation, the State of Incorporation, the president, vice-president and secretary.

ATTACHMENT F (cont.)

PERSONNEL OF PROPOSER (Full name - Do not use initials):

Provide qualifications of Key Personnel of the firm and the staff (Project Manager, technical staff) assigned to this project. Also include the role of the personnel in this Project. Include resumes.

A. _____
First Name Middle Name Last Name

Title or Position (Co-Partner, joint venturer, officer of a corporation, or individual)

Business Address City State Zip Code

B. _____
First Name Middle Name Last Name

Title or Position (Co-Partner, joint venturer, officer of a corporation, or individual)

Business Address City State Zip Code

C. _____
First Name Middle Name Last Name

Title or Position (Co-Partner, joint venturer, officer of a corporation, or individual)

Business Address City State Zip Code

A. Minimum Qualifications

Only Proposals submitted by firms that meet or exceed all the minimum qualification will be considered.

1. For this Project SFMTA required that the responding firm must be in business for at least last five years. The firm must have completed at least three projects in the United State, in last five years that are similar in size and scope as the SFMTA PARCS Project. Completed projects must consist of at least five parking facilities networked together to a centralized location. Please use the table below, for the five year experience, within the United States.

ATTACHMENT F (cont.)

Vendor Firm's History

Name, Address and Phone number of the firm (local and head quarter, if different):	
Number of years in PARCS business:	
Date Incorporated and/or licensed in the State of California (please attach a copy of the license):	
Number of employees (Local and others):	

Project Experience (List 3 projects, within the United States, similar in size and scope that the Firm worked on)

Project No. 1

Project Name:	
Contact Person's Name (with Phone number and E-mail address):	
Address of the Project:	
Firm's Project Manager:	
Year the Project started:	
Year the Project completed:	
Budget of the Project:	
Number of Ticket Dispensers, Ticket Acceptors, and Pay on Foot Stations in the Project:	
Number of Parking facilities within the Project:	
Number of Facility Management System (FMS) and Central Management Computers (CMC) in the Project:	

Project No. 2

Project Name:	
Contact Person's Name (with Phone number and E-mail address):	
Address of the Project:	
Firm's Project Manager:	
Year the Project started:	
Year the Project completed:	
Budget of the Project:	
Number of Ticket Dispensers, Ticket Acceptors, and Pay on Foot Stations in the Project:	
Number of Parking facilities within the Project:	
Number of Facility Management System (FMS) and Central Management Computers (CMC) in the Project:	

ATTACHMENT F (cont.)

Project No. 3

Project Name:	
Contact Person's Name (with Phone number and E-mail address):	
Address of the Project:	
Firm's Project Manager:	
Year the Project started:	
Year the Project completed:	
Budget of the Project:	
Number of Ticket Dispensers, Ticket Acceptors, and Pay on Foot Stations in the Project:	
Number of Parking facilities within the Project:	
Number of Facility Management System (FMS) and Central Management Computers (CMC) in the Project:	

2. Assigned personnel shall be factory-trained and shall have at least three years of working experience in the PARCS installation and maintenance. Please use the table below, to report the PARCS installation, maintenance and configuration experience of the personnel proposed to work on the SFMTA PARCS Project. Use separate sheets and resumes, if needed.

Qualifications of the personnel assigned to this project

Name and Title of the team member:	
Number of years with the firm:	
Number of years in PARCS industry (Describe if the experience is in Operations and/or hardware/software):	
Role in this Project:	
List of previous project (also include the role of the personnel in that project):	
List of degrees, licenses, certificates and training completed by the personnel:	
Year of last factory-training received	

3. Corporate Documentation and Financial Information
Provide relevant information regarding organizational stability and strength, including the following:

ATTACHMENT F (cont.)

- A. A description or statement of organization (e.g., sole proprietorship, partnership, corporation, joint venture, etc)
- B. If a corporation, a listing of the members of the Board of Directors.
- C. A listing of financial references and statement of financial stability.
- D. Copy of the Reviewed Financial Statement.

The Proposer must provide reviewed financial statements for the previous three (3) years, prepared by a certified public accountant in accordance to generally acceptable auditing standards, beginning with the most recent year, or three (3) years of notarized Federal Tax Statements. Financial documents may be marked as Proprietary or Confidential. Proposers should be aware, however, that under the City's Sunshine Ordinance, financial materials submitted by a successful Proposer are subject to disclosure in response to a public records request. Should the SFMTA receive such a request, the Agency will notify the selected Proposer upon receipt of the request.

4. Proposer shall be certified by the California State Department of Consumer Affairs Contractors State License Board for general contracting. Include a copy of the License.

B. Minimum System Requirements

The proposed PARCS must include the following. Proposers must include a statement (with the supporting documents) that their proposed System meets or exceeds all the following requirements:

1. Proposer must include the Project Execution Plan to complete the SFMTA's PARCS Project.
2. A detailed plan on how the Proposer will support PARCS after installation, during the warranty period and throughout the term of the maintenance agreement.
3. An Open Architecture System that will allow SFMTA to add features into the PARCS at a later date.
4. TCP/IP based System.
5. Remote accessibility to PARCS over a secure web-based application.
6. System data must be exportable to remote servers, including but not limited to SFpark, Central Management Computer and Parking Guidance System Servers.
7. Proposed System shall be compliant with Article 22 of the City And County Of San Francisco Business And Tax Regulations Code.
8. Proposed System shall be compliant with the latest Payment Card Industry Data Security Standard (PCI/DSS) requirement.
9. Proposed System must be Americans with Disability Act (ADA) compliant pursuant to Americans with Disability Act Accessibility Guidelines (ADAAG) and California Accessibility Code (CAC) requirements.

Include details on how the Responding firm planning to support SFMTA during and after the installation and that the Responding firm has means to support a big operation as SFMTA parking operation. Also include a brief statement (not more than 1 page for each

ATTACHMENT F (cont.)

personnel) describing personnel's PARCS experience in projects that is similar to this project. Also, include a statement that the individual listed above will be performing the work and will not be substituted with any other personnel or reassigned to another project without SFMTA's prior approval.

(Use separate sheet for additional personnel)

6. References

In the tables below, provide the contact information of the clients (preferably other public agencies), where the responding firm has actively work on a Project, as a Prime contractor, in last five years.

Client 1

Project Name:	
Contact Person's Name (with Phone number and E-mail address):	
Address of the Project:	
Client's Project Manager:	
Year the Project started:	
Year the Project completed:	
Number of Ticket Dispensers, Ticket Acceptors, Pay on Foot Stations, FMS and CMC in the Project:	
Number of Parking facilities within the Project:	
Nature of Relationship to Proposer:	

Client 2

Project Name:	
Contact Person's Name (with Phone number and E-mail address):	
Address of the Project:	
Client's Project Manager:	
Year the Project started:	
Year the Project completed:	
Number of Ticket Dispensers, Ticket Acceptors, Pay on Foot Stations, FMS, and CMC in the Project:	
Number of Parking facilities within the Project:	
Nature of Relationship to Proposer:	

Client 3

Project Name:	
Contact Person's Name (with Phone number and E-mail address):	
Address of the Project:	
Client's Project Manager:	
Year the Project started:	
Year the Project completed:	
Number of Ticket Dispensers,	

ATTACHMENT F (cont.)

Ticket Acceptors, Pay on Foot Stations, FMS, and CMC in the Project:	
Number of Parking facilities within the Project:	
Nature of Relationship to Proposer:	

Client 4

Project Name:	
Contact Person's Name (with Phone number and E-mail address):	
Address of the Project:	
Client's Project Manager:	
Year the Project started:	
Year the Project completed:	
Number of Ticket Dispensers, Ticket Acceptors, Pay on Foot Stations, FMS, and CMC in the Project:	
Number of Parking facilities within the Project:	
Nature of Relationship to Proposer:	

Client 5

Project Name:	
Contact Person's Name (with Phone number and E-mail address):	
Address of the Project:	
Client's Project Manager:	
Year the Project started:	
Year the Project completed:	
Number of Ticket Dispensers, Ticket Acceptors, Pay on Foot Stations, FMS, and CMC in the Project:	
Number of Parking facilities within the Project:	
Nature of Relationship to Proposer:	

7. Controls and Reporting

Describe previously utilized systems of Project controls. Provide a copy of a representative sample of an integrated cost/change/schedule control system.

Describe methods and procedures for developing and publishing Project reports and records. Provide a copy of a representative sample Project report.

Responding vendor must also include the firm's (especially the Project Manager's) experiences in Controlling Project Cost and Schedule.

ATTACHMENT F (cont.)

Provide a statement of the firm's philosophy with respect to the cost and budget control during the Project, demonstrating experience and ability to manage a Project within a given budget.

List on a separate page, include, any businesses or business interests located or doing business in San Francisco in which the Proposer, including the Joint Venture Partner or Subcontractor providing PARCS, or individuals who control the Proposer have an interest. For each such interest, list the entity or individual, nature of the business, and term of the agreement, if applicable. If the Proposer wishes to have the response to this question treated as proprietary business information, the page containing this information should be clearly designated as such. Proposers should be aware, however, that under the City's Sunshine Ordinance, financial materials submitted by a successful Proposer are subject to disclosure in response to a public records request. Should the SFMTA receive such a request, the Agency will notify the selected Proposer upon receipt of the request.

8. Has the Proposer or any of its management staff, including the Joint Venture Partner or Subcontractor responding to this RFQ ever received a notice of default or breach of contract, even if such a default was cured at a later date? ☐ Yes ☐ No
9. Has the Proposer or any of its management staff including the Joint Venture Partner or Subcontractor responding to this RFQ ever requested release from a Project contract? ☐ Yes ☐ No
10. Has the Proposer or any of its management staff including the Joint Venture Partner or Subcontractor responding to this RFQ ever managed a Project in which the Project contract was cancelled or terminated by the owner? ☐ Yes ☐ No
11. Has the Proposer or any of its management staff including the Joint Venture Partner or Subcontractor responding to this RFQ ever been a party to any legal action or proceeding relating to a PARCS contract? Does the Proposer have any outstanding claims against any parking facility owners or their staff? ☐ Yes ☐ No
12. Has the Proposer, any of its management staff including the Joint Venture Partner or Subcontractor responding to this RFQ, or any firms controlled by any management staff previously been employed by or associated with a firm that has filed for bankruptcy in the last ten years? ☐ Yes ☐ No
13. Is the Proposer or any of its management staff including the Joint Venture Partner or Subcontractor responding to this RFQ now in arrears on taxes or fees due on any parking business or operation? ☐ Yes ☐ No
14. Has the Proposer or any of its management staff including the Joint Venture Partner or Subcontractor responding to this RFQ ever been the subject of an enforcement action taken by any governmental body for the non-payment of taxes or violations of any city, county, state or federal regulation, ordinance or statute? ☐ Yes ☐ No

If the answer to any of the items 8 -14 is "Yes," please explain below. Place the corresponding question number before each response. Attach separate sheet if necessary. Moreover, Vendor must also include the following information:

RFQ # SFMTA2009/10-03	111 of 126	Issued [date]
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ATTACHMENT F (cont.)

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ATTACHMENT G

SAMPLE XML FILE FORMAT FOR PARKING SPACE INFOMRATION

The following XML is the format in which the selected Proposer will deliver real-time parking information:

<garage_occupancy>

<transmission_datetime>Date and time of transmission to SFpark Transactional System in standard Oracle format to the second </transmission_datetime>

<Garage_ID>ID number assigned by SFMTA</Garage_ID>

<number_occupied_spaces>number of cars presently in the garage</number_occupied_spaces>

<total_spaces>number of spaces currently available in the garage</total_spaces>

</garage_occupancy>

XML Code:	Shall Be:
Effective Date	Date and time the this price schedule will be effective
transmission_datetime	Given by the System
Garage_ID	ID number created by SFMTA assigned to each garage
number_occupied_spaces	The total number of cars that have entered the garage
Total_spaces	The total number of parking spaces currently available factoring in to account any spaces taken off-line (e.g., for a repair project) and any additional spaces created via the use of valets.

ATTACHMENT H

SAMPLE XML FILE FORMAT REQUIRED FOR THE SFpark Price Schedule

<price_schedule>

<Effective_Date> Date and time the effective date in standard Oracle format to the second </Effective_Date >

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

<parking_garage>

<Garage_ID>ID number assigned by SFMTA</Garage_ID>

<Start_DOW>First Day of the Week this price is effective</Start_DOW>

<End_DOW>Last Day of the Week this price is effective</End_DOW>

<Price_Start_time>Start time for price in standard Oracle format to the second
</Price_Start_time>

<Price_End_time>End time for price in standard Oracle format to the second
</Price_end_time>

<Legnth_of_stay_schedule>

<Hour>Hour in whole numbers</Hour> <Price_Premium_pct>Price premium
percentage</Price_Premium_pct>

....

</Legnth_of_stay_schedule>

<Price>Decmial value of the prince in dollars</price>

</ parking_garage >

</price_schedule>

ATTACHMENT H (cont.)

XML Code:	Shall Be:
transmission_datetime	Given by SFMTA
Parking_garage	
Garage_ID	ID number created by SFMTA assigned to each garage
Start_DOW	Given by SFMTA, it represents the first day of the week this price is valid
End_DOW	Given by SFMTA, it represents the last day of the week this price is valid
Price_Start_Time	Given by SFMTA, it represents the beginning of the time period for this price
Prince_End_Time	Given by SFMTA, it represents the end of the time period for this price
Length-Of_Stay_Schedule	
Hour	1 is the hour after the first full hour a driver is parked. 2 is the second hour after the first full hour a driver is parked.
Price_Premium_Percentage	Percentage premium over the regular price
Price	This is the regular price per hour in dollars

Example:

<price_schedule>

<Effective_Date>2009/05/04:12:00:00AM</Effective_Date>

<Transmission_datetime>2009/04/15:12:00:00AM</Transmission_datetime>

<parking_garage>

<garage_ID>11111</garage_ID>

<Start_DOW>Monday</Start_DOW>

<End_DOW>Friday</End_DOW>

<Price_Start_time>09:00 AM</Price_Start_time>

<Price_End_time>05:00 PM</Price_end_time>

<Legnth_of_stay_schedule>

<Hour>1</Hour><Price_Premium_pct>50</Price_Premium_pct>

<Hour>2</Hour><Price_Premium_pct>100</Price_Premium_pct>

<Hour>3</Hour><Price_Premium_pct>150</Price_Premium_pct>

</Legnth_of_stay_schedule>

<Price>3.00</price>

</parking_garage>

ATTACHMENT H (cont.)

< parking_garage >

<Parking_Space_ID>**22222**</Parking_Space_ID>
<Start_DOW>**Monday**</Start_DOW>
<End_DOW>**Friday**</End_DOW>
<Price_Start_time>**05:00 PM**</Price_Start_time>
<Price_End_time>**10:00 PM**</Price_end_time>
<Price>**2.00**</price>

</parking_garage >

<parking_garage>

<Parking_Space_ID>**11111**</Parking_Space_ID>
<Start_DOW>**Saturday**</Start_DOW>
<End_DOW>**Saturday**</End_DOW>
<Price_Start_time>**09:00 AM**</Price_Start_time>
<Price_End_time>**10:00 PM**</Price_end_time>
<Price>**1.00**</price>

</parking_garage>

</Price_schedule>

(For accessible tax forms, please visit: www.sfgov.org/tax or call 415-554-4400)



Yes No **MUST ANSWER ALL QUESTIONS:**

DATE CLOSED

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 /

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 /

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I hereby certify under penalty of perjury that the foregoing parking tax return, including any accompanying schedules and statements, has been examined by me, and the information thereon is, to the best of my knowledge and belief, true, correct, and fully compliant with all of the requirements for parking operators provided in Articles 9 and 22 of the San Francisco Business and Tax Regulations Code. (For RCE Code, see website www.sfgov.org/txlax.) Make necessary changes to the name and address on this page. Make check payable to the San Francisco Tax Collector. Write your Certificate number in the upper left corner of the check. Return this entire statement with your remittance.

43960



EMAIL ADDRESS: BUSINESS TELEPHONE#

ATTACHMENT I (cont.)

PLEASE TYPE OR PRINT LEGIBLY IN BLACK INK

BUSINESS TAX ID	DBA #	SITUS #	CERTIFICATE #	QTR END DATE	TAX YEAR
<div style="border: 1px solid black; height: 20px;"></div>	<div style="border: 1px solid black; height: 20px;"></div>	<div style="border: 1px solid black; height: 20px;"></div>	<div style="border: 1px solid black; height: 20px;"></div>	<div style="border: 1px solid black; height: 20px;"></div>	<div style="border: 1px solid black; height: 20px;"></div>

OWNERSHIP NAME:

PARKING STATION LOCATION:

NUMBER OF STALLS: MAXIMUM OCCUPANCY:

BREAKDOWN OF PARKING FEES COLLECTED

Code: H=Hourly; F=Flat; M=Monthly; E=Exempt; or
O=Other (Explain at the bottom of this page)

Please indicate correct code below for each rate:

		Month 1			Month 2			Month 3		
Code	Rate									
H/F/M/E/O	Amount	x	Quantity	=	Total	x	Quantity	=	Total	
1				= \$				= \$		
2				= \$				= \$		
3				= \$				= \$		
4				= \$				= \$		
5				= \$				= \$		
6				= \$				= \$		
7				= \$				= \$		
8				= \$				= \$		
9				= \$				= \$		
10				= \$				= \$		
11				= \$				= \$		
12				= \$				= \$		
13				= \$				= \$		
14				= \$				= \$		
15				= \$				= \$		
16 Total:				\$				\$		

17 Total Quarterly Parking Collection = Months 1 + 2 + 3

Enter on Line 1, page 1

\$

If necessary, please attach additional sheets to report additional rates.

UNACCOUNTED TICKET RATIO	
1 Inventory at the start of the reporting period	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
2 Tickets issued for the reporting period	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
3 Total (1 + 2)	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
4 Less: a. Tickets voided for the reporting period	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
b. Tickets collected for the reporting period	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
5 Unaccounted Tickets (3-4a-4b)	<div style="border: 1px solid black; width: 100%; height: 20px;"></div>
6 Unaccounted Ticket Ratio (5 ÷ 2)x100	<div style="border: 1px solid black; width: 100%; height: 20px;"></div> %

INFORMATION FOR INACTIVATING THIS PARKING LOCATION	
Last Date of Operation: <div style="border: 1px solid black; width: 100%; height: 20px;"></div>	
Certificate of Authority returned to Tax Collector? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, Certificate of Authority was returned on: <div style="border: 1px solid black; width: 100%; height: 20px;"></div>	
(If Any) New Ownership Name, Address, & Phone #: <div style="border: 1px solid black; width: 100%; height: 20px;"></div>	
Describe reason for not doing business at this San Francisco location:	
<input type="checkbox"/> Lease Expired	
<input type="checkbox"/> Other (please explain): <div style="border: 1px solid black; width: 100%; height: 20px;"></div>	

Explanation of O "Other" code:

NOTE: Upon the cessation of business by the parking operator or service provider at the location named on the Certificate of Authority to Collect Third Party Parking Taxes (COA) or upon the sale or transfer of the business, you must immediately (1) surrender your COA to the Tax Collector and (2) notify the Tax Collector in writing that you have ceased conducting a parking business at the location. The holder of the COA remains presumptively liable for the collection of parking taxes at the location named in the COA and for the reporting and remittance of such taxes to the Tax Collector, until the COA is surrendered and notification has been made.

ATTACHMENT I (cont.)



José Cisneros
Treasurer

Business Tax Section
Office of the Treasurer & Tax Collector
City and County of San Francisco
P.O. Box 7425, San Francisco, CA 94120-7425
Taxpayer Assistance: (415) 554-4400

George Putris
Tax Administrator

General Information and Instructions Quarterly Parking Tax Return

The San Francisco Municipal Code, Part III, Article 9, San Francisco Business and Tax Regulations Code, requires each parking operator in the City and County of San Francisco to collect the 25% parking tax on any rent, fee or charge paid for the occupancy of a vehicle in a parking space.

QUARTERLY TAX RETURN FILING DEADLINE

Parking operators must file Quarterly Parking Tax Returns with the San Francisco Tax Collector after the close of each calendar quarter. These returns are due the first day of the month following the end of such quarter. A return is delinquent if filed, mailed, or postmarked after the last day of the month following the end of the quarter. Quarterly Parking Tax Returns filed and/or taxes paid on or after the delinquent date are subject to a late filing penalty, late payment penalty, administrative fee, and interest. Penalties, fees, and interest are imposed in addition to the Parking Tax due.

IMPORTANT REMINDERS

- Operators must comply with the requirements stated in Articles 9 and 22 of the San Francisco Business and Tax Regulations Code. For copies of Articles 9 and 22, please visit our website at www.sfgov.org/tax.
- Operators must provide a breakdown of Parking Fees Collected for each month during the quarter and the Unaccounted Ticket Ratio on the reverse side of the Quarterly Parking Tax Return.
- You must answer Questions A through G on the Quarterly Parking Tax Return.
- Please sign the Return, under penalty of perjury. Unsigned Returns are not considered valid filings and will be returned to taxpayers for signature.
- Please make your check payable to the San Francisco Tax Collector. Please include your Business Certificate Number or Business Tax ID/DBA/SITUS numbers, and parking station location on your check. Each parking station location requires a separate Return and separate check for the total payment due shown on Line 12 of the Return.
- If you no longer operate this parking station location, or if your business is closed, sold, or is no longer doing business in San Francisco, please complete the information on the back of the Quarterly Parking Tax Return and return it with the Certificate of Authority (COA) and Business Registration Certificate to the San Francisco Tax Collector.

FOR FURTHER ASSISTANCE

1. Call Taxpayer Assistance at (415) 554-4400 from 8:00 a.m. to 5:00 p.m., Monday through Friday;
2. Visit our website at www.sfgov.org/tax; or
3. Visit us at City Hall, Room 140, 1 Dr. Carlton B. Goodlett Place, San Francisco from 8:00 a.m. to 5:00 p.m., Monday through Friday.

INSTRUCTIONS FOR COMPLETING THE QUARTERLY PARKING TAX RETURN PLEASE COMPLETE PAGE 2 OF THE RETURN FIRST

BRIEF DESCRIPTION OF THE TOP SECTION OF THE QUARTERLY PARKING TAX RETURN

Business Tax ID Number / DBA / SITUS: Your business tax ID number is a 16-digit number, which is either your Social Security Number or Federal Tax ID Number (FEIN), combined with our assigned numbers for the Ownership Account, DBA (Doing Business As), and SITUS (Example: 123456789-01-01-001).

Certificate Number: Your certificate number is the 6-digit number assigned to your business by our office.

Quarterly (QTR) End Date: This is the last day of the calendar quarter being reported, i.e. March 31, June 30, September 30, and December 31.

Due On or Before: This is the last day to file and pay without incurring penalties, interest, and an administrative fee.

Delinquent Date: Please see page 2 of these instructions under "Penalty Assessments for Filings Postmarked after the Due Date" section for specific dates upon which the returns are due and delinquent.

Parking Location: This is the physical address of your parking station. EACH LOCATION REQUIRES A SEPARATE

PARKING TAX RETURN. Valet parking operators must identify a fixed location for each of their parking operations.

Operators must answer all questions from item A to item F to comply with the requirements stated in Articles 9 and 22 of the San Francisco Business and Tax Regulations Code. For copies of Articles 9 and 22, please visit our website at www.sfgov.org/tax.

Final Return for Parking Location: If your business has ceased operations at this location, please check the box and complete the "INFORMATION FOR INACTIVATING THIS PARKING LOCATION" on the reverse of the Return and submit it with your Certificate of Authority and Business Registration Certificate.

ATTACHMENT I (cont.)

Permit Information: If your business has a Police Permit &/or Fire Department Permit, please indicate the Class and License Account Numbers.

LINE-BY-LINE INSTRUCTIONS FOR THE QUARTERLY PARKING TAX RETURN

Please complete the following lines on your Parking Tax Return, if applicable.

- Line 1. Total Parking Collections for this location: Report all rent, fees and charges, including parking tax, paid by the occupant/user of the parking space. Total Parking Collections include parking revenues from fixed parking locations and valet parking collections.
- Line 2. Exemptions: List all parking charges that are exempt from parking tax: Line 2A Resident parking on same residential premises; Line 2B Parking rent or fee that is paid for government vehicles by a government check or credit card; Line 2C Parking rent or fee for bank or insurance company vehicles paid by a bank or insurance company check or credit card; and 2D Other exemptions, please indicate type of exemption.
- Line 3. Total Exemptions: Add the exemptions claimed in Lines 2A, 2B, 2C, and 2D.
- Line 4. Taxable Parking Collections: Subtract Line 3 from Line 1. This is the net Taxable Parking Collections received for this parking location during the reported quarter.
- Line 5. Parking Tax Due: Multiply Line 4 by a Rate Factor of 20%. The 25% Parking Tax included in Line 4 is equivalent to 20% of the net Taxable Parking Collections.
- Line 6. Prepayments: Enter total prepayment you made during the quarter, if any for this parking location.

All Parking Taxes required to be collected by any operator shall be remitted monthly to the SF Tax Collector. The Parking Tax Prepayment is due on or before the last day of the following month. Generally, most parking operators elect to pay the actual amount of taxes collected as their prepayments. However, in the event that the actual collections are not determined when the prepayment is due, prepayments must be based on the estimated tax due for the month in question; in no instance may a prepayment be less than 30% of the tax collected from the preceding quarter. Below is the monthly prepayment schedule.

Monthly Prepayment Schedule		
Collection Month	Due on or Before *	Delinquent on
January	February 28	March 1
February	March 31	April 1
April	May 31	June 1
May	June 30	July 1
July	August 31	September 1
August	September 30	October 1
October	November 30	December 1
November	December 31	January 1

*Note: If the Due Date falls on a Saturday, Sunday or Legal Holiday, the last day to pay without incurring penalties, interest and an administrative fee will be the next business day.

- Line 7. Net Tax Amount Due: Subtract Line 6 from Line 5 and enter the amount.

PENALTY ASSESSMENTS FOR FILINGS POSTMARKED AFTER THE DUE DATE

NOTE: **Postmarks made by the United States Postal Service shall be deemed the date of filing by Mail.**
The following table reflects the due and delinquent dates.

Quarterly Payment Schedule		
Quarter Ending	Due on or Before *	Delinquent on
Mar 31st	April 30	May 1
Jun 30th	July 31	August 1
Sept 30th	October 31	November 1
Dec 31st	January 31	February 1

* Note: If the due date falls on a Saturday, Sunday, or Legal Holiday, the last day to pay without incurring penalties, interest, or fees will be the next business day.

- Line 8. Late Filing Penalty: Add a Late Filing Penalty of \$100 on Line 8.
- Line 9. Late Payment Penalty: Multiply Line 7 by 5% per month up to 20% and enter on Line 9. For payments made 90 days or more after the delinquent date, add an additional 20% penalty for a total of 40% penalty.
- Line 10. Interest: Multiply Line 7 by 1% per month from 1st month delinquent to month of payment. (There is no maximum limit to the amount of interest.)
- Line 11. Administrative Fee: Add an Administrative Fee of \$35.00 on Line 11. This fee is assessed to cover the administrative costs of handling late filing returns.

ATTACHMENT I (cont.)

TOTAL PAYMENT DUE

Line 12. **Total Payment Due:** Enter the total amount you owe by adding Lines 7, 8, 9, 10, and 11. Please make your check payable to the **San Francisco Tax Collector**. Please include your Business Certificate Number or Business Tax ID / DBA / SITUS numbers, and parking station location on your check. Each parking station location requires a separate Return and separate check for the total payment due shown on Line 12.

Instructions for Page 2 of the Quarterly Parking Tax Return

Copy Taxpayer Information from Page 1 of the Return to Page 2 of the Return. In black ink, print neatly or type inside the boxes of Business Tax ID / DBA / SITUS, Certificate Number, Qtr End Date, Tax Year, Ownership Name, and Parking Station Location on top.

Registered Ownership Name: The name of the person/entity who is the owner of the business. There may be instances where the ownership name and business name are not the same.

DBA: Doing Business As (the name of your parking location)

Number of Stalls: The number of parking spaces at this location, including both marked and unmarked stalls.

Maximum Occupancy: The maximum number of motor vehicles that can be parked at this parking location at one time.

BREAKDOWN OF PARKING FEES COLLECTED

Lines 1-15. List all types of parking rates (including Parking Tax) with total quantity and total collection for each corresponding rate in a reporting month. If necessary, please attach additional sheets to report additional rates.

Code: Use a code to identify each rate: "H" for Hourly Rate; "F" for Flat Rate; "M" for Monthly Rate; and "E" for Exempt; O for Other (please explain on page 2 of Return)

Please note that the total quarterly parking collection of "E" should equal to the Total Exemptions on Line 3 of Page 1 of the Return.

Rate Amount: Enter the parking rate charged with corresponding code.

Quantity: Enter the total number of vehicles charged for each corresponding rate and month.

Total: Multiply each rate amount by the total quantity for each month.

Line 16. **(Monthly) Total:** Add the total amounts from lines 1 to 15 for each month.

Line 17. **Total Quarterly Parking Collections:** Add the totals for Months 1, 2, and 3 of Line 16. This amount should equal Line 1 of Page 1 of the Return.

UNACCOUNTED TICKET RATIO

To comply with San Francisco Business and Tax Regulations Code, Article 9, Section 607(d), please follow the steps below to compute the Unaccounted Ticket Ratio and enter the result on the front page of the Parking Tax Return, item E.

Line 1. **Inventory at start of the reporting period:** Enter the number of all vehicles in the parking station's inventory at the start of the quarter. Inventory means the number of motor vehicles present in a parking station at the start of the quarter.

Line 2. **Issued tickets for the reporting period:** Enter the total number of Parking Tickets issued to Occupants, including Voided Tickets and Parking Tickets otherwise used or consumed in the operation of the Parking Facility for the quarter.

Line 3. **Total:** Add Lines 1 and 2.

Line 4a. **Voided tickets for the reporting period:** Enter number of Parking Tickets that were not issued to occupants, but were used in the course of the operator's testing, repair or maintenance of RCE.

Line 4b. **Collected tickets for the reporting period:** Enter the number of Parking Tickets that are issued to occupants and are returned to the operator with payments.

Line 5. **Unaccounted Tickets:** Subtract the sum of Lines 4a and 4b from Line 3. An Unaccounted Ticket is a Parking Ticket that is issued to an occupant and is not returned to the operator. Unaccounted Tickets include lost tickets.

Line 6. **Unaccounted Ticket Ratio:** Divide Line 5 by Line 2 and multiply by 100. This is the ratio of Unaccounted Tickets to Issued Tickets for the quarter, expressed as a percentage of Issued Tickets. Enter this result on the front page, item E.

INFORMATION FOR INACTIVATING THIS PARKING LOCATION

Please complete this box if your business has ceased operation at this location.

To inactivate a parking location or an account, please pay all city obligations, file the final Parking Tax Return, provide the last date of operation, the new account number or new operator's name, address and phone number and reasons for not doing business at this location and return it with the Certificate of Authority and Business Registration Certificate to the San Francisco Tax Collector. Then check the box for "Final Statement for Parking Location" on the front page of the Parking Tax Return. You may contact our Taxpayer Assistance at (415) 554-4400 to check on any outstanding obligations owed to the City.

The Following pages provide the description of the parking facilities with current information on each facility location, capacity and equipment breakdown.

ATTACHMENT J

GENERAL INFORMATION OF PARKING FACILITIES

Existing PARCS Configuration

Facility Name & Address	Customer base (Parking transaction types)***	No. of Spaces	FMS	Central Cashier	POF	Entry Lanes	Exit Lanes	Exit Cashier
5th & Mission* (Downtown Corp) 833 Mission St	Transient Monthly Motorcycle	2585	1	8	11	7+1 (Motor-cycle)	8+1 (Motor-cycle)	0
7th & Harrison** 415 7th Street	Transient Monthly			1		1	1	
16th & Hoff 42 Hoff Street	Transient Monthly	98				1 (Plus 1 roll-up gate for the monthly parker)	1	1
1660 Mission St 1660 Mission Street	Transient Monthly	59	1			1		1
Civic Center 355 McAllister	Transient Event Discounted Parking Monthly	843		1	0	1	3	2
Ellis O'Farrell* 123 O'Farrell St	Transient Monthly Discounted Parking Valet	950	1	4	5	3	4	0

ATTACHMENT J (cont.)

Facility Name & Address	Customer base (Parking transaction types)***	No. of Spaces	FMS	Central Cashier	POF	Entry Lanes	Exit Lanes	Exit Cashier
Golden Gateway 250 Clay Street	Transient Monthly Discounted Parking Valet	1095		1	0	4	2 (Monthly only)	2
Japan Center* 1610 Geary Blvd.	Transient Monthly Discounted Parking	920 (M=Main, A= Annex)	1	M =3 A= 1	M= 5 A= 2	M=2 A= 1	M=3 A= 1	M=0 A= 0
Lombard Street 2055 Lombard Street	Transient Monthly Discounted Parking	205	1	0	0	1	0	1
Mission Bartlett 3255 21 st St.	Transient Monthly Discounted Parking	350		1	0	1 (Roll-up gate for Monthlies)	1	1
Moscone Center 255 Third St.	Transient Monthly	732		2	2	3	3	0
North Beach 735 Vallejo Street	Transient Monthly	203		1	1	1	1	0
Performing Arts 360 Grove Street	Transient Monthly Discounted Parking	598			0	2	2	1
Polk Bush 1399 Bush Street	Transient Monthly	129		1	0	2 (Roll-up gate for Monthlies)	2	0
Portsmouth Square* 733 Kearny Street	Transient Monthly Discounted Parking Valet	504		2	1	2	3	0

ATTACHMENT J (cont.)

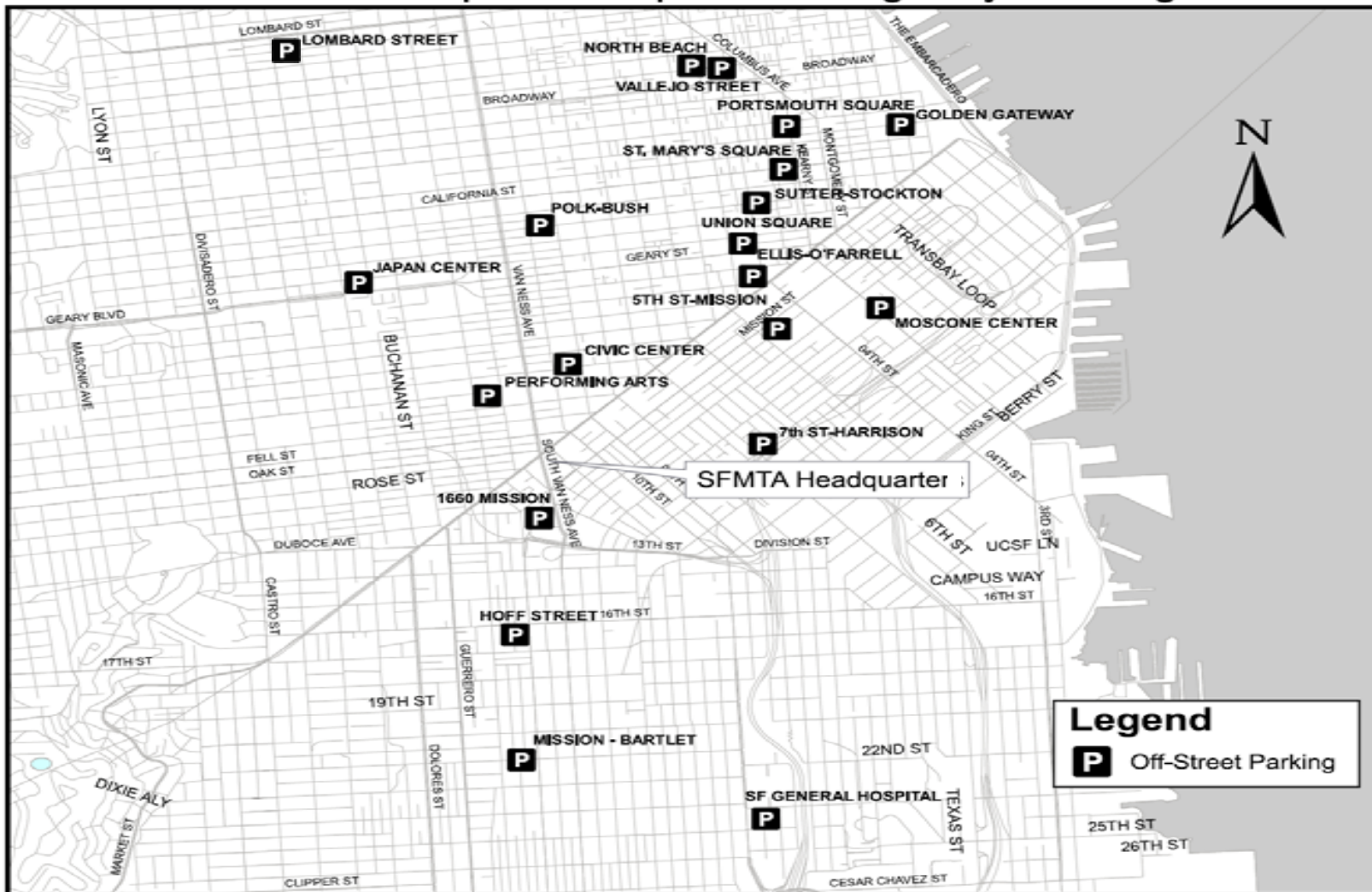
Facility Name & Address	Customer base (Parking transaction types)***	No. of Spaces	FMS	Central Cashier	POF	Entry Lanes	Exit Lanes	Exit Cashier
SF General Hospital 2501 23 rd Street	Transient Monthly Discounted Parking Valet	1657		1	1	4	3	3
St. Mary's 433 Kearny Street	Transient Monthly Discounted Parking Valet	414		2	1	3	3	0
Sutter Stockton* (Uptown Corp) 444 Stockton Street	Transient Monthly Discounted Parking	1865		5	8	4	6	0
Union Square* (Uptown Corp) 333 Post Street	Transient Monthly Discounted Parking Valet	985		3	4	4	4	0
Vallejo Street 766 Vallejo Street	Transient Monthly	163	0	0	0	1	0	1
<p>* = Non-Profit corporation managed parking facilities</p> <p>** = 7th & Harrison is a Lot and uses Pay-and-display System</p> <p>*** = Currently implemented parking rates are available in Appendix E. Following are a brief description of the "Types":</p> <p>Transient: Transient transaction includes day, night, weekend and event rates, etc.</p> <p>Monthly: Monthly transaction includes rates for Carpool, Carshare, assigned, and Restricted parking rates, etc.</p> <p>Discounted: Discounted transaction includes merchant validations, student discounts, motorcycle discount, etc.</p> <p>Valet: Not all the garages currently have a separate valet rate structure. Some of the garages use "Transient" or "event" parking rates for "Valet" parking. Moreover, most of the garages currently do not have a "nested" valet parking area.</p>								

ATTACHMENT K

GEOGRAPHIC LOCATION OF PARKING FACILITIES

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San Francisco Municipal Transportation Agency Parking Facilities



ATTACHMENT K – ACCESSIBLE VERSION

GEOGRAPHIC LOCATION OF PARKING FACILITIES

Attachment K is a map illustrating the locations of the San Francisco Municipal Transportation Agency’s 20 parking facilities. The boundaries of the map include Lombard Street to the north, The Embarcadero to the east, Cesar Chavez Street to the south and Masonic Avenue to the west. The parking facilities depicted are as follows:

Facility Name	Location
7th & Harrison Lot	7th Street at Harrison Street
16th & Hoff Garage	16th Street at Hoff Street
Civic Center Garage	McAllister Street between Larkin & Polk Streets
Ellis-O’Farrell Garage	O’Farrell Street between Stockton & Powell Streets
Fifth & Mission Garage	Mission Street between 4th & 5th Streets
Golden Gateway Garage	Clay Street between Front & Davis Streets
Japan Center Garage	Geary Boulevard between Buchanan & Webster
Lombard Street Garage	Lombard Street at Fillmore Street
Mission-Bartlett Garage	21st Street between Mission & Valencia Streets
Mission-Otis Garage	Mission Street at Otis & So. Van Ness Streets
Moscone Center Garage	3rd Street between Howard & Folsom
North Beach Garage	Vallejo Street between Stockton & Powell Streets
Performing Arts Garage	Grove Street between Franklin & Gough Streets
Polk-Bush Garage	Bush Street at Polk Street
Portsmouth Square Garage	Kearny Street between Washington & Clay Streets
St. Mary’s Square Garage	Kearney Street between California & Pine Streets
SF General Hospital Garage	23rd Street between Vermont & Potrero Streets
Sutter-Stockton Garage	Stockton Street between Bush & Sutter Streets
Union Square Garage	Post Street between Stockton & Powell Streets
Vallejo Street Garage	Vallejo Street between Stockton & Powell Streets

ARTICLE 22: PARKING STATIONS; REVENUE CONTROL EQUIPMENT

[Background on Article 22 and Frequently Asked Questions](#)

Related Article: [Article 9 - Tax on Occupancy of Parking Space in Parking Stations](#)

[San Francisco Business and Tax Regulations Code](#)

Sec. 2201. Definitions.

Sec. 2202. Exempted Parking Stations.

Sec. 2203. RCE Requirements for All Parking Stations.

Sec. 2204. Requirements for Small Attended Parking Stations.

Sec. 2205. Requirements for Attended Parking Stations.

Sec. 2206. Requirements for Flat Rate Parking Stations.

Sec. 2207. Requirements for Monthly-Only Parking Stations.

Sec. 2208. Requirements for Unattended Parking Stations.

Sec. 2209. Equipment Requirements for Public Event Parking Stations.

Sec. 2210. Equipment Requirements for Valet Parking Stations.

Sec. 2211. Multiple Operations Parking Stations.

Sec. 2212. New Parking Technology.

Sec. 2213. Electronic Payment.

Sec. 2214. Maintenance and Repair of Revenue Control Equipment.

Sec. 2215. Manual Revenue Control Procedures Required When Revenue Control Equipment is Not Operational.

Sec. 2216. Inspections of Parking Stations.

Sec. 2217. Enforcing SFMTA Survey of Parking Stations and Reporting.

Sec. 2218. Required Business Practices for All Parking Stations.

Sec. 2219. Reserved.

Sec. 2220. Consumer Protection.

Sec. 2221. Reserved.

Sec. 2222. Reserved.

Sec. 2223. Violation.

Sec. 2224. Administrative Penalties.

Sec. 2225. Enforcement.

Sec. 2226. Civil Penalties.

Sec. 2227. Reserved.

Sec. 2228. Reserved.

Sec. 2229. Consumer Action and Relief.

Sec. 2230. Criminal Penalties.

Sec. 2231. Cumulative Remedies.

Sec. 2232. Limitation of Actions.

Sec. 2233. Cooperation with City Agencies.

Sec. 2234. City Garages.

Sec. 2235. Reserved.

Sec. 2236. Reserved.

Sec. 2237. Effective and Operative Dates.

Sec. 2238. Severability.

SEC. 2201. DEFINITIONS.

(a) Existing Defined Terms. The terms "Operator," "Occupant," "Occupancy," "Parking Station," "Motor Vehicle," and "Rent" shall have the meaning set out in Article 9, Section 601 of this Code.

(b) Additional Defined Terms.

(1) "Affiliate," when used in relation to any Person means another Person who owns or Controls, is owned or Controlled by, or is under common ownership or Control with, such Person.

(2) "Attendant Parking" means the service of parking an occupant's vehicle provided by the Operator of an Attended Parking Station at the Attended Parking Station or in a Parking Station connected with the Operator's Attended Parking Station.

(3) "Attended Parking Station" means a Parking Station in which the Operator utilizes an attendant or cashier or other employee to issue Parking Tickets and/or collect Rent and/or otherwise assist Occupants.

- (4) "Automatic Vehicle Counter" means a mechanical or electronic device, such as a hose counter, electric eye, arming and/or triggering loop, or other automated counting device that records the passage of a vehicle.
- (5) "Cancelled Transaction" means a Transaction that the Operator cancels prior to payment because of an RCE malfunction.
- (6) "City Garage" means a Parking Station owned by the City and County of San Francisco or by the Parking Authority for the City and County of San Francisco.
- (7) "Collected Tickets" means the number of Parking Tickets returned to the Operator by Occupants for payment of Rent.
- (8) "Control" means the power to control the affairs and key decisions of another person or corporation, in whatever manner exercised, whether directly or indirectly.
- (9) "Discount Parking" means parking provided for reduced Rent to members of a class of Occupants, including but not limited to early morning entry Occupants ("early-bird"), scooter or motorcycle Occupants, carpool Occupants, and persons with a merchant validation.
- (10) "Discount Parking Ticket" means a Parking Ticket issued for Discount Parking.
- (11) "Enforcing SFMTA" means the Tax Collector for the City and County of San Francisco.
- (12) "Flat Rate Parking" means parking provided for preset Rent for a prescribed or limited time Occupancy Period at a Parking Station that is not a Public Event Parking Station.
- (13) "Inventory" means the number of motor vehicles present in a Parking Station at a given time.
- (14) "Issued Tickets" means the total number of Parking Tickets issued to Occupants, including Voided Tickets, and Parking Tickets otherwise used or consumed in the operation of the Parking Facility for a given period.
- (15) "Journal Tape" means a printed record of every Transaction, in consecutive order, that is generated by RCE not capable of producing an electronic Log File (e.g., a cash register or fee computer tape).
- (16) "Log File" means an electronic read-only record generated by the RCE that is a consecutive record by date and time of every Transaction and the actions of the RCE and ancillary RCE devices.
- (17) "Lost Ticket" means a Parking Ticket that has been issued to and misplaced by an Occupant, which has not been returned to the Operator with payment of Rent.
- (18) "Monthly Occupant" means an Occupant who pays a flat fee for Occupancy on a monthly basis.
- (19) "Monthly Parking" means parking for which Rent is charged to the Occupant as a fixed monthly fee.

(20) "NIST Book 44" means the National Institute of Standards and Technology, Book 44, as adopted by the State of California pursuant to California Code of Regulations Section 4400 et seq.

(21) "Occupancy Period" means the time elapsed between the entry and the exit of an Occupant's Motor Vehicle from a Parking Station for which the Operator charges Rent.

(22) "Parking Meter" means a mechanical or electronic device, owned or operated by the City and County of San Francisco, for the purpose of measuring the time a vehicle is permissibly parked in a Parking Space. For purposes of this Article, a Parking Meter is not RCE.

(23) "Parking Space" means a marked area or space designated for and only large enough for the parking of a single Motor Vehicle.

(24) "Parking Tax" means the tax and surcharge imposed on Rent charged for Occupancy in a Parking Station imposed by Article 9 of the San Francisco Business and Tax Regulations Code.

(25) "Parking Ticket" means the record provided by the Operator to the Occupant setting forth the time and date that the Occupant's vehicle entered the Parking Station that is used by the Operator to determine the Rent charged to the Occupant.

(26) "Pay and Display Parking Station" means an Unattended Parking Station in which Occupants utilize a Pay Station to repay Rent for a specified Occupancy Period, receive a Receipt or Parking Ticket that the Occupant displays in his or her vehicle as proof of payment.

(27) "Pay Station" means a mechanical or electronic device that accepts payment or prepayment of Rent from an Occupant and is capable of issuing a Parking Ticket, release ticket or Receipt.

(28) "Periodic Report" means a report prepared daily, weekly, monthly, or quarterly by the Operator showing, at a minimum, the total Rent collected for that period, the identification numbers of the Parking Tickets used during that period, and the number of vehicles that parked in the Parking Station during that period.

(29) "Person" means any individual, group, company, partnership, association, joint stock company, trust, corporation, society, syndicate, club, business, or governmental entity. "Person" shall not include the City or any of its departments or agencies.

(30) "Public Event Parking Station" means a Parking Station with more than five Parking Spaces, the Occupants of which are principally attendees of public events, such as a performing arts or sporting events, that occur fewer than 100 days in any calendar year and for which an Occupant prepays a flat-rate Rent for a fixed Occupancy Period.

(31) "RCE" means Revenue Control Equipment.

(32) "RCE Records" means the documents and reports generated by Revenue Control Equipment, including but not limited to Log Files or Journal Tapes. Books of account, accounting records, and other financial records provided by an Operator to the City in the course of an audit to confirm the data in Log Files or Journal Tapes shall also be considered RCE records.

(33) "Receipt" means the record issued by an Operator to an Occupant of the Rent paid by or on behalf of the Occupant.

(34) "Release Ticket" means the ticket issued by an Operator in exchange for payment of Rent that allows the Occupant to exist the Parking Station.

(35) "Revenue Control Equipment" means an automated mechanical or electronic device or devices that meet(s) the requirements of this Article. For purposes of this Article, a Parking Meter is not RCE.

(36) "Service Agent" means a person or other entity engaged in the business of installing, maintaining, or repairing RCE.

(37) "Substitute Ticket" means a Parking Ticket that an Operator processes as a replacement for a Lost Ticket.

(38) "Transaction" means the calculation and payment of Rent for Occupancy.

(39) "Transient Parking" means parking for which Rent is charged to the Occupant by the hour or the fraction of the hour.

(40) "Unaccounted Ticket" means a ticket that is issued to an Occupant and is not returned to the Operator. A Lost Ticket is an Unaccounted Ticket.

(41) "Unaccounted Ticket Ratio" means the ratio of Unaccounted Tickets to Issued Tickets for a given period, expressed as a percentage of Issued Tickets.

(42) "Unattended Parking Station" means a Parking Station in which the Operator does not use an attendant or cashier or other employee to issue Parking Tickets, collect Rent, and/or otherwise assist Occupants.

(43) "Valet" means a person or a service company subject to the requirements of Article 12 of the San Francisco Police Code as a Fixed Location Valet or a Special Event Valet.

(44) "Valet Lot" means a Parking Station, including a garage, lot or other off-street space or facility, used by a Valet for the parking or storage of Motor Vehicles in exchange for which the Valet receives compensation or other consideration.

(45) "Voided Ticket" means a Parking Ticket that is not issued to an Occupant, but that is used in the course of the Operator's testing, repair or maintenance of the RCE.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2202. EXEMPTED PARKING STATIONS.

The requirements of this Article shall not apply to any Parking Station:

(a) That does not charge Rent at any time;

(b) That is a Parking Station operated by the City and County of San Francisco and uses Parking Meters;

(c) In which all Rent paid for Occupancy is paid by a resident or a registered guest of a hotel or motel by adding the Rent to the room bill or charge to the resident, or registered guest, as long as the charges for the hotel room and the charges for parking are subject to the Transient Hotel Occupancy Tax set out in Article 7 of the San Francisco Business and Tax Regulations Code.

(d) That is located in a residential building or development that provides Monthly Parking as a convenience or additional amenity to its residents. This exemption shall apply only to Rent paid by persons who are residents of the building or development in which the Parking Station is located, and where parking is provided as a convenience or additional amenity to such residents.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2203. RCE REQUIREMENTS FOR ALL PARKING STATIONS.

(a) Unless specifically exempted in this Article, a Parking Station must utilize functioning RCE that meets the requirements of this Article whenever the Operator charges Rent for Occupancy.

(b) RCE must record all Transactions either to a Log File or to a Journal Tape, as required by this Article.

(c) An Operator shall utilize RCE meeting the requirements of this Article to track and account for Transactions and to record and account for Rent received and Parking Taxes to be collected and remitted to the Tax Collector.

(d) Neither an Operator nor any of its Affiliates, agents or employees shall have more than a five percent ownership interest or other monetary, equitable, or secured interest in the manufacturer of, vendor of or Service Agent for the RCE used in any Parking Station controlled by said Operator.

(e) In any case in which the Operator has an ownership interest of any kind or any amount in the vendor or Service Agent for the RCE used in any Parking Facility under the control of the Operator, the Operator shall not have access to the source code or access to any part of the RCE software, hardware, data storage devices, or other RCE equipment that would allow the Operator to modify or delete RCE Records or other data that is generated or stored in the RCE, including but not limited to Rents charged, monies for Rent collected, Occupancy Periods, and Parking Taxes collected or owed.

(f) All RCE that contains a time clock or recorder must meet or exceed the specifications, tolerances, performance and testing standards for time clocks and time recorders set out in the NIST Book 44, Section 5.55, and as it may be amended. Time clocks, time recorders and other timing devices incorporated or used in RCE must be electronic and must not be capable of recalibration or other adjustment other than setting the current time and date.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2204. REQUIREMENTS FOR SMALL ATTENDED PARKING STATIONS.

(a) The Operator of an Attended Parking Station may apply to the Enforcing SFMTA for exemption from the requirements of sections 2203 and 2205 of this Article, provided that the

Operator demonstrates to the satisfaction of the Enforcing SFMTA that the gross annual revenues of the Parking Station from Rent do not exceed \$25,000.

(b) If the Enforcing SFMTA grants the Operator an exemption from the requirements of sections 2203 and 2205 of this Article, the Operator shall:

(1) Provide to each Occupant a Parking Ticket that has preprinted on it a unique, sequential identification number. The Parking Ticket shall either have a stub or a split portion that the Operator shall place on the windshield of the Occupant's vehicle. The Operator shall not use a Parking Ticket more than once.

(2) Write the Occupant's vehicle license plate number on the Parking Ticket in ink.

(3) Stamp the Parking Ticket with the time the Occupant entered the Parking Station and the time the Occupant exited the Parking Station, using a mechanical or electronic time-stamp or punch clock device.

(4) Upon an Occupant's payment of Rent, provide to the Occupant a hand-written or machine generated Receipt stating the date and time of the Occupant's Motor Vehicle's entry to and time of exit from the Parking Station, the Rent charged, the name of the attendant, and the name and address of the Parking Station.

(5) Create a Periodic Report for each day that the Parking Station provides parking in exchange for Rent.

(6) The Operator shall retain all Periodic Reports created pursuant to this Section 2204 and all issued Parking Tickets for not less than five years after their creation.

(c) The Operator shall comply with all provisions of this Article, except as to those exemptions to the requirements of Sections 2203 and 2205 granted by the Enforcing SFMTA.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2205. REQUIREMENTS FOR ATTENDED PARKING STATIONS.

Except as specifically exempted or otherwise required by this Article, an Operator of an Attended Parking Station that charges Rent for Occupancy by the hour or the fraction of an hour shall utilize RCE that incorporates the functions set out in this Section.

(a) The Operator must provide a receipt issued by the RCE to the Occupant at the time the Occupant's Motor Vehicle enters the Parking Station. The Parking Ticket must state the time and date of entry, and the name and address of the Parking Station. Each Parking Ticket issued by the Operator must contain a preprinted, unique, sequential identification number that is not printed by the RCE.

(b) The RCE must record the following information to a Journal Tape or Log File in the sequential order in which the events occur:

(1) Time and date of a Motor Vehicle's entry to a Parking Station;

(2) Time and date of a Motor Vehicle's exit from a Parking Station;

- (3) Amount of Rent charged;
 - (4) Value of any discounts to Rent provided;
 - (5) Amount of Parking Tax collected;
 - (6) Identity or identification number of the Operator's employee who processed the Transaction.
- (c) Each Transaction must be identified in the Log File or Journal Tape by a non-resettable, sequential identification number assigned by the RCE.
- (d) RCE must be capable of providing a legible Receipt to an Occupant at the time that the Occupant pays Rent. Pay Stations and cashiers must offer the Occupant a Receipt at the time that the Occupant pays Rent. A Receipt must contain the following information:
- (1) Time and date of the entry of the Occupant's Motor Vehicle to the Parking Station;
 - (2) Time and date of the exit of the Occupant's Motor Vehicle from the Parking Station;
 - (3) Total amount Operator charged Occupant, including Rent and Parking Tax;
 - (4) Parking Station address;
 - (5) Business telephone and address of Operator or Operator's agent responsible for addressing consumer complaints.
- (e) Data that is entered to or maintained in a Log File or a Journal Tape must only be accessible to the Operator only in a read-only format, so that the Operator, the Operator's employees, and Service Agents cannot delete or alter any of the recorded data. The RCE vendor must disable any RCE data functions that would allow an Operator or its agents or its employees to delete or modify data entered into the RCE.
- (f) The Operator shall not alter or attempt to alter the data in a Log File or a Journal Tape.
- (g) Every day that the Parking Station is open for business, all information and data received or generated by the RCE that is recorded to a Log File for that day must be replicated or backed-up to a data tape, disk or hard drive or digital data storage medium in a readily accessible read-only format, and said information and data must be maintained in San Francisco by the Operator in that format for not less than five years from the date of its creation.
- (h) Each day that the Parking Station is open for business, all information and data received or generated by RCE that is recorded to a Journal Tape for that day must be printed out and maintained in San Francisco by the Operator for not less than five years from the date of its creation.
- (i) Where the Operator utilizes RCE that includes a computer, a network server, or an Internet based software or database program, all employees and agents of an Operator, including but not limited to cashiers, attendants, bookkeepers, supervisors and managers, and RCE maintenance personnel, must be individually identified by the RCE, and each Transaction and data entry, including all payments received, Voided Tickets or Cancelled Transactions, and Discount

Parking Rent charged, must be attributed to such individual in the Log File. The RCE must also record whenever the RCE software program is altered and by whom.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2206. REQUIREMENTS FOR FLAT RATE PARKING STATIONS.

The Operator of a Parking Station that provides Flat Rate Parking and does not provide Public Event Parking is not required to comply with Sections 2205(b)(1), 2205(b) (2), 2205(d) (1), 2205(d) (2), and 2205(i), but shall comply with all other provisions of Section 2205.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2207. REQUIREMENTS FOR MONTHLY-ONLY PARKING STATIONS.

(a) The Operator of a Parking Station that only provides parking to Monthly Occupants and never provides any other type of mode of parking is not required to utilize RCE, but shall maintain records of the names and billing addresses of Occupants and the amount of Rent charged, the value of any discounts provided, and the amount of Parking Tax collected from each Occupant. The Operator shall maintain said records in San Francisco for not less than five years from the date of their creation.

(b) The Operator must provide each Monthly Occupant with a decal or hangtag or other means of identifying the Occupant's authorization to park in the Parking Station, and the Operator must require that each Occupant utilize the decal or hangtag provided.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2208. REQUIREMENTS FOR UNATTENDED PARKING STATIONS.

(a) An Operator of a Pay and Display Parking Station must have RCE located within the Parking Station for the prepayment of Rent. The RCE must upon the payment of Rent issue a Parking Ticket or Receipt to the Occupant that states the time and date issued, the amount of Rent prepaid, and the Occupancy Period. The Parking Ticket or Receipt must contain a statement instructing the Occupant to display it on the dashboard of his or her vehicle, and must warn the Occupant that his or her vehicle may be towed for failing to display the Parking Ticket or Receipt as required. The Operator shall post a clear and conspicuous sign at every location where the Occupant pays Rent, of at least 10 inches by 15 inches, in type at least one inch high and 3/4 inches wide, repeating the aforesaid display instructions and tow warning. Where an Operator has met the requirements of this section, and the Occupant fails to display the Parking Ticket as directed by the Operator, the Operator may in its discretion tow the vehicle in accordance with California Vehicle Code section 22658, 22952, 55953 or other applicable law or charge additional Rent. Such additional rent must be clearly stated in the rate posting signage required by Section 2220(b) of this Article.

(b) An Unattended Parking Station that is not a Pay and Display Parking Station must have individually numbered and clearly marked Parking Spaces. The RCE must upon the payment of Rent issue a Parking Ticket or Receipt to the Occupant that states the time and date issued, the amount of Rent prepaid, and the Occupancy Period. The RCE must be able to record the

identification number of the Parking Space occupied by the Occupant's vehicle to track period of Occupancy.

(c) The Enforcing SFMTA may issue such rules and regulations as are required to provide for the remote payment of Rent at Unattended Parking Stations through the use of telephones, cellular telephones, smart cards, debit cards or other electronic devices, consistent with the purposes and provisions of this Article.

(d) An Operator of an Unattended Parking Station shall not tow or charge additional Rent to any vehicle that entered the Unattended Parking Station while the RCE was not fully operational and for a period of eight hours after the RCE is restored to full function.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2209. EQUIPMENT REQUIREMENTS FOR PUBLIC EVENT PARKING STATIONS.

(a) An Operator of a Public Event Parking Station shall at each vehicle entrance to the Parking Station utilize an Automatic Vehicle Counter to record every vehicle entering the Parking Station for purposes of parking.

(b) Automatic Vehicle Counters shall display the total number of vehicles that entered the Parking Station utilizing a non-resettable mechanical or electronic counter.

(c) An Operator of a Public Event Parking Station shall provide a Parking Ticket to each Occupant upon entry to the Parking Station, and the Operator shall instruct the Occupant to place the Parking Ticket on the dashboard of the vehicle or other conspicuous place in the vehicle. Every Parking Ticket must display a unique, preprinted sequential identification number, the date of the event, and the address of the Parking Station.

(d) Automatic Vehicle Counters used in a Public Event Parking Station must be capable of issuing a Journal Tape or log report or other record of the number of vehicles that entered the Parking Station at the point where the Automatic Vehicle Counter was located. The Automatic Vehicle Counter must state on the report the date of the activities reported and the time period in which it was in operation.

(e) The Operator of a Public Event Parking Station must reconcile the number of vehicles registered by Automatic Vehicle Counters with the number of Parking Tickets issued to Occupants for every day that the Parking Station provides public event parking. An Operator must document and explain in writing any discrepancies or differences between the total number of Parking Tickets used and the number of vehicles counted by the Automatic Vehicle Counters.

(f) The Operator of a Public Event Parking Station must retain the documentation of the number of Parking Tickets used and any written explanation of the difference between the number of Parking Tickets used and the number of vehicles counted by its Automatic Vehicle Counters for not less than five years from the date of the public event.

(g) Notwithstanding the requirements of Section 2212 of this Article, a Public Event Parking Station is not required to accept electronic payment of Rent.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2210. EQUIPMENT REQUIREMENTS FOR VALET PARKING STATIONS.

An Operator of a Valet Parking Station that charges Rent at a flat rate and does not charge Rent to any Occupant by the hour or the fraction of an hour is not required to comply with Section 2205(b)(1), 2205(b)(2), 2205(d)(1), 2205(d)(2), and 2205(i), but shall comply with all other provisions of Section 2205. An Operator that provides valet services and charges Rent for Occupancy by the hour or the fraction of the hour is subject to all provisions of Section 2205. The requirements of this Article as to Valets are in addition to and do not alter the requirements set out in Section 835 of this Code or other applicable ordinances. An Operator that provides Attendant Parking is not subject to the exemptions of this Section.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2211. MULTIPLE OPERATIONS PARKING STATIONS.

The Operator shall comply with all applicable provisions of this Article at all times. In particular, Operator shall meet the specific requirements of this Article applicable to different Parking Station operation modes, such as Attended Lot Parking Station, Unattended Parking Station, Flat Rate Parking Station, and Public Event Parking Station, during any time that such Parking Station is being operated in such mode.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2212. NEW PARKING TECHNOLOGY.

The Enforcing SFMTA, by exercise of its rulemaking authority under this Article, may issue rules, determinations and interpretations consistent with the purposes of this Article as may be necessary and appropriate to apply or enforce this Article relating to new or emerging technologies applicable to RCE.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2213. ELECTRONIC PAYMENT.

Unless specifically exempted in this Article, an Operator must accept electronic payment of Rent through a credit card, bank debit card, smartcard, or other means of electronic money transfer widely used by or generally available to the public.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2214. MAINTENANCE AND REPAIR OF REVENUE CONTROL EQUIPMENT.

An Operator may maintain and repair its RCE itself or use Service Agents. An Operator's utilization or reliance upon Service Agents shall not relieve the Operator of its ultimate responsibility for ensuring that RCE is installed in the Parking Station, is functioning correctly, and that said RCE complies with the requirements of this Article during all times that the Parking Station provides parking in exchange for Rent.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2215. MANUAL REVENUE CONTROL PROCEDURES REQUIRED WHEN REVENUE CONTROL EQUIPMENT IS NOT OPERATIONAL.

(a) During any time that RCE is not functioning, the Operator may continue to operate the Parking Station subject to the following conditions:

(1) The Operator and/or the Operator's agent shall not tow any vehicle that entered the Parking Station during the time that the RCE is unable to issue legible Parking Tickets or legible Receipts and for eight hours after the RCE is restored to full function;

(2) The Operator shall manually record in ink on preprinted sequentially numbered tickets the following information:

(A) Time and date of the entry of the Occupant's Motor Vehicle to the Parking Station;

(B) Time and date of the exit of the Occupant's Motor Vehicle from the Parking Station;

(C) Total amount Operator charged Occupant, including Rent and Parking Tax;

(D) Parking Station address;

(E) Business telephone and address of Operator or Operator's agent responsible for addressing consumer complaints.

(3) The Operator shall maintain a log written in ink recording the dates and times and reasons that it utilized manual revenue control procedures. The Operator shall maintain said log and all manually issued Parking Tickets for not less than five years after their creation.

(4) The Operator shall issue to every Occupant an individually and sequentially numbered Receipt stating the date, the Occupancy Period, and the amount charged, including Rent and Parking Tax.

(b) The Operator shall use good faith efforts to maintain and repair the RCE so that it operates in conformance with the requirements of this Article. If malfunctioning RCE is not restored to full function within 72 hours of the time that it ceased to operate in conformance with this Article (excluding Sundays and holidays if the Operator uses a service repair company), the Enforcing SFMTA may determine that the Operator has not made a good faith effort to maintain or repair the RCE and is in willful violation of this Article. A determination that the Operator has not attempted in good faith to maintain RCE or repair malfunctioning RCE may be rebutted by the Operator's presentation of proof, that the Enforcing SFMTA in its sole and absolute discretion deems to be credible, to establish the Operator's good faith efforts to maintain or repair the RCE.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2216. INSPECTIONS OF PARKING STATIONS.

The Enforcing SFMTA shall conduct periodic inspections of Parking Stations to ensure that Parking Stations have operational RCE that meet the requirements of this Article.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2217. ENFORCING SFMTA SURVEY OF PARKING STATIONS AND REPORTING.

(a) In order to gather information necessary to enforce this Article, the Enforcing SFMTA shall conduct and complete by May 1, 2007 a survey of all Parking Stations and Operators doing business in the City. The Survey shall include but is not limited to:

(1) The monthly average and maximum occupancy of the Parking Facility for Transient Parkers and Monthly Parkers;

(2) Confirmation for each Parking Station that it has in place RCE meeting the requirements of this Article;

(3) The number of consumer complaints received by the Enforcing SFMTA

(b) The Enforcing SFMTA shall maintain records of complaints regarding Parking Stations and Operators that are sufficient to track an Operator's compliance with the requirements of this Article.

(c) The Enforcing SFMTA shall by February 1, 2008 report to the Board of Supervisors the Enforcing SFMTA's progress implementing and enforcing the requirements of this Article and the results of the amnesty program effected under section 608 of the Code.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2218. REQUIRED BUSINESS PRACTICES FOR ALL PARKING STATIONS.

(a) Auditable Record. An Operator shall implement and utilize appropriate business practices that, in conjunction with RCE, create an auditable record of the following information for each Occupant:

(1) Rent charged and paid;

(2) Rent discount, if given;

(3) Occupancy Period (or entry and exit times) for Rent charged;

(4) Parking Tax collected.

(b) Maintenance of Parking Tickets. An Operator must keep in San Francisco each issued or cancelled Parking Ticket for not less than five years from the date the Parking Ticket was issued. Parking Tickets must be provided to any City auditor or other auditor authorized by the Enforcing SFMTA immediately upon request.

(c) Maintenance of Log Files. An Operator shall keep in San Francisco each Log File in an accessible read-only electronic storage format, for not less than five years from the date of the earliest Transaction recorded in said Log File. An Operator must also maintain a printout of all Log Files for not less than five years. Upon request, the Operator shall immediately provide to any City auditor or other auditor authorized by the Enforcing SFMTA, the Log File in an electronic format readable by the City.

(d) Maintenance of Journal Tapes. An Operator shall keep in San Francisco each Journal Tape for not less than five years from the date of the earliest Transaction recorded in said Journal

Tape. The Journal Tape must be provided to any City auditor or other auditor authorized by the Enforcing SFMTA immediately upon request.

(e) Improper Use of Discount Parking. An Operator that provides Discount Parking or Flat Rate Parking must establish business practices and control measures to prevent its employees and managers from using a discount Parking Ticket to avoid reporting the full amount of Rent collected or to avoid remitting the correct amount of Parking Tax due.

(f) Reconciliation of Records. No less than monthly, for every day that the Parking Station provides parking to the public in exchange for Rent, an Operator shall reconcile the number of Parking Tickets issued with the number of vehicles that the RCE recorded as having entered the Parking Station, and shall create a Periodic Report setting out that information.

(g) Training in Use of RCE. An Operator shall train its employees and managers in the required uses of RCE, including but not limited to: recording Transactions; maintaining Parking Tickets, Log Files, and Journal Tapes; and, reconciling the count and identification numbers of Parking Tickets used with the number of vehicles that parked in the Parking Station and the amount of Rent received in any given period.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2219. Reserved.

SEC. 2220. CONSUMER PROTECTION.

(a) Public Complaints. The Enforcing SFMTA shall receive complaints from members of the public as to an Operator's failure to comply with the provisions of this Article. Where the Enforcing SFMTA determines that an Operator may have violated the terms of this Article, in addition to any other action that the Enforcing SFMTA may take pursuant to this ordinance, the Enforcing SFMTA will notify the District Attorney so that it may pursue its own investigation and take appropriate action. Whenever a written or oral complaint is made to the Enforcing SFMTA that there has been a violation of this Article, the Enforcing SFMTA shall refer the complaint to the District Attorney's Office and may also investigate the complaint or allegation itself or refer the matter to the City Attorney.

(b) Rates Posted. The Operator shall post the rates for Rent in effect at the time the Occupant enters the Parking Station at the entrance to the Parking Station, and at every place where the Occupant pays Rent, including cashiers booths and Pay Stations. An Operator shall not charge an Occupant more than the Rent posted for the Occupant's actual Occupancy Period. Rent rates shall be posted no further than eight feet from every entrance of the Parking Station, in a manner and in a typeface that can be easily read from a distance of four feet.

(c) Notice to Occupants of Receipt Requirement. In addition to the signage requirements of California Vehicle Code section 22658 and other applicable sections of that Code, the Operator shall post a clear and conspicuous sign at every vehicle entrance to the Parking Station and at every location where Occupants pay Rent that informs Parkers of the Operator's obligation to provide a receipt when requested and providing phone numbers to contact the Parking Facility's manager and the Enforcing SFMTA. The Enforcing SFMTA shall through appropriate rules determine the specific language and size of said signs.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2221. Reserved.

SEC. 2222. Reserved.

SEC. 2223. VIOLATION.

(a) Any of the following shall be considered a violation of this Article:

(1) Failure of an Operator to provide to an Occupant a Receipt as required in this Article. Each time an Operator fails to provide a Receipt shall be considered a separate violation.

(2) Operating a Parking Station without utilizing RCE or business practices and procedures required by this Article.

(3) Failure of an Operator to cooperate with any City SFMTA as required by this Article.

(4) Failure of an Operator to maintain RCE Records as required by this Article.

(5) Failure of an Operator to report accurately in monthly or quarterly Parking Tax statements required under this Article and the Business and Tax Regulations Code the dates and times that it did not utilize RCE as required by this Article.

(6) Failure of an Operator to use good faith efforts to repair non-functioning RCE.

(7) Failure of an Operator to certify its conformance with the provisions of this Article concurrent with payment or remittance of Parking Taxes, as required by this Article and Business and Tax Regulations Code Section 6.7-2.

(b) Except as provided in Section 2223(a)(1), each day that an Operator does not comply with the provisions of this Article shall be considered a separate violation.

(c) Intentionally tampering with RCE, including but not limited to altering or deleting data gathered or maintained by RCE in order to defraud the City or to defraud Occupants shall constitute a serious and willful violation of this Article.

(d) Substituting a Parking Ticket with a Discount Parking Ticket for the purposes of falsely reporting or falsely recording the amount of Rent collected from an Occupant shall constitute a serious and willful violation of this Article.

(e) An Operator's refusal to produce RCE Records timely when requested by the Enforcing SFMTA or other authorized agencies as required under Sections 2223, 2230 and 2236 of this Article or when requested under Section 6.4-1 and 6.5-1 of the Business and Tax Regulations Code shall constitute a serious and willful violation of this Article.

(f) An Operator's commission of any of the acts described in Sections 2229(a), 2229(b), and 2229(c) constitutes a serious and willful violation of this Article.

(g) A serious and willful violation of this Article may constitute tax fraud for which the Enforcing SFMTA may suspend or revoke the Operator's business registration certificate and

certificate of authority to collect third party parking taxes pursuant to Section 6.6-1(g) of the Business and Tax Regulations Code.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2224. ADMINISTRATIVE PENALTIES.

(a) Citations. An administrative penalty may be assessed by the Enforcing SFMTA for a violation of the provisions of this Code, as specified in Section 2223 of this Code. The penalty may be assessed by means of an administrative citation issued by a person authorized by the Enforcing SFMTA to do so.

(b) Penalty Amounts.

(1) Violation of the following Sections of this Code are subject to a penalty of \$100: 2223(a) (1); 2223(a)(6).

(2) Violation of the following Sections of this Code are subject to a penalty of \$500: 2223(a) (2), 2223(a) (3), 2223(a) (4), 2223(a) (5), 2223(a) (7).

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2225. ENFORCEMENT.

(a) The Enforcing SFMTA, the District Attorney, the Police Department and the City Controller or authorized representatives of those agencies shall have the authority to inspect Parking Stations, RCE, RCE Records, and books of account to ensure that an Operator is in compliance with this Article, that all required RCE is functioning as required by this Article, and that Rent and Parking Taxes are accurately reported and collected.

(b) In enforcing the provisions of this Article, the Enforcing SFMTA shall utilize the administrative notice, citation, hearing, appeal and judicial review procedures set out in Article 6 of the Business and Tax Regulations Code. The Enforcing SFMTA's exercise of those procedures is not a prerequisite for and does not preclude any other means of enforcement available to the City or the District Attorney, including but not limited to criminal and civil legal action, which may be pursued independently of administrative action.

(c) In enforcing the provisions of this Article, the Enforcing SFMTA may use all authority granted to it by law, including but not limited to its authority to audit and inspect, investigate, attach liens, revoke licenses, revoke certificates of registration, revoke certificates of authority, and seize and sell property under the Business and Tax Regulations Code.

(d) The Enforcing SFMTA is authorized to promulgate regulations and issue rules, interpretations, and determinations consistent with the purposes of this Article as may be necessary and appropriate to implement or enforce the provisions of this Article.

(e) An Operator is strictly liable for the acts of its employees, managers, and agents that violate any provision of this Article.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2226. CIVIL PENALTIES.

(a) Civil Penalties and Enforcement. Violation of this Article shall be subject to a civil penalty of up to \$5,000 per violation. In addition to the enforcement authority and powers granted to the Tax Collector in the San Francisco Business and Tax Regulations Code, the City and County of San Francisco may initiate a civil action against any person to compel compliance or to enjoin violations of this Article.

(b) Recovery of Attorneys' Fees. If the City and County of San Francisco initiates a civil action against any person to compel compliance or to enjoin violations of this Article, at the time the action is filed, the City may elect to seek recovery of attorneys' fees and costs incurred in that enforcement action. Where the City makes this election, the prevailing party shall be entitled to recover attorneys' fees. In no event shall the award of attorneys' fees to a prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action.

SEC. 2227. Reserved.

SEC. 2228. Reserved.

SEC. 2229. CONSUMER ACTION AND RELIEF.

An Occupant may bring an action against an Operator and/or an Operator's employee or agent who fails to provide a Receipt upon request or who charges the Occupant Rent based on an inaccurate statement of duration of Occupancy and may recover from the Operator any or all of the following: (1) an order enjoining the violation; (2) civil damages; (3) punitive damages, if the court determines that the violation was willful; and (4) any other relief that the court deems proper. The court shall award court costs and attorney's fees to a prevailing private plaintiff in litigation filed under this subsection.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2230. CRIMINAL PENALTIES.

(a) It shall be a misdemeanor to violate the requirements of Sections 2218 or 2220 of this Article, or of Section 604(a) of this Code.

(b) Nothing in this Article shall preclude the District Attorney from prosecuting violations of the provisions of this Article as a felony under applicable State law.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2231. CUMULATIVE REMEDIES.

Unless otherwise expressly provided, the remedies, penalties and procedures provided under this Article are cumulative and are not intended to be exclusive of any other available remedies, penalties and procedures.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2232. LIMITATION OF ACTIONS.

Unless otherwise provided by state law, any criminal, civil, or administrative action brought under this Article shall be commenced not more than four years from the date of the Transaction, except for fraud in which case Section 6.11-2 of the Business and Tax Regulations Code shall apply.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2233. COOPERATION WITH CITY AGENCIES.

An Operator and its owners, managers, and employees must cooperate with the Enforcing SFMTA or any other City SFMTA having an interest in the operation of the Parking Station, including but not limited to City auditors, the District Attorney's office, and any other City officials, employees or agents assigned by ordinance, regulation or authorized by the Enforcing SFMTA to administer or implement this Article, by providing immediate access to all RCE, RCE Records, Parking Tickets, books and records of accounts, and other documentation regarding an Operator's receipt of Rent, remittance of Parking Taxes, and compliance with this Article and the Business and Tax Regulations Code.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2234. CITY GARAGES.

Nothing in this Article shall limit the authority of the City and County of San Francisco or the Parking Authority of the City and County of San Francisco to administer and manage Parking Stations under their respective jurisdiction or control or to establish revenue control requirements for those Parking Stations that are more restrictive than the provisions of this Article.

SEC. 2235. Reserved.

SEC. 2236. Reserved.

SEC. 2237. EFFECTIVE AND OPERATIVE DATES.

This Article shall become effective 30 days after final adoption by the Board of Supervisors. So that Operators may obtain RCE that conforms to the requirements of this Article and so that Operators wishing to do so may apply for the Amnesty Program under section 608 of the Business and Tax Regulations Code, the requirements of sections 2203, 2205, 2206, 2208, 2209, 2210, 2211, and 2213 of this Article shall not become operative until the termination of the Amnesty Application Period set out in section 608.8 of the Business and Tax Regulations Code. Operators that have RCE meeting the requirements of this Article on the effective date of this Article shall continue to use RCE complying with this Article during the Amnesty Application Period. Operators that do not have RCE that complies with the requirements of sections 2203, 2205, 2206, 2208, 2209, 2210, 2211, and 2213 of this Article, shall during the Amnesty Application Period conform to the requirements of Section 2204(b)(1-6) and 2204(c) of this Article.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 2238. SEVERABILITY.

If any part of this Article or the application thereof to any person or circumstances is held invalid, then the remainder of this Article, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

ARTICLE 9: TAX ON OCCUPANCY OF PARKING SPACE IN PARKING STATIONS

[San Francisco Business and Tax Regulations Code](#)

Sec. 601. Additional Definitions.

Sec. 602. Imposition and Rate of Tax.

Sec. 602A. Charges Subject to Tax.

Sec. 602.5. Imposition of a 10-Percent Surcharge.

Sec. 603. Occupant to Pay Tax to Operator.

Sec. 604. Collection of Tax by Operator; Receipt to Occupant; Rules for Collection Schedules.

Sec. 605. Unlawful Advertising Regarding Tax.

Sec. 606. Additional Exemptions.

Sec. 607. Operator Certification of Revenue Control Equipment, RCE Record Review, and Unaccounted Ticket Ratio.

Sec. 608. Parking tax amnesty program

Sec. 608.1. Short Title.

Sec. 608.2. Definitions.

Sec. 608.3. Amnesty Program.

Sec. 608.4. Liabilities Subject to Amnesty Program.

Sec. 608.5. Amnesty Applications.

Sec. 608.6. Subsequent Deficiencies.

Sec. 608.7. Subsequent Refunds.

Sec. 608.8. Authority of Tax Collector.

Sec. 615. Administration.

SEC. 601. ADDITIONAL DEFINITIONS.

When used in this Article the following terms shall mean or include:

- (a) "Operator." Any person operating a parking station in the City and County of San Francisco, including but not limited to, the owner or proprietor of such premises, lessee, sublessee, mortgagee in possession, licensee or any other person otherwise operating such parking station. A person who otherwise qualifies as an operator as herein defined shall not, by reason of the fact that he was exempt from the tax herein imposed, be exempted from the obligations of an operator hereunder.
- (b) "Occupant." A person who, for a consideration, uses, possesses or has the right to use or possess any space for the parking of a motor vehicle in a parking station under any lease, concession, permit, right of access, license to use or other agreement or otherwise.
- (c) "Occupancy." The use or possession or the right to the use or possession of any space for the parking of a motor vehicle in a parking station.
- (d) "Parking Station." The term "parking station" shall include, but is not limited to:
 - (1) Any outdoor space or uncovered plot, place, lot, parcel, yard or enclosure, or any portion thereof, where motor vehicles may be parked, stored, housed or kept, for which any charge is made;
 - (2) Any building or structure, or any portion thereof in which motor vehicles may be parked, stored, housed or kept, for which any charge is made.
- (e) "Motor Vehicle." The term "motor vehicle" includes every self-propelled vehicle operated or suitable for operation on the highway.
- (f) "Rent." The consideration received for occupancy valued in money, whether received in money or otherwise, including all receipts, cash, credits and property or services of any kind or nature, and also the amount for which credit is allowed by the operator to the occupant without any deduction therefrom whatsoever.
- (g) "Parking Meter." Any device which, when the recording device thereof is set in motion, or immediately following the deposit of any coin, shall register the period of time that any motor vehicle may be parked adjacent thereto.

(Amended by Ord. 9-71, App. 1/21/71; Ord. 231-91, App. 6/12/91; Ord. 20-98, App. 1/16/98)

SEC. 602. IMPOSITION AND RATE OF TAX.

Subject to the provisions of this Article, there is hereby imposed a tax of 15 percent for the rent of every occupancy of parking space in a parking station in the City and County.

(Amended by Ord. 453-77, App. 10/13/77; Ord. 20-98, App. 1/16/98)

SEC. 602A. CHARGES SUBJECT TO TAX.

The term "rent," as defined in Section 601(f), shall be deemed to include the total charges required to be paid by an occupant (including but not limited to, any separately stated valet or

service labor charge) in connection with the use or occupancy of parking space; provided that nothing herein shall require the payment of parking tax on the sale of petroleum products, automobile parts, or the like, or the rendering of services (including car-wash services) totally unconnected with the use or occupancy of parking space. The Board of Supervisors hereby declares its intent that from its initial enactment, the parking tax was intended to include and exclude the charges set forth in this Section 602A. The Board of Supervisors further declares that the addition of this Section 602A is not intended to make any substantive change in the Parking Tax Ordinance, but is enacted for clarification purposes only.

(Added by Ord. 74-72, App. 4/3/72; amended by Ord. 20-98, App. 1/16/98)

SEC. 602.5. IMPOSITION OF A 10-PERCENT SURCHARGE.

There shall be an additional tax of 10 percent on the rent of every occupancy parking space in a parking station in the City and County of San Francisco on and after July 1, 1980. The total tax on the rent of every occupancy after the effective date of this surcharge shall be 25 percent.

When rent is paid, charged, billed or falls due on either a weekly, monthly or other term basis, the rent so paid, charged, billed or falling due shall be subject to the tax of 15 percent herein imposed to the extent that it covers any portion of the period prior to July 1, 1980, and to the tax of 15 percent herein plus the amount of surcharge imposed to the extent that it covers any portion of the period on and after July 1, 1980, and such payment, charge, bill or rent due shall be apportioned on the basis of the ratio of the number of days falling within said periods to the total number of days covered thereby. Where any tax has been paid hereunder upon any rent without any right of occupancy therefor, the Tax Collector may by regulation provide for credit or refund of the amount of such tax upon application therefor as provided in this Code.

The surcharge tax so collected shall be deposited in the General Fund subject to appropriation pursuant to the budget and fiscal provisions of the Charter.

By adopting this ordinance the People of the City and County of San Francisco do not intend to limit or in any way curtail any powers the Board of Supervisors may exercise as to the subject matter of this ordinance, including, but not limited to, raising the rate of taxation or surcharge, lowering the rate of taxation or surcharge, eliminating the tax or surcharge, or creating or defining new categories of taxpayers under this ordinance.

(Added by Proposition R, App. by voters 6/30/80; amended by Ord. 20-98, App. 1/16/98)

SEC. 603. OCCUPANT TO PAY TAX TO OPERATOR.

Unless prohibited by the laws of the United States, the State of California, or exempted by the provisions of this Article, every occupant occupying parking space in a parking station in this City and County shall be required to pay the tax imposed herein to the operator along with the rent for occupancy. This obligation is not satisfied until the tax has been paid to the City and County, except that a receipt indicating payment of the rent from an operator maintaining a place of business in this City and County or from an operator who is authorized by the Tax Collector to collect the tax shall be sufficient to relieve the occupant from further liability for the tax to which the receipt refers.

(Amended by Ord. 395-84, App. 9/20/84)

SEC. 604. COLLECTION OF TAX BY OPERATOR; RECEIPT TO OCCUPANT; RULES FOR COLLECTION SCHEDULES.

(a) Every Operator maintaining a place of business in this City and County as provided in Section 603 herein, and Renting a parking space in a Parking Station in this City and County to an Occupant who is not exempted under Section 606 of this Article or elsewhere in this Code, shall at the time of collecting the Rent from the Occupant, collect the Parking Tax from the Occupant and on demand shall give to the Occupant a Receipt that meets the requirements of **Article 22** of this Code. In all cases in which the Parking Tax is not collected by the Operator, as aforesaid, the Operator shall be liable to the Tax Collector of the City and County for the amount of Parking Tax due on the amount of taxable Rent collected from the Occupant under the provisions of this Article the same as though the Parking Tax were paid by the Occupant. In all cases of transactions upon credit or deferred payment, the remittance or payment of Parking Tax to the Tax Collector may be deferred in accordance therewith, and the Operator shall be liable therefore at the time and to the extent that such credits are paid or deferred payments are made in accordance with the rate of tax owing on the amount thereof.

(b) Unless the Operator can provide an explanation or other sufficient proof that the Enforcing Agency in its sole discretion deems to be credible to establish the validity of a claim for a Lost Ticket or an otherwise Unaccounted Ticket (as those terms are defined in Section 2201 of this Code), every Lost Ticket and Unaccounted Ticket shall be considered as a full value Parking Ticket for which the Operator is liable for transmitting to the City the full value of the Parking Tax and surcharge required under this Code applicable to a full day's Rent for a single Parking Space Occupancy without discount, except that an Operator shall be allowed an Unaccounted Ticket Ratio of 1.5 percent for each Parking Station that it operates (as that term is defined and used in **Article 22** of this Code) in a reporting period, for which the Operator shall not be liable for failure to remit the Parking Tax.

(c) The Operator shall have the burden of explaining and establishing the validity of Lost Tickets and Cancelled Transactions, as those terms are defined in **Article 22** of this Code. The Enforcing Agency may consider a verifiable statement signed by the Occupant claiming a Lost Ticket that includes the Occupant's name, address, telephone number, the Occupant's Motor Vehicle license plate number, the time of entry and the time of exit as sufficient proof of a valid Lost Ticket transaction. An Operator shall maintain a log of all Lost Tickets and Cancelled Transactions. The Enforcing Agency may consider in its sole and absolute discretion an Operator's log of Cancelled Transactions or Lost Ticket transactions that includes the cashier or attendant's name and/or Log File identification number who processed the Transaction, the date and time of the Transaction, and a credible reason for processing the transaction as a Lost Ticket transaction.

(d) The Tax Collector shall have the power to adopt rules and regulations prescribing methods and schedules for the collection and payment of the tax and such methods and schedules shall provide that the fractional part of one cent shall be disregarded unless it amounts to 1/2 of one cent or more, in which case the amount (determined without regard to the fractional part of one cent) shall be increased by one cent.

(Amended by Ord. 395-84, App. 9/20/84; Ord. 20-98, App. 1/16/98; Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 605. UNLAWFUL ADVERTISING REGARDING TAX.

It shall be unlawful for any operator to advertise or hold out or state to the public or to any occupant, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the operator or that it will not be added to the rental of the parking space, or that, if added, it or any part thereof will be refunded.

(Added by Ord. 286-70, App. 8/28/70)

SEC. 606. ADDITIONAL EXEMPTIONS.

No tax shall be imposed hereunder:

- (1) On the rent for any occupancy or parking space in parking stations wherein the rent for such occupancy is paid by the deposit of a coin or coins in a parking meter owned or operated by the City and County and located adjacent to said parking space;
- (2) On the rent for any occupancy of parking space in parking stations which are a part of residential or hotel premises, provided the occupant of said parking space is a resident or a registered guest of said premises;
- (3) On the rent for any occupancy of parking space by registered hotel guests in parking stations not located on the hotel premises if no charge is made to the registered guest or if such charge is added to the room bill of the registered guest and paid by him to the hotel, provided that proper records are maintained by both the hotel and the operator which accurately reflect such exemption parking activity;
- (4) On the rent for any occupancy of parking space in parking stations where:
 - (a) The motor vehicle occupying said parking space is owned by an individual person who is on active duty in some branch of the United States military service; and
 - (b) The motor vehicle is stored for not less than 75 days; provided that the operator submits, at the time the return required by this ordinance is due, a declaration under penalty of perjury, a form to be furnished by the Tax Collector, verifying the facts necessary for this exemption.

(Amended by Ord. 296-72, App. 10/13/72; Ord. 20-98, App. 1/16/98)

SEC. 607. OPERATOR CERTIFICATION OF REVENUE CONTROL EQUIPMENT, RCE RECORD REVIEW, AND UNACCOUNTED TICKET RATIO.

- (a) Definitions. The terms used in this Section shall have the meaning given to them in Section 2201 of this Code.
- (b) Operator's RCE Certification. Concurrent with remittance of Parking Taxes to the City pursuant to Business and Tax Regulations Code Section 6.7-1, an Operator shall certify in writing under penalty of perjury that it has utilize RCE that complies with the applicable

provisions of **Article 22** of this Code during the period for which the Operator remits the Parking Taxes. If the Operator remits Parking Taxes to the City on a monthly basis, then the Operator shall certify that during the immediately preceding month it utilized RCE that complies with all applicable provisions of this Article. If the Operator prepays estimated Parking Taxes, then the Operator shall certify with its prepayment that it has utilized RCE that complies with all applicable provisions of this Article during the preceding prepayment period.

(c) Operator's RCE Records Review Certification. Concurrent with remittance of Parking Taxes to the City pursuant to Business and Tax Regulations Code Section 6.7-1, an Operator shall also certify in writing under penalty of perjury that it has reviewed the RCE Records, as defined at Section 2201(b) of this Code, as to amounts of gross revenue, Rent received, Parking Tax collected and remitted, discounts provided, and Unaccounted Ticket Ratio for each Parking Station that it operated in the period reported. The Operator shall further certify that it has reconciled those RCE Records with its books and records of accounts of Rent received and Parking Tickets used, such that the Operator's certifications made under this Article are informed and correct.

(d) Operator's Unaccounted Ticket Ratio Certification. Concurrent with remittance of Parking Taxes to the City pursuant to Business and Tax Regulations Code Section 6.7-1, on a form provided by the Tax Collector, an Operator shall state the Unaccounted Ticket Ratio for the reporting period, and shall certify in writing under penalty of perjury that the stated ratio is accurate. The Unaccounted Ticket Ratio shall be calculated as follows. The number of Unaccounted Tickets for a reporting period is calculated separately for each Parking Station operated by the Operator as the sum of Inventory at the start of the reporting period and the Issued Tickets for that period, less the Voided Tickets for that period, less the Collected Tickets for that period. The Unaccounted Ticket Ratio is calculated as the number of Unaccounted Tickets for a particular Parking Station for that period divided by the number of Issued Tickets for that period, with the resulting quotient multiplied by 100 and expressed as a percentage of Issued Tickets.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 608. PARKING TAX AMNESTY PROGRAM.

SEC. 608.1. SHORT TITLE.

This ordinance shall be known as the "Parking Tax Penalty Amnesty Program."

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 608.2. DEFINITIONS.

The terms used in this Section 608 shall have the meaning given to them in Article 9, Section 601 of this Code.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 608.3. AMNESTY PROGRAM.

(a) A Tax Penalty Amnesty Program is hereby established for Operators of Parking Stations required to collect and remit Parking Taxes under Articles 6 and 9 of this Code who have

liabilities eligible for amnesty under Section 608.4 of this Article and who satisfy the eligibility requirements established in Sections 608.4 and 608.5 of this Article.

(b) For any person who has a liability eligible for amnesty under Section 608.4 of the Article and who meets the eligibility requirements established in Sections 608.4 and 608.5 of this Article and who applies for and is granted amnesty:

(1) The Tax Collector shall waive all penalties and interest on penalties owed for failure to collect and/or remit Parking Taxes under **Article 22** and Sections 6.17-1, 6.17-2, and 6.17-3 of this Code; and

(2) The Tax Collector shall waive all penalties and interest on penalties owed for delinquent remittance of Parking Taxes owed under the provisions Articles 6 and 9 of the Business and Tax Regulations Code without need to make the findings required under Section 6.17-4; and

(3) No proceeding to suspend or revoke a business registration certificate pursuant to Section 6.6-1 of this Code shall be initiated for an Operator's failure to collect or remit parking taxes for which the Tax Collector has granted amnesty; and

(4) No civil or criminal action shall be brought against an Operator, for any tax period for which the Tax Collector grants tax penalty amnesty, based upon the nonreporting, under-reporting, failure to remit Parking Tax and Parking Tax liabilities or the nonpayment of or failure to remit any taxes owed under the provisions of **Article 22** of this Code.

(c) The Amnesty Program shall not apply to Operators that do not voluntarily and in good faith contact the Tax Collector during the Amnesty Period to submit voluntarily to an audit.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 608.4. LIABILITIES SUBJECT TO AMNESTY PROGRAM.

(a) The Tax Penalty Amnesty Program shall apply to remittance of penalties and interest on penalties for unpaid owing third party Parking Tax liabilities for the tax periods ending on or before 75 days prior to the effective date of this Ordinance, with the following exceptions:

(1) The Tax Collector shall not waive penalties owed as a result of any jeopardy determination or any audit deficiency determination that has become final prior to the commencement of the Amnesty Application Period.

(2) The Tax Collector shall not waive, under the authority of this Article, penalties, which are included in any civil tax collection litigation commenced by the Tax Collector prior to the commencement of or during the Amnesty Application Period.

(3) Taxes owed that have been reduced to a notice of deficiency prior to the commencement of the Amnesty Period are not eligible for inclusion in the Amnesty Program.

(4) Parking taxes owed and interest on those owed taxes are not subject to amnesty.

(b) No refund or credit shall be granted of any penalty paid by any person prior to the time the person submits an Amnesty Application pursuant to Sections 608.3 and 608.8 of this Article.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 608.5 AMNESTY APPLICATIONS.

(a) The provisions of this Article shall apply to any person who is responsible for the collection and remittance to the City of Parking Taxes under **Article 22** and Section 6.7-1 of this Code and who files an application for Parking Tax amnesty within the Amnesty Application Period designated by the Tax Collector pursuant to Section 608.8 of this Article and who does both of the following:

(1) Files completed tax returns for all periods for which he or she has not previously filed a tax return or files amended tax returns for all periods for which he or she under-reported taxes owned; and

(2) Pays/remits in full all taxes, fees, and interest due.

(b) Notwithstanding the provisions of Subsection (a) of this Section, if necessary to effectuate the purposes of this Article, the Tax Collector in its sole and absolute discretion may extend the period for payment of taxes and interest due or enter into an installment payment agreement in lieu of complete payment. Failure of the taxpayer to comply with the terms of any extension granted or installment payment agreement entered under this subsection by the Tax Collector shall render the waiver of any penalties applicable thereto null and void, and the total amount of tax, interest and all penalties shall be immediately due and payable.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 608.6. SUBSEQUENT DEFICIENCIES.

If the Tax Collector issues a deficiency determination based upon a return filed pursuant to Section 608.5 of this Article, penalties shall be imposed only with respect to the difference between the amount shown on the return and the correct amount of tax.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 608.7. SUBSEQUENT REFUNDS.

If any overpayment of tax under this Section 608 is refunded or credited, the City shall have no liability for or obligation to pay interest on that overpayment.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 608.8. AUTHORITY OF TAX COLLECTOR.

Upon effective date of this Ordinance, the Tax Collector shall designate an Amnesty Application Period, which shall not exceed six months in duration, in which Amnesty Applications shall be accepted. The Tax Collector shall publicize the Tax Penalty Amnesty Program established by this Article and shall notify Operators about the amnesty program and about the new requirements of **Article 22** of this Code and the increased penalties imposed by the provisions of Section 2231. The Tax Collector shall issue all forms and instructions necessary to implement this Article. The Tax Collector shall enforce the provisions of this Article and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this Article.

(Added by Ord. 234-06, File No. 060892, App. 9/14/2006)

SEC. 615. ADMINISTRATION.

Authority of Tax Collector Generally; Deposit of Collections to General Fund. The Tax Collector shall enforce the provisions of this Article and may prescribe, adopt and enforce rules and regulations relating to the administration and enforcement of this Article. The Tax Collector may prescribe the extent to which any ruling or regulation shall be applied without retroactive effects.

The Tax Collector shall transmit all moneys collected pursuant to this Article to the Treasurer for deposit to the General Fund and, subject to the budget and fiscal provisions of the Charter, the collections may be expended for any City purpose.

(Amended by Ord. 433-79, App. 8/24/79; Ord 20-98, App. 1/16/98; Ord. 241-06, File No. 061209, App. 10/4/2006)

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Traffic Engineering

BRIEF DESCRIPTION:

Authorizing a bid call for Department of Public Works (DPW) Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project, to install curb bulb-outs along Irving Street and a pedestrian island on 7th Avenue.

SUMMARY:

- The Inner Sunset Traffic Calming Plan identified projects to improve access and safety within the area bounded by 4th Avenue, Moraga Street, 9th Avenue and Lincoln Way. This phase of this Plan, will include sidewalk bulbs along Irving Street at 4th, 5th, 7th, 8th, and 9th Avenues and a pedestrian refuge island at 7th Avenue and Moraga Street.
- The contract work is designed to improve pedestrian safety by providing better pedestrian visibility and shorter crossing distances, without any adverse impacts to transit.
- DPT staff performed the initial conceptual design for this contract. DPW staff performed the design review and contract preparation. DPW staff will also provide contract advertising and construction management services.
- The contract work will be funded through the American Recovery and Reinvestment Act of 2009 (ARRA) and Proposition K Sales Tax revenues.
- DPT staff will request authority from the SFMTA Board to award the contract after bids have been opened and the lowest responsible bidder has been determined.
- Under guidelines set by Caltrans, which administers the federal funding, the Underutilized Disadvantaged Business Enterprise (UDBE) subcontracting goal for this Contract is 6%.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION

PREPARING ITEM _____

FINANCE _____

EXECUTIVE DIRECTOR/CEO _____

SECRETARY _____

ADOPTED RESOLUTION

BE RETURNED TO Manito Velasco

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2.

PURPOSE

SFMTA staff requests this Board to authorize a bid call for Department of Public Works (“DPW”) Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project, to install curb bulb-outs along Irving Street and a gateway island on 7th Avenue.

GOAL

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

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

DESCRIPTION

Scope of Work

SFMTA Parking and Traffic (DPT), utilizing DPW Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project, proposes to install:

- Curb bulbs at Irving Street and 4th, 5th, 7th, 8th, and 9th Avenues.
- Gateway treatment at 7th Avenue and Moraga Street.

These locations were selected based on input received at several community meetings with residents in the project area. The Work is more specifically described in the “Inner Sunset Traffic Calming and Transit Enhancements Project Contract No. 1519J Project Manual” and the accompanying contract plans and miscellaneous reference drawings (which are voluminous documents and are available for inspection at DPW's Bureau of Engineering, 30 Van Ness Avenue, 5th Floor, San Francisco, California).

The completion date for this contract is 120 calendar days after written Notice To Proceed. following the Work.

The work is designed to improve safety for pedestrians by improving visibility, slowing vehicle turns and shortening the curb to curb distance. The work can accomplish these goals without any adverse impacts to transit.

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

PAGE 3.

Under guidelines set by Caltrans, which administers the federal funding, the Underutilized Disadvantaged Business Enterprise (UDBE) subcontracting goal for this Contract is 6%.

ALTERNATIVES CONSIDERED

Instead of contracting out, staff considered performing the work using City forces. However, although DPW staff could perform the work, they cannot do so within the timeframe specified by the grants.

Staff concluded that contracting out was the best alternative to proceed with the construction of the project. Historically, contracting out via competitive bidding has been the primary way that most sidewalk infrastructure has been constructed in the City; staff has found this method to be a cost-effective and efficient way to construct new curb bulb-outs and median islands.

FUNDING IMPACT

The engineer's detailed cost estimate for this contract is in excess of \$432,000.

The work is funded through Proposition K Sales Tax revenues, and the American Recovery and Reinvestment Act of 2009 (ARRA). The SFCTA has already approved \$317,000 in Proposition K construction funds. The remaining \$343,000 is coming from ARRA funds, through Caltrans, which administers these funds for the Federal Highway Administration.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

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

The City Attorney's Office has reviewed this report.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize a bid call for the Department of Public Works Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project, to install curb bulb-outs, gateway treatments.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SFMTA Parking and Traffic and Inner Sunset residents have identified locations for traffic calming that are consistent with City guidelines; and,

WHEREAS, Curb bulb-outs and pedestrian islands are designed to improve safety for pedestrians by increasing pedestrian visibility, slowing vehicle turns and shortening the curb to curb distance; and,

WHEREAS, Curb bulb-outs and pedestrian islands improve pedestrian safety without imposing any adverse impacts to transit; and,

WHEREAS, Staff has identified the intersections of Irving Street at 4th, 5th, 7th, 8th, and 9th Avenues for curb bulb-outs and 7th Avenue and Moraga Street for a pedestrian refuge island; and,

WHEREAS, Staff proposes to perform the Work under Department of Public Works Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project; and

WHEREAS, The work will be funded with Proposition K sales tax revenues and funds through the American Recovery and Reinvestment Act of 2009; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Department of Public Works to issue a bid call for DPW Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Enclosure 2

DPW Contract No. 1519J: Inner Sunset Traffic Calming and Transit Enhancements Project

Project Budget and Financial Plan

PROJECT BUDGET

Category	Budget Amount
Construction Contract	\$432,000
Construction Support/Grant Support	\$102,000
DPT Traffic Engineering & SFMTA Planning (Construction Support)	\$126,000
TOTAL (CONSTRUCTION PHASE)	\$660,000

FINANCIAL PLAN

Funding Source	Amount	Percentage
ARRA Funds	\$343,000	52%
Local Half Cent Sales Tax - Proposition K	\$317,000	48%
TOTAL	\$660,000	100%

THIS PRINT COVERS CALENDAR ITEM NO. : 10.14

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Requesting approval of the plans and specifications and authorizing bid call for San Francisco Municipal Transportation Agency Contract No. 1206, Islais Creek Motor Coach Facility Phase I.

SUMMARY:

- The proposed SFMTA Islais Creek Motor Coach Facility Construction Project will occupy 8.4 acres on the north shore of Islais Creek and be bounded by I-280 northbound off ramp on the west, Cesar Chavez on the north and Indiana Street on the east. This new operating division will be the replacement for the Kirkland Motor Coach Division and the home of the SFMTA's new hybrid motor coaches.
- The scope of work under this contract consists of site development, a bus yard with parking for 165 40-foot motor coaches, 19 non-revenue vehicles, fuel/wash building, annex building, shoreline park, and art structure.
- The estimated cost for this construction contract is between \$40 and \$45 million. The construction work is to be substantially completed within 600 calendar days from the Notice to Proceed.
- Federal, and local sources will provide funding for this Contract.

ENCLOSURES:

1. SFMTAB Resolution
2. Project Budget and Financial Plan

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION
BE RETURNED TO

Attn: Gigi Pabros

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

Requesting approval of the plans and specifications and authorizing bid call for San Francisco Municipal Transportation Agency Contract No. 1206, Islais Creek Motor Coach Facility Phase I.

San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1206, Islais Creek Motor Coach Facility Phase I, will construct a new bus yard to be located on 8.4 acres of City owned or leased land at 1301 Cesar Chavez Street. The new bus yard will include parking for 165 of the SFMTA's 40-foot hybrid coaches and 19 non-revenue vehicles. It will be bounded by I-280 northbound off ramp on the west, Cesar Chavez on the north and Indiana Street on the east and Islais Creek on the south. This new operating division will be the replacement for the Kirkland Motor Coach Division and the home of the SFMTA's new hybrid motor coaches.

On the Islais Creek shoreline, the project will create an edge treatment and park that reflects the historical industrial and port uses along the Bay. This work will construct a walkway; restore wetlands damaged by past industrial use and install an art structure.

GOAL

Contract No. 1206 would assist in the implementation of the following goals, objectives, and initiatives in the SFMTA Strategic Plan:

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

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

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

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

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

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

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

Objective 5.2 – Improve facilities in which people are working

Objective 5.3 – Improve internal communication and employee satisfaction

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DESCRIPTION

Islais Creek Motor Coach Facility Phase I has a number of major components. The first is site development.

Site Development will consist of demolishing existing structures and removal of buried storage tanks. It will also include excavation and removal of contaminated soils, dewatering, grading, and providing fill for the site. As part of the site development the level of the site will be raised two feet. A drainage system, foundations, and utilities will be installed.

The second component will be pavement, striping, lighting, signage and security fence for the motor coach yard. The yard will provide parking for 165 40-foot (standard) motor coaches, 19 non-revenue vehicles (maintenance vehicles) and employee private autos.

The third component of the Islais Creek Motor Coach Facility Phase I is the fuel/wash building. It will have three bays for fueling, lubing, and washing of vehicles. The building will also contain a tire shop, fare collection system, and wash water reclaim system.

There will also be an annex building with offices, restrooms, lockers, a lunchroom, systems room, electrical room, emergency generator and the facility's substation.

The final component of the project will be a shoreline park that will have a walkway, benches, irrigation and landscaping. An art structure that commemorates the maritime history of the area will be installed in the shoreline park and a significant portion of the shoreline will be restored wetlands.

Islais Creek Phase II will follow the completion of Phase I once sufficient funding has been secured to construct it. Phase II will be a maintenance building with heavy maintenance capability.

The current estimate for the contract is between \$40 and \$45 million.

The Contract Compliance Office has established a Small Business Enterprise (SBE) goal of 25 percent.

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

The plans and specifications for SFMTA Contract No. 1206 are not included as an enclosure to this calendar item. They are available for review at One South Van Ness Avenue, 3rd Floor, SFMTA Transportation Planning and Development Division.

ALTERNATIVES CONSIDERED

Other options were considered to accommodate the SFMTA's growing fleet of forty foot motor coaches. The lack of space at existing facilities led to a determination that it was impractical to attempt to expand an existing facility and that land would have to be acquired and a new facility constructed. The location of the Islais Creek Motor Coach Facility Phase I project presented the SFMTA with reasonably priced real estate and the opportunity to construct a state of the art motor coach facility.

FUNDING IMPACT

This contract is funded by Federal grants and local matching funds from the San Francisco County Transportation Authority (SFCTA) and other sources.

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

OTHER APPROVALS RECEIVED OR STILL REQUIRED

No other approvals are required for this item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve the plan and specifications and authorize bid call for Contract No.1206 Islais Creek Motor Coach Facility Phase I.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, San Francisco Municipal Transportation Agency (SFMTA) Contract No. 1206, Islais Creek Motor Coach Facility Phase I, is a construction contract to construct a new motor coach facility on 8.4 acres of land on the north shore of Islais Creek and be bounded by I-280 northbound off ramp on the west, Cesar Chavez on the north and Indiana Street on the east; and,

WHEREAS, This new operating division will be the replacement for the Kirkland Motor Coach Division and the home of the SFMTA's new hybrid motor coaches; and,

WHEREAS, The scope of work under this contract consists of site development, a bus yard with parking for 165 40-foot motor coaches, 19 non-revenue vehicles, fuel/wash building, annex building, shoreline park, and art structure; and,

WHEREAS, The time allotted to substantially complete the construction work is 600 calendar days, with liquidated damages of \$15,000 per day for failure to complete the work on time; and,

WHEREAS, Contract No. 1206, Islais Creek Motor Coach Facility Phase I Upgrade, will assist SFMTA in meeting Strategic Plan Goals #1, 2, and 5; and,

WHEREAS, The project is funded by Federal and local grants; and,

WHEREAS, The Contract Compliance Office has established a Small Business Enterprise goal of 25 percent; now, therefore be it

RESOLVED, That the SFMTA Board of Directors approves the plans and specifications and authorizes the Executive Director/CEO to advertise San Francisco Municipal Transportation Agency Contract No. 1206, Islais Creek Motor Coach Facility Phase I.

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
ISLAIS CREEK MOTOR COACH FACILITY PHASE I
San Francisco Municipal Transportation Agency Contract 1206
Project Budget and Financial Plan

Item	Budget
Design Work:	
Consultant and Staff Support (SFMTA and Other Dept. Services)	\$5,474,227
Right of Way and Land Acquisition:	
Purchase, Lease, Permits, Staff Support (SFMTA and Other Dept. Services)	\$11,741,182
Construction Phase:	
Construction Contract, Contingency, and Staff Support	\$51,999,048
Total Cost	\$69,214,457

Funding	Amount
Federal Grants	\$33,406,839
Local Grants	
Prop K Sales Tax	\$29,180,000
Bridge Tolls	\$400,000
SFMRIC	\$6,227,618
Total Funding	\$69,214,457

THIS PRINT COVERS CALENDAR ITEM NO. : 14

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transportation Planning and Development

BRIEF DESCRIPTION:

Requesting authorization for the Executive Director/CEO to execute Contract No. APT 591-01, LRV Doors and Steps Reconditioning and Systems Rehabilitation, with AnsaldoBreda Inc., in an amount not to exceed \$56,752,554, and for a term not to exceed five years.

SUMMARY:

- The current fleet of AnsaldoBreda light rail vehicles (LRVs) has been providing Muni Metro service since 1997.
- For the fleet to continue providing reliable service, key components of the LRVs have to be rehabilitated, which include the door and steps systems, the couplers system, the air supply system, the PSC2 cable, the articulation wire harness, the articulation resilient pins and the traction motor bearings.
- On May 6, 2009, the SFMTA issued a Request for Proposals (RFP) for the project; only AnsaldoBreda Inc., the original equipment manufacturer of the LRVs, responded to the RFP.
- Staff negotiated a contract with AnsaldoBreda to perform the work for an amount not to exceed \$56,752,554, such work to be completed within five years from the date of the Notice to Proceed.
- Funding for this project is being provided through federal grants, including \$15 million in American Recovery and Reinvestment Act (ARRA) funds, California State I-Bonds, and operating funds.

ENCLOSURES:

1. SFMTA Board Resolution
2. Contract Agreement

APPROVALS:

DATE

DIRECTOR OF DIVISION
PREPARING ITEM

FINANCE

EXECUTIVE DIRECTOR/CEO

SECRETARY

ADOPTED RESOLUTION

BE RETURNED TO

Elson Hao – 700 Pennsylvania, B200

ASSIGNED SFMTAB CALENDAR DATE: _____

PAGE 2

PURPOSE:

The purpose of this project is to rehabilitate key operating systems for 143 LRVs belonging to the SFMTA. Rehabilitating these systems will improve overall vehicle reliability, thereby improving service reliability for the LRV fleet.

GOAL:

The goal of this project is to improve equipment reliability in order to meet the following goal and objective of the SFMTA's Strategic Plan:

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

Objective No. 2.1: Improve transit reliability to meet 85% on-time performance standard

DESCRIPTION:

Scope of Work:

The current fleet of AnsaldoBreda light rail vehicles (LRVs) has been providing Muni Metro service since 1997. The scope of this project is to rehabilitate key operating systems of the LRVs, including reconditioning of the doors and steps systems; rehabilitation of the couplers to improve vehicle trainlines, the air supply units, and the PSC2 Cable to improve ATCS reliability; upgrading the articulation wire harnesses to improve trainline circuit integrity; replacing the aging resilient pins in the articulation joint; and replacing the bearings in the traction motors. In order to restore these systems to their original operating specifications, the Contractor will provide all labor, inspections, engineering, tools, materials, parts, facilities and equipment required to complete the work. Furthermore, the Contractor will prepare all required detailed drawings, design calculations and other specified technical documentation in connection with the rehabilitation of these systems.

In the absence of this rehabilitation project, the reliability and operation of the vehicles will start to deteriorate, which would affect service reliability to the riding public.

Procurement Process:

On May 6, 2009, the SFMTA issued a Request for Proposals (RFP) for the project. Only AnsaldoBreda Inc. responded to the RFP. This allowed SFMTA staff, to negotiate with the contractor the scope and cost of the project. Based on the negotiations, AnsaldoBreda will perform the work specified in the RFP plus additional work to replace the resilient pins in the articulation joint and to replace the bearings in all the traction motors at a total cost of \$56,752,554.

The contract requires AnsaldoBreda, Inc. to complete the project in 1380 calendar days after Notice to Proceed; liquidated damages of \$500 per day of delay will be assessed for failure to complete the work on time.

ALTERNATIVES CONSIDERED:

In-house technicians qualified to rehabilitate these systems; however, due to limited personnel and funding resources, the work would have to be performed on each LRV if it failed and as extra work (overtime). Furthermore, SFMTA does not have the facility space or the required supply of parts and materials to perform vehicle overhauls at this level without affecting scheduled preventive maintenance and repair work to the fleet.

FUNDING IMPACT:

Funding for this project is coming from four sources: \$20.7 million from California State I-Bonds, \$8.5 million from the balance of the LRV Procurement Project ; \$17.8 million from the LRV Rehabilitation Project CPT – 591; and \$15 million in American Recovery and Reinvestment Act (ARRA) funds from the Federal Transit Administration.

In order to utilize the ARRA funds, the SFMTA needs to have the contract awarded by November 30, 2009. Disapproval of this request will result in the SFMTA's losing these funds for this much-needed rehabilitation project.

OTHER APPROVAL RECEIVED OR STILL REQUIRED:

The contract will require approval from the Board of Supervisors.

The SFMTA will also seek approval of the contract from the Civil Service Commission.

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

The SFMTA's Contract Compliance Office has confirmed that the Contractor is committed to the meeting the SBE goal of 7% for this project.

RECOMMENDATIONS:

Staff recommends that the SFMTA Board authorize the Executive Director/CEO to execute Contract No. APT 591-01, LRV Doors and Steps Reconditioning and Systems Rehabilitation, with AnsaldoBreda Inc., in an amount not to exceed \$56,752,554 and for a term not to exceed five years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Contract No. APT 591-01, LRV Doors and Steps Reconditioning and Systems Rehabilitation, will rehabilitate key operating systems on the existing fleet of light rail vehicles, which will improve the reliability of the fleet; and,

WHEREAS, The scope of work under Contract No. APT 591-01 will include all labor, inspections, engineering, tools, materials, parts, facilities and equipment required to complete all work, including all required detailed drawings, design calculations and other specified technical documentation in connection with the rehabilitation of these systems; and,

WHEREAS, On May 6, 2009, the SFMTA issued a Request for Proposals (RFP) for the project; the SFMTA received one proposal from AnsaldoBreda Inc., 1461 Loveridge Road, Pittsburg, CA 94565, in response to the RFP; and,

WHEREAS, SFMTA staff negotiated a contract with AnsaldoBreda to perform the work specified in the RFP, plus additional work to replace the resilient pins in the articulation joint and to replace the bearings in all the traction motors, for a total cost of \$56,752,554; and,

WHEREAS, Funding for the project will come from federal grant funds, including American Recovery and Reinvestment Act (ARRA) funds, and California State I-Bonds; and

WHEREAS, The Contract Compliance Office has confirmed the contractor's commitment to meeting the 7% SBE goal for this contract; now, therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute Contract No. APT 591-01, LRV Doors and Steps Reconditioning and Systems Rehabilitation, with AnsaldoBreda Inc., in an amount not to exceed \$56,752,554, and for a term not to exceed five years; be it further

RESOLVED, That the SFMTA Board of Directors recommends that the Board of Supervisors approve this contract.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Contract Between
The City and County of San Francisco
and

AnsaldoBreda Inc.

LRVs Doors and Steps Reconditioning
and Systems Rehabilitation

Contract No APT 591-01

CCO No. 09-1076



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Exhibits

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Exhibit B	Milestone Schedule
Exhibit C	Price Schedule
Exhibit D	Proposal Schedule

**City and County of San Francisco
Municipal Transportation Agency
Municipal Railway Department
One South Van Ness 7th Floor
San Francisco, California 94107**

**Agreement between the City and County of San Francisco and
AnsaldoBreda Inc.**

This Agreement is made this _____ day of _____, 2009, in the City and County of San Francisco, State of California, by and between: AnsaldoBreda Inc., a Delaware 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 143 of SFMTA’s light rail vehicles (the “LRVs”).

B. A. Request for Proposals (“RFP”) was issued on May 6, 2009, and City selected Contractor pursuant to the RFP.

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

D. Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number 4021-09/10 and _____ on July 20, 2009 and _____;

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.

Conditional Acceptance; Conditionally Accepted: The condition of a repaired Vehicle that, in the SFMTA's determination, does not meet the requirements for full acceptance, but is authorized by the SFMTA to enter into revenue service, pending completion of all repairs.

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.

Corrective Action Plan: The plan submitted by Contractor to correct Defects that have been determined by the SFMTA to be Fleet Defects, as defined in Section 65.7(a).

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

Defect(s): Patent or latent malfunctions or failure in manufacture or design of any component or subsystem.

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

LRV or Vehicle: A light rail vehicle subject to repair under this Contract.

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.

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 May 6, 2009, for LRV Doors, Steps and Systems Rehabilitation.

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

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.

Work Program: The plan submitted by Contractor to correct a declared Fleet Defect in all LRVs that have not experienced the Defect.

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 the Effective Date to _____.

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 the RFP, including Volume 2 (Technical Specifications), and in the Contractor's Proposal, according to the Project Delivery Schedule set forth in Exhibit B.

5. Compensation

5.1. **Amount of Contract.** In no event shall the amount of this Agreement exceed Fifty-Six Million, Seven Hundred Fifty-Two Thousand, Five Hundred Fifty-Four Dollars (\$56,752,554)

5.2. **Price Breakdown.** 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. The unit prices in Exhibit C represent the costs for each Vehicle if the Vehicle requires the entire scope of Work listed in Item Nos. 1.1 through 1.6. However, if after inspection of a Vehicle pursuant to Section TP10.03 of the Technical Specifications and design review under Section 61.4, the SFMTA determines that the Vehicle requires only a portion of the scope of Work in a particular Item No., the unit price of the Item No., and the resultant cost of the Work on each Vehicle, shall be reduced after negotiations with Contractor.

5.3. **SFMTA Approval of Work.** 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.

5.4. **No Interest; Price Adjustments.** 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.

6. Guaranteed Maximum Costs

6.1. 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.

6.2. 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.

6.3. 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.

6.4. 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; Title

7.1. **Invoices.** 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. No more than one invoice per month shall be submitted. Invoices shall be accompanied by appropriate supporting documentation. All amounts paid by City to Contractor shall be subject to audit by City.

7.2. **Progress Payments.** Progress payments shall be made as set forth in the Payment Schedule (Exhibit D). Progress payments shall be conditioned on either (1) transfer of title to the City for the portion of the components, equipment or material paid for by the progress payment (as provided in Section 7.3 below), plus a certificate of insurance required by Section 15.1(g) of this Agreement; or (2) for payments for Item 1b of the Payment Schedule made prior to delivery of the parts or assemblies, issuance of a letter of credit in conformance with the provisions of Section 15.3, in the amount of the progress payment. Progress payments shall be made by the City to Contractor at the address specified in the section entitled "Notices to the Parties." Letter(s) of credit will be released upon transfer of full title to parts or assemblies.

7.3. **Title.** Upon the earlier of payment or acceptance of any part, component, or assembly, Contractor warrants that title to said part, component or assembly shall pass to the City free and clear of all liens, mortgages and encumbrances, financing statements, security agreements, claims and demands of any character.

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.

10. Taxes

10.1. 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.

10.2. 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:

(a) 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;

(b) 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.

(c) 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.

(d) 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 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.

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

14.1. 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.

14.2. 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; Bonds; Letters of Credit

15.1. Insurance

(a) 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:

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

(ii) Commercial General Liability Insurance with limits not less than \$2,000,000 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) Garage Liability insurance, including coverage for garage operations arising from premises/operations, product/completed operations, contracts, owned vehicles, non-owned vehicles and damage to vehicles owned by others (bailment): Minimum limit of liability of not less than \$10,000,000 each occurrence combined single limit bodily injury and property damage; and

(v) Garage keepers' legal liability insurance, comprehensive form, with limits not less than \$10,000,000 each occurrence.

(vi) 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.

(vii) The shipping contractor shall carry, at a minimum, physical damage insurance (including destruction, damage, fire and theft) in the amount of not less than \$4,000,000 and commercial liability insurance in the amount of not less than \$2,000,000.

(b) Commercial General Liability, Business Automobile Liability Insurance, Garagekeepers' Legal Liability and Shippers Coverage policies must provide the following:

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

(ii) 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.

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

(d) All policies (and bonds, as described in Section 15.2 below) shall provide 30 days' advance written notice to City of cancellation or reduction in coverage for any reason, mailed to the following address:

San Francisco Municipal Transportation Agency
425 Geneva Ave
San Francisco, CA 94112
Attention: Louis Maffei
Contract No. APT 591-01 (CCO 09-1076)

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

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

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

(h) Before commencing any operations under this Agreement, Contractor shall do the following: (a) 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 coverage's set forth above, and (b) furnish complete copies of policies promptly upon City request.

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

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

15.2. Bonds

(a) 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 LRV, the Contractor shall furnish to City a performance bond and a labor and materials bond, each in the amount not less than 20% 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.

(b) From acceptance by City of the 143 rehabilitated LRVs, and throughout the warranty period (including paint/corrosion) of these 143 rehabilitated LRVs, 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.

(c) 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.

(d) 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.

15.3. Letters of Credit.

(a) **Requirements.** Any letter of credit submitted in lieu of a bond or other required security under this Agreement shall be a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation. It must have an original term of one year, with automatic renewals of the full amount throughout the term of the Agreement and throughout the performance of Contractor's obligations under the Agreement. If Contractor fails to deliver the letter of credit as required, City will be entitled to cancel this Agreement. The letter of credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Executive Director/CEO on behalf of the City and County of San Francisco.

(b) **Financial Institution..** The letter of credit must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution must (a) be a bank or trust company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least \$25,000,000.00, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating.

(c) **Demand on Letter of Credit.** The letter of credit will constitute a security deposit guaranteeing faithful performance by Contractor of all terms, covenants, and conditions of this Agreement, including all monetary obligations set forth herein. If Contractor defaults with respect to any provision of this Agreement, SFMTA may make a demand under the letter of credit for all or any portion thereof to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty. Such loss or damage may include without limitation any damage to or restoration of City property or property that is required to be constructed, maintained or repaired pursuant to this Agreement, payments to City, and claims for liquidated damages; provided, however, that City will present its written demand to said bank for payment under said letter of credit only after City first has made its demand for payment directly to Contractor, and five full Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the letter of credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the letter of credit is so used or applied by City, Contractor, within 10 business days after written demand by City, shall reinstate the letter of credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

(d) Expiration or Termination. The letter of credit must provide for 60 Days notice to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business Days prior to its expiration. In the event the City receives notice from the issuer of the letter of credit that the letter of credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement letter of credit (in a form and issued by a financial institution acceptable to the City) within 10 Days following the City's receipt of such notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the letter of credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the letter of credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

(e) Return of Letter of Credit. The letter of credit will be returned within 90 Days after the end of the term of this Agreement, as defined in Section 15.1, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 18.8, City will return or release the letter of credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent letter of credit, as determined by City.

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

16. Indemnification

16.1. General Indemnity. 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").

16.2. 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.

16.3. **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.

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. 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 Management Work Plan and Project Schedule	\$150 per day per deliverable
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Failure to deliver the LRVs by the times stated in the Contract.	\$500 per Vehicle per day
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Failure to submit timely Corrective Action Plan (or required revisions)	\$500 per day (per Fleet Defect)
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Failure to submit timely Work Program
(or required revisions)

\$500 per day (per Fleet Defect)

Failure to timely complete Corrective Action Plan
or Work Program

\$500 per day per Vehicle

The total amount of Liquidated Damages shall not exceed \$3 million, and is in addition to any other damages which are recoverable by the City specified elsewhere in the Agreement.

20. Default; Remedies

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

(a) 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.

(b) 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.

(c) 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.

(d) 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.

20.2. 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.

21. Termination for Convenience

21.1. **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.

21.2. **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:

- (a) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
- (b) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (c) Terminating all existing orders and subcontracts.
- (d) 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.
- (e) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (f) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
- (g) 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.

21.3. **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:

- (a) 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.
- (b) 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.
- (c) 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.

(d) 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.

21.4. **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.

21.5. **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.

21.6. **Survival.** City's payment obligation under this Section shall survive termination of this Agreement.

22. **Rights and Duties Upon Termination or Expiration**

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

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| 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 | 55. Disputes |
| 18. Liability of City | 56. Severability |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| | 63. FTA Requirements |

64. Warranty Provisions

22.1. **Contractor Duties.** Subject to the immediately preceding subsection 22.1, 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 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.

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:

Municipal Transportation Agency
Attn: Louis Maffei
425 Geneva Ave
San Francisco, CA 94112
Phone: (415) 337-2337
Fax: (415) 337-2369
louis.maffei@sfmta.com

To Contractor:

AnsaldoBreda Inc.
Attn: Lorenzo Reffreger
1461 Loveridge Road
Pittsburg, CA 94565
Phone: (925)
Fax: (925)
mobile: (415) 420-4125
lreffreger@ansaldobredainc.com

Any notice of default must be sent by registered mail.

26. Ownership of Results

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

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City.

If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. 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.

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 in the same manner as 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.

32.1. 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.

32.2. 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.

32.3. **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.

32.4. **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.

33. 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.

34. Nondiscrimination; Penalties

34.1. **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.

34.2. **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.

34.3. 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.

34.4. 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.

34.5. 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.

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 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.

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. 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 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.

43. Requiring Minimum Compensation for Covered Employees

43.1. 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.

43.2. 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.

43.3. 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.

43.4. 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.

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

43.6. 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.

43.7. 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.

43.8. 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.

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

44. Requiring Health Benefits for Covered Employees

44.1. 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.

44.2. 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.

44.3. 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.

44.4. 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.

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

44.6. 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.

44.7. 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.

44.8. 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.

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

44.10. 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.

44.11. 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.

44.12. 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.

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

44.14. 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

45.1. 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.

45.2. 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:

(a) 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 may be 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.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) Set the term of the requirements.

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

(h) 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.

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

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

45.4. **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.

45.5. **Liquidated Damages.** Contractor agrees:

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

(b) 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;

(c) 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.

(d) 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;

(e) 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:

(i) 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

(ii) 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.

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

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

45.6. **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.

47. 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.

48. Modification of Agreement

48.1. 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%.

48.2. 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:

(a) 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.

(b) 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 City. No oral statement of any

person whosoever shall in any manner or degree modify or otherwise affect the terms of this contract, which include the requirements of the Technical Specifications.

(c) If the City determines that there are mechanical conditions in any Vehicle that were not known or reasonably discoverable prior to commencement of the work under this Agreement, the parties shall negotiate a lump sum cost to repair such work to be paid under the Allowance provision (item 4) in the Payment Schedule. The terms and conditions of any such repair work shall be memorialized in a written contract modification to be executed by the parties.

49. 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.

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. Disputes

55.1. 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.

55.2. 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.

55.3. 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.

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

55.5. 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.

55.6. 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.

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 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.

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

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

60. Time of Essence

Time is of the essence in this Agreement.

61. Technical Specifications

61.1. **Fabrication.** The 143 rehabilitated LRVs shall be rehabilitated and guaranteed in accordance with the Technical Specifications.

61.2. **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 rehabilitate the systems specified in the Technical Specifications and return the Vehicles in a condition that is complete and ready for service. 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.

61.3. **Priority.** In the event of any deviation between the description of these 143 rehabilitated LRVs in the Technical Specifications and in this document, the Technical Specifications shall govern.

61.4. **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.

61.5. 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.

61.6. Materials/Accessories Responsibility. The Contractor shall be responsible for all materials and workmanship in the rehabilitation of the LRV systems required by the Technical Specifications and all accessories used, whether the same are manufactured by the Contractor or purchased from a subcontractor during the rehabilitation of the Vehicle systems. 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.

62. Assumption of Risk of Loss

Prior to acceptance of the rehabilitated LRVs, 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.

63. 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.

64. Warranty Provisions

64.1. Contractor Warranty. Warranties in this document are in addition to any statutory remedies or warranties imposed on the Contractor. Warranties include 100 percent of parts and labor costs. "Defects" are patent or latent malfunctions or failure in manufacture or design of any component or subsystem that causes an LRV to cease operating or to operate in a degraded mode. "Related Defects" are damage inflicted on any component or subsystem as a direct result of a Defect. Consistent with these requirements and definitions, the Contractor warrants and guarantees to the SFMTA each complete LRV, and specific subsystems and components, as follows.

(a) Complete LRV. The rehabilitated systems of the LRV, are warranted to be free from Defects and Related Defects for one year, beginning on the date of acceptance, or Conditional Acceptance, of each LRV under "Acceptance of LRV" (Technical Specifications, TP01). The warranty is based on regular operation of the LRV under the operating conditions prevailing in Muni service.

(b) Spare Parts. Spare parts purchased shall be warranted and guaranteed to be free from Defects and Related Defects for the longer of two (2) years or the manufacturer's standard warranty, beginning on the date the part is accepted by the SFMTA.

64.2. Extension of Warranty. If, during the warranty period, repairs or modifications on any on any LRV, made necessary by defective design, materials or workmanship, are not completed due to lack of material or inability to provide the proper repair for 30 calendar days, the applicable warranty period shall be extended by the number of days equal to the delay period.

64.3. Voiding Of Warranty. The warranties shall not apply to the failure of any part or component of the LRV that directly results from misuse, negligence, accident, or repairs not conducted in accordance with the Contractor-provided maintenance manuals and with workmanship performed by adequately trained personnel in accordance with recognized standards of the industry. The warranty shall also be void if the SFMTA fails to conduct normal inspections and scheduled preventive maintenance procedures as recommended in the Contractor's maintenance manuals and that omission solely caused the part or component failure.

64.4. Exceptions And Additions To Warranty. The warranties shall not apply to scheduled maintenance items, normal wear-out items, and items furnished by the SFMTA, except insofar as such equipment may be damaged by the failure of a part or component for which the Contractor is responsible.

64.5. Detection Of Defects. If the SFMTA detects a Defect within the warranty period, it shall within 20 working days, notify the Contractor's representative. Within five working days after receipt of notification, the Contractor's representative shall either agree that the Defect is in fact covered by warranty, or reserve judgment until the subsystem or component is inspected by the Contractor's representative or is removed and examined at the SFMTA's property or at the Contractor's plant. At that time, the status of warranty coverage on the subsystem or component shall be mutually resolved between the SFMTA and the Contractor. Work shall commence to correct the Defect within 10 working days after receipt of notification and shall be conducted in accordance with "Repairs by Contractor" (Section 66.2).

64.6. Scope Of Warranty Repairs. When warranty repairs are required, the SFMTA and the Contractor's representative shall agree within five working days after notification on the most appropriate course for the repairs and the exact scope of the repairs to be performed under the warranty. If no agreement is obtained within the five-day period, the SFMTA reserves the right to commence the repairs in accordance with "Repairs by SFMTA" (Section 66.3).

64.7. Fleet Defects

(a) Occurrence. A Fleet Defect is defined as cumulative failures of any kind in the same components in the same or similar application, where such items are covered by the warranty and such failures occur in the warranty period in at least 10 percent of the LRVs to be rehabilitated under this Agreement.

(b) Remedy. The Contractor shall correct a fleet defect under the warranty provisions defined in "Repair Procedures" (Section 66). Within 30 days of receipt of notification of a Fleet Defect, the Contractor shall provide the SFMTA with a Corrective Action Plan, subject to approval by SFMTA, specifying how and when all LRVs with Defects shall be corrected. No later than 10 days after correcting the Defects, the Contractor shall submit a proposed Work Program reasonably designed to prevent the occurrence of the same Defect in all LRVs remaining to be repaired, and, if applicable, spare parts purchased under this Contract. The Work Program shall specify how and when the corrective work in all remaining LRVs will be performed. If SFMTA requires changes to a Corrective Action Plan or Work Program in order to approve it, Contractor shall submit the revised Plan or Program within five days after SFMTA requests such changes. Where the specific Defect can be solely attributed to particular identifiable part(s), the Work Program shall include redesign and/or replacement of only the defectively designed and/or manufactured part(s). In all other cases, the work program shall include inspection and/or correction of all of the LRVs in the fleet via a

mutually agreed to arrangement. Any Contractor-proposed changes to a Fleet Defect Corrective Action Plan or Work Program must be submitted to the SFMTA for approval. If (a) Contractor does not provide a Corrective Action Plan or Work Program within the time specified above (or as extended by SFMTA), or (b) Contractor does not submit revisions to a Corrective Action Plan or Work Program as requested by the SFMTA, or (c) Contractor does not fully correct a specific declared Fleet Defect within the time specified in the Corrective Action Plan or in the Work Program, SFMTA will assess liquidated damages in accordance with Section 19 of this Agreement.

65. Repair Procedures

65.1. Repair Performance. The Contractor is responsible for all warranty-covered repair work. To the extent practicable, the SFMTA will allow the Contractor or its designated representative to perform such work. At its discretion, the SFMTA may perform such work if it determines it needs to do so based on transit service or other requirements. Such work shall be reimbursed by the Contractor.

65.2. Repairs By Contractor

(a) Unless the time is extended by the SFMTA, the Contractor or its designated representative shall begin work on warranty-covered repairs within five calendar days after receiving notification of a Defect from the SFMTA. The SFMTA shall make the LRV available to complete repairs timely with the Contractor repair schedule.

(b) The Contractor shall provide at its own expense all spare parts, tools, and space required to complete repairs. At the SFMTA's option, the Contractor may be required to remove the LRV from the SFMTA's property while repairs are being performed. If the LRV is removed from the SFMTA's property, repair procedures must be diligently pursued by the Contractor's representative. Contractor shall bear all costs for transporting the LRV for repairs.

65.3. Repairs By SFMTA

(a) **Parts Used.** If the SFMTA performs the warranty-covered repairs, it shall correct or repair the Defect and any Related Defects utilizing parts supplied by the Contractor specifically for this repair. At its discretion, the SFMTA may use Contractor-specified parts available from its own stock if deemed in its best interest. Monthly, or at a period to be mutually agreed upon, reports of all repairs covered by this warranty shall be submitted by the SFMTA to the Contractor for reimbursement or replacement of parts. The Contractor shall provide forms for these reports.

(b) **Contractor Supplied Parts.** The SFMTA may require that the Contractor supply new parts for warranty-covered repairs being performed by the SFMTA. These parts shall be shipped prepaid to the SFMTA from any source selected by the Contractor within 10 working days of receipt of the request for said parts. Parts supplied by the Contractor shall be Original Equipment Supplier (OEM) equivalent or superior to that used in the LRV original manufacture.

(c) **Return of Defective Components.** The Contractor may request that parts covered by the warranty be returned to the manufacturing plant. The total cost for this action

shall be paid by the Contractor. Materials should be returned in accordance with Contractor's instructions.

(d) Failure Analysis. The Contractor shall, upon specific request of the SFMTA, provide a failure analysis of fleet defect-or safety-related parts, or major components, removed from LRVs under the terms of the warranty, that could affect fleet operation. Such reports shall be delivered within 60 days of the receipt of failed parts.

(e) Reimbursement For Labor. Contractor shall reimburse the SFMTA for labor. The amount shall be determined by multiplying the number of man-hours actually required to correct the Defect by the current top mechanic's hourly overtime wage rate. The wage rate, and therefore, the warranty labor rate, is subject to adjustment each year. Through June 30, 2009, the warranty labor rate shall be based on the mechanic's wage rate of \$148.72/hour, which includes labor, fringe benefits, and overhead. Contractor shall also reimburse the SFMTA for the cost of transporting the Vehicle if such action was necessary. These wage and fringe benefit rates shall not exceed the rates in effect in the SFMTA's service division at the time the Defect correction is made.

(f) Reimbursement For Parts. Contractor shall reimburse the SFMTA for defective parts and for parts that must be replaced to correct the Defect. The reimbursement shall be at the current price at the time of repair and shall include taxes where applicable and 15 percent handling costs.

(g) Reimbursement Requirements. The Contractor shall reimburse the SFMTA for warranty labor and/or parts within 60 days of receipt of the warranty claim.

65.4. Warranty After Replacement/Repairs. If any component, unit, or subsystem is repaired, rebuilt or replaced by the Contractor, or by the SFMTA with the concurrence of the Contractor, the component, unit, or subsystem shall be assigned a new warranty period equal to the original manufacturer's warranty, effective the replacement date.

The warranty on items determined to be fleet defects as defined in Section 65.7 shall be assigned a new warranty period equal to the original manufacturer's warranty, effective the repair/replacement date for corrected items on each LRV.

66. Delivery of Vehicles

66.1. Delivery Rate. Vehicle deliveries shall be in accordance with the Project Delivery Schedule (Exhibit B). SFMTA shall not have more than 8 LRVs out of service at any one time for rehabilitation work and related activities, including pre-inspection, transit, rehabilitation, testing or commissioning.

66.2. Pilot Delivery. The pilot LRV shall be delivered and ready for acceptance testing in accordance with Exhibit B. SFMTA will test the pilot LRV in accordance with the test program in TP10 of the Technical Specifications. After receiving written approval of the pilot LRV, the 2nd car shall be delivered to SFMTA for testing and approval in accordance with Exhibit B. The remaining LRVs shall be delivered to SFMTA on a schedule and rate per month to be approved by SFMTA. The Contractor proceeds at its own risk prior to SFMTA's written approval of the pilot LRV.

66.3. Vehicle Delivery Conditions: All deliveries to SFMTA shall be to an SFMTA-specified Light Rail Vehicle 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.

67. Acceptance of Vehicles

67.1. Procedure. After arrival at the designated point of delivery at the SFMTA, each Vehicle will undergo acceptance tests by SFMTA as described in the Technical Specifications, TP10.09. When a Vehicle passes all of the these tests, the SFMTA will issue a Final Acceptance Certificate to Contractor (see Technical Specifications, TP01.08.D). If a Vehicle fails acceptance tests, the SFMTA will notify the Contractor in writing of the reasons for non-acceptance, and the Vehicle will not be accepted until the repair procedures described in Section 69 of this Agreement have been completed and the Vehicle has successfully passed the tests. All deliveries of Vehicles shall be halted whenever two (2) or more Vehicles have failed the acceptance tests and are awaiting corrective action.

67.2. Conditional Acceptance. Notwithstanding the provisions of Section 67.1, if a Vehicle does not meet all requirements for full acceptance, the SFMTA may, at its exclusive option, "Conditionally Accept" the Vehicle and place it into revenue service, pending receipt of Contractor-furnished materials and/or labor necessary to effectuate corrective action for acceptance. For any Conditionally Accepted LRV, payments shall be made as provided in Section 7.2 above.

68. Repairs Prior to Acceptance.

68.1. General. The SFMTA may require the Contractor, or its designated representative, to perform repairs after non-acceptance or conditional acceptance, or the Contractor may request that the work be done by SFMTA personnel with reimbursement by the Contractor. Contractor shall inform SFMTA in advance of any modifications made to the Vehicle during the acceptance period.

68.2. Repairs by Contractor. If the SFMTA requires the Contractor to perform repairs after non-acceptance of the coach, the Contractor's representative must begin the repair within five (5) working days after receiving notification from the SFMTA of failure of acceptance tests. The Contractor shall provide, at its own expense, all spare parts, tools, and labor required to complete the repairs. At the SFMTA's option, the Contractor may be required to remove the Vehicle, at the Contractor's expense, from SFMTA property while repairs are being performed. The Contractor shall then provide a space to complete the repairs, shall diligently pursue the repairs, and shall assume risk of loss while the Vehicle is under its control.

68.3. Repairs by SFMTA.

(a) If the SFMTA agrees to a request by the Contractor for SFMTA to perform repairs on a Vehicle prior to SFMTA acceptance, SFMTA shall correct or repair the defect using parts supplied by the Contractor specifically for this repair. Monthly, or at a period to be mutually agreed upon, SFMTA shall submit to Contractor reports of all repairs covered by this procedure for actual cost reimbursement. The Contractor shall provide forms for these reports.

(b) If the Contractor supplies parts for repairs being performed by SFMTA before acceptance of the coach, Contractor shall ship these parts prepaid to SFMTA within 10 working days after receipt of the request for said parts. The Contractor may request that

defective components covered by this provision be returned to the manufacturing plant. Contractor shall bear all expenses for supplying such parts and for any associated costs.

(c) Contractor shall reimburse SFMTA for all costs of labor and materials (including taxes) for repairs made or caused to be made by SFMTA. If SFMTA performs the repairs itself, the amount shall be determined by multiplying the number of man-hours actually required to correct the defect by the current technician's hourly overtime wage rate, which includes fringe benefits and overhead, plus the cost of transporting the Vehicle if such action was necessary. If SFMTA requires the service of an outside repair shop, Contractor shall reimburse SFMTA for all such repair invoices. Contractor shall also reimburse SFMTA for administrative costs incurred in performing the repairs. The use of SFMTA labor will not relieve the Contractor from the responsibility to ensure that repairs are carried out in accordance with proper procedures.

(d) The City may deduct the cost of repairs from any monies due or that may become due to the Contractor under the Agreement, or if such monies are insufficient, the contractor or its surety shall pay to the City any deficiency.

69. Unavoidable Delays

69.1. **Definition.** An Unavoidable Delay is an interruption of the work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include and are limited to acts of God; floods; windstorms; tornadoes; wars; riots; insurrections; epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; changes in the work ordered by the City insofar as they necessarily require additional time in which to complete the entire work; the prevention by the City of the Contractor's commencing or prosecuting the work. The duration of said Unavoidable Delays shall be limited to the extent that the commencement, prosecution, and completion of the work are delayed thereby, as determined by the City.

69.2. **Notification of Delay.** The Contractor shall notify SFMTA as soon as the Contractor has, or should have, knowledge that an event has occurred that will delay deliveries. Within five calendar days, the Contractor shall confirm such notice in writing, furnishing as much detail as is available.

69.3. **Request for Extension.** The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by SFMTA to make a decision on any request for extension due to Unavoidable Delays. SFMTA shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension and the duration of such extension. SFMTA shall notify the Contractor of its decision in writing. The granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or of any other rights to which the City is entitled.

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

CITY

CONTRACTOR

Municipal Transportation Agency

AnsaldoBreda Inc.

Nathaniel P. Ford, Sr.
Executive Director/CEO

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.

Municipal Transportation Agency

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.

Board of Directors

Resolution No. _____

Dated: _____

Attest:

Lorenzo Reffreger
Director, Marketing, Sales and Service
1461 Loveridge Road
Pittsburg, CA 94565

Secretary

City vendor number: 41208

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robin M. Reitzes
Deputy City Attorney

Board of Supervisors

Resolution No. _____

Dated: _____

Attest:

Clerk

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 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 loading 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.

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.

XXV. AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (ARRA) REQUIREMENTS

A. Registration Requirements. The Contractor shall maintain a current registration in the federal Central Contractor Registration database, located at www.ccr.gov and provide the City with its CCR registration number and legal name as entered into CCR. A valid DUNS number and Tax Identification Number (TIN) are required in order to register.

B. Reporting Requirements. The Contractor shall be required to provide information to the SFMTA on the employment impact of all work being performed with ARRA funds so that SFMTA can report such information as required to agencies of the Federal Government. SFMTA will provide forms to Contractor for this purpose, as well as more detailed information and examples. At a minimum, Contractor shall track and/or report information regarding the following:

1. Number of direct jobs working on the project (including all created, retained, or existing jobs). An example of a direct job is a worker employed to construct a facility or to maintain or repair equipment on-site whose time is charged directly to the project.
2. Number of direct, on-project job hours that were worked. (expressed as "full-time equivalents" or FTEs) - calculated as total hours worked in jobs created, retained or existing divided by the number of hours in a full-time schedule, as defined by the contractor.
3. The amount of payroll for the jobs. (Total dollar amount of wages paid by the contractor or consultant for employees on the specified project. Payroll only includes wages and does not include overhead or indirect costs.)
4. The classification (or broad job category) of each job on the project.
5. A description of what was obtained for payment.

C. Records. Contractor agrees to maintain separate and distinct accounts, records, and documents that adequately identify the source and application of ARRA funds and must track accounting and reporting transactions accordingly.

XXVI. WHISTLEBLOWER PROVISIONS (*ARRA-funded contracts*)

Contractor cannot discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, made to the Recovery Accountability and Transparency

Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency or their representative, information that the employee reasonably believes is evidence of :

- **gross mismanagement of an agency contract or grant relating to covered funds;**
- **a gross waste of covered funds;**
- **a substantial and specific danger to public health or safety related to the implementation or use of covered funds;**
- **an abuse of authority related to the implementation or use of covered funds; or**
- **a violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.**

Contractor agrees to post notice of the rights and remedies as required by ARRA.

EXHIBIT B
PROJECT DELIVERY SCHEDULE

Delivery of 143 Rehabilitated Light Rail Vehicles and Associated Deliverables

DELIVERY MILESTONE	Calendar Days	AFTER NTP
a. Acceptance of Management Work Plan, Master Baseline Schedule	+30	30 days
b. Delivery of Pilot LRV ready for acceptance testing no later than	+150	180 days
c. Delivery of successful testing and Conditional Acceptance of the Pilot Car no later than	+30	210 days
d. Completion of successful testing and Conditional Acceptance of Second car	+60	270 days
e. Completion of successful testing and Conditional Acceptance of 143 rd car @ 4/month.	+1110	1380 days

Milestone requirements detailed in Section 67 of the Contract and in Section TP01.08 of the Technical Provisions.

EXHIBIT C**PRICE SCHEDULE****FOR SFMTA REHABILITATION OF IDENTIFIED SUBSYSTEMS FOR 143 LRVs**

Item No.	Description	Qty.	Unit Price	Total Price
1.	Rehabilitation of Couplers, Truck, Air Supply Units, Doors and Steps, Articulation Wiring and harnesses for 143 LRVs including manuals, CDRLs, Transport of Vehicle to Contractor facility and return to SFMTA facility, Site Support & Warranty*			
1.1	Rehabilitated couplers (electrical and mechanical) complete assembly (A)	143	\$53,500	\$7,650,443
1.2	Rehabilitated doors and steps complete assembly (B)	143	\$203,963	\$29,166,640
1.3	Replacement PSC-2 Wiring Harnesses (C)	143	\$6,860	\$980,980
1.4	Re-designed new articulation wiring and harnesses complete assembly (D)	143	\$37,306	\$5,334,726
1.5	Rehabilitated air supply units complete assembly (E)	143	\$24,003	\$3,432,425
1.6.	Replacement of Center Pins and Traction Motor Bearings (F)	143	\$11,210	\$1,602,991
1.7	Program Management, Engineering, QA Support (G)			\$2,813,410
Subtotal of Item 1 (A+B+C+D+E+F+G)				\$50,981,615

Item No.	Description	Qty.	Unit Price	Total Price
2.	Training 35 SFMTA employees and trainers on the operations and maintenance of supplied equipment including training on the use of special tools and software as applicable and manuals (H)	Lump Sum		\$20,000
3.	Spare Parts For 143 LRVs			
3.1	Rehabilitated couplers (electrical and mechanical) complete assembly (SFMTA will provide cores) (I)	10	26,750	267,498
3.2	Rehabilitated doors and steps complete assembly (J)	2	181,165	362,329
3.3	Replacement PSC-2 Wiring Harnesses (K)	1	6,859	6,859
3.4	Re-designed new articulation wiring and harnesses ; a. Jumper Cables b. Bulkhead Connectors			
3.4.1	Articulation Wiring Spares a+b (L)	10	21,871	218,708
Subtotal of Spares (I+J+K+L)				\$855,394
4.	Allowance for latent or unforeseen mechanical conditions			\$2,000,000
5.	Sales tax on materials (reimbursable)			\$2,895,545
CONTRACT TOTAL (1+2+3+4+5)				\$56,752,554

TOTAL CONTRACT PRICE

(amounts are rounded to the nearest dollar)

\$ 56,752,554

EXHIBIT D

PAYMENT SCHEDULE

1. Rehabilitation of 143 Light Rail Vehicles

Item No.	Activities	Progress Payment
1a.	Approval of Contractor's Management Work Plan and Program CDRL's (Program CDRL's as defined in section TP15 Deliverables Summary)	5% of the amount of Line Item 1 of Price Schedule (30% of the amount to be paid upon delivery of the Work Plan and all CDRLs to SFMTA and 70% to be paid upon approval of the Work Plan and all CDRLs by SFMTA)
1b.	Proof of payment of Major Parts and Assemblies including Couplers, Trucks, Air Supply Units, Doors and Steps, Articulation Wiring and harnesses, (Based on presentation of executed purchase orders)	Not to exceed 25% of the amount of Line Item 1 of Price Schedule
1c.	Delivery of car to Pittsburgh	20% of the amount of Line Item 1 of Price Schedule, on a per car basis
1d.	Completion of Pre-Shipment testing, and Release of car for shipment (Based on TP01.08 - Release for shipment Certificate)	20% of the amount of Line Item 1 of Price Schedule, on a per car basis.
1e.	Conditional Acceptance of each Vehicle (per Section 68.2 of Agreement) (Based on TP01.08 - Approval for Revenue Service Certificate)	20% of the amount of Line Item 1 of Price Schedule, on a per car basis.
1f.	Final Acceptance, delivery of all car-based deliverables, closure of all Corrective Actions (Based on Final Acceptance Certificate, per TP01.08)	5% of the amount of Line Item 1 of Price Schedule, on a per car basis.
1g.	Closure of all contract deliverables by SFMTA (Based on Contract Closeout Certificate TP01.08)	5% of the amount of Line Item 1 of Price Schedule

2. Training

Item No.	Activities	Progress Payment
2a.	Delivery and Approval of Training Plan	15% of the amount of Line Item 2 of Price Schedule
2b.	Completion of all training	80% of the amount of Line Item 2 of Price Schedule
2c.	Final acceptance of all contract deliverables	5% of the amount of Line Item 2 of Price Schedule

3. Spare parts

Spare parts delivered and accepted by SFMTA in San Francisco shall be paid according to the detailed list in Line Item 3 of Price Schedule

NOTE: Payment for the rehabilitation work will occur upon completion of listed items on this Payment Schedule, upon proper receipt of an invoice requesting payment and acceptable completion of all contract terms. Sales taxes shall be reimbursed quarterly based on evidence of payment to the California State Board of Equalization.