

PARATRANSIT BROKER AGREEMENT
BETWEEN THE
CITY AND COUNTY OF SAN FRANCISCO
AND
VEOLIA TRANSPORTATION SERVICES, INC.

Contract No. SFMTA 2008/09-54

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PARATRANSIT BROKER AGREEMENT

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

Agreement between the City and County of San Francisco and
Veolia Transportation Services, Inc.

This Agreement is made this 1st day of April, 2010, in the City and County of San Francisco, State of California, by and between: Veolia Transportation Services, Inc., a Maryland 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. The SFMTA wishes to hire the services of a paratransit broker to administer the City's Paratransit Program.
- B. A Request for Proposals ("RFP") was issued on June 29, 2009, and City selected Contractor as the highest qualified scorer 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.

Now, THEREFORE, the parties agree as follows:

Definitions

5310 Vehicles. Wheelchair accessible vehicles purchased with federal grant funds received by non-profit agencies for transportation of persons with disabilities and seniors.

Active User. A paratransit Customer who has conducted at least one transaction with the SF Paratransit Program (e.g. purchased ride tickets, scheduled a ride, etc.) during the previous twelve months.

Administrative Expenses. All of Broker's anticipated and authorized costs and expenses that are included in a Budget approved pursuant to this Agreement, including but not limited to capital expenses (other than costs to procure the MDCs) to be paid out by Broker, personnel and administrative expenses.

Agreement; Contract. This Paratransit Broker Agreement and all referenced Exhibits, which are incorporated by reference as though fully set forth herein.

Americans with Disabilities Act; ADA. The Americans With Disabilities Act of 1990.

Appeals Panel. The body that is convened to hear appeals of paratransit eligibility determination decisions. The Appeals Panel is comprised of three members, who typically include one representative of paratransit Riders, a transit property representative, and a medical professional.

Broker; Paratransit Broker. The Contractor selected to provide paratransit Services pursuant to this Agreement.

Broker's Office. The office where the Broker conducts its administrative operations, located at 68 12th Street, San Francisco, CA 94103

Budget. Documentation of anticipated expenses for an upcoming fiscal year to be prepared by Broker and approved by City, to include estimates of Operating Expenses.

Contractor. Veolia Transportation Services, Inc., also doing business under this Agreement as San Francisco (SF) Paratransit.

Customer; Rider. A person within the Service Area who meets all Program eligibility requirements and who requests paratransit services from Contractor.

Customer Database. The local database to be maintained by Contractor on Trapeze Pass software which manages eligibility, interfaces with the debit card software system, and which uploads Customer eligibility status to the MTC's Regional Eligibility Database.

Effective Date. The date when the Controller of the City and County of San Francisco has certified that available funds have been set aside for payment of services to be rendered under the Agreement and the Contractor has been so notified in writing by the SFMTA.

Executive Director/CEO. The Executive Director and Chief Executive Officer of the Municipal Transportation Agency.

Fare Media. Fare payment methods and technologies for paratransit service, such as SF Access ride tickets or the paratransit taxi debit card.

Fiscal Year. July 1 through June 30.

FTA-Defined Reportable Incident: A "Reportable Incident" involving a transit vehicle or that occurs on transit-controlled property, as defined in the Transit Glossary of the National Transit Database., located at the following internet address: <http://www.ntdprogram.gov/ntdprogram/Glossary.htm>.

Group Van. A mode of service in the SF Paratransit program which provides pre-scheduled transportation services to groups of ADA-certified Riders to a single location, such as an adult day health care program or a work site.

Holidays. New Years' Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day.

Inter-County Paratransit Service. Direct regional paratransit service available for paratransit Customers through agreements with the East Bay Paratransit Consortium and Golden Gate Bridge, Highway and Transportation District.

In Taxi Equipment (ITE). Hardware installed in San Francisco taxi cabs that will accept the paratransit debit card as a form of payment.

Management Fee. The fee established in Section 5.3 of the Agreement.

Manager. The Manager of the SFMTA's Accessible Services Program or his or her designee.

Mobile Data Computers (MDC). Portable, on-board computers, which will be mounted in SF Paratransit vans for the purpose of providing a direct interactive communications link to the software systems of the Broker and/or Provider.

Modes. The different means of providing Paratransit Services, including Taxi, Group Van, SF Access, and Shop-n-Roll Shuttle.

Muni. The San Francisco Municipal Railway, the public transportation system of the City and County of San Francisco, under the jurisdiction of the SFMTA.

Municipal Transportation Agency; SFMTA. The Municipal Transportation Agency, an agency of the City and County of San Francisco established by San Francisco Charter Article VIII A.

Metropolitan Transportation Commission; MTC. The nine-county San Francisco Bay Area regional transportation planning agency.

Operating Expenses. Anticipated and authorized service operating costs and expenses, including but not limited to payments to subcontractors.

Paratransit Debit Card System; PDCS. An account-based application that will allow taxi Riders to use a debit card to pay the fare. The PDCS system will use a magnetically striped card with the Rider's name, a unique identification number and photograph that will identify the Rider and automatically process authorization, payment and reconciliation of the paratransit fare through specialized debit card reading equipment to be installed in taxis.

Paratransit Grievance Committee. A committee to be established by the Broker for the purpose of hearing Customers' grievances.

Paratransit Plus Program. A program for persons who do not qualify for Services under the eligibility criteria of the ADA, but have demonstrated a high level of difficulty using Muni bus and light rail services.

Proposal. The Proposal submitted by Broker in response to the Request for Proposals.

Ramped Taxi. Taxis with ramps that are accessible by persons using wheelchairs.

Regional Eligibility Database; RED. Regional Database used by all Bay Area agencies providing paratransit services for the purpose of tracking eligibility status for Bay Area paratransit riders.

Request for Proposals; RFP. The Request for Proposals issued by City on June 29, 2009.

San Francisco Paratransit Coordinating Council, PCC. Muni's community advisory body for paratransit services in San Francisco, comprised of paratransit consumers, van and taxi providers and social service representatives. The PCC was established in the late 1970's to advise Muni on matters of paratransit and accessibility, and to advocate for the needs and views of the elderly and disabled community regarding Muni's paratransit services.

Service Area. The area within which Contractor must provide the Services required by this Agreement, which includes the area within the geographic boundaries of the City and County of San Francisco, Treasure Island. In San Mateo County the Service Area includes any location within a ¼ mile corridor on either side of an operating MUNI route within the portion of northern San Mateo County that is bounded on the south by School Street, and which includes the Daly City BART station, Westlake Shopping Center, and Top of the Hill, Daly City, and transfer points to San Mateo County's RediWheels service, including but not limited to the Stonestown Shopping Center on 9th Avenue, Daly City. The Service

Area also includes the Marin Headlands on Sundays and the following holidays: New Years' Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas.

Service Costs. Costs of the transportation services by all Modes providing paratransit service.

Service Standards. Specific, measurable standards that stipulate the level of service quality that paratransit Riders can expect from the Paratransit Broker and the Transportation Service Providers.

Services. The Paratransit Broker services to be provided under this Agreement for the purpose of managing the subsidized accessible van and taxi transportation access to Riders in the Service Area.

SF Access. Pre-scheduled ADA van service (formerly called ADA Access and Lift Van) currently provided pursuant to an agreement between the Contractor and Mobility Plus Transportation (MPT).

SF Paratransit Program; Program. The City and County of San Francisco's program to provide paratransit transportation services to eligible Riders in San Francisco as a component of Muni's accessible fixed route diesel coach, trolley coach, light rail, and historic streetcar services, in accordance with all applicable Service Standards.

Shop-n-Roll Shuttle; Shopping Shuttle. A grocery shopping service for seniors and persons with disabilities provided as one of the Services in the Paratransit Program.

Software. The Software licensed to the City under the Software License Agreement between Trapeze Software Group, Inc. and the City, dated October 31, 2008.

Subscription Service. A paratransit service for qualifying trips to and from fixed point destinations at the same time(s) and day(s) of the week for a period of at least 30 days.

Taxi. A motor-vehicle-for-hire licensed as a taxicab by the San Francisco Police Department and governed by the SFMTA.

Transportation Service Providers; Providers. Subcontractors to the Paratransit Broker that provide van and taxi transportation services for the Paratransit Program.

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 April 1, 2010 to June 30, 2015. SFMTA may, in its sole discretion, exercise an option to extend the Agreement for an additional five- (5-) year period, through June 30, 2020.

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 with a Notice to Proceed (NTP).

4. Services Contractor Agrees to Perform.

The Contractor agrees to perform the services provided for in Appendix A, "Scope of Work," attached hereto and incorporated by reference as though fully set forth herein, which services and tasks are subject to review and approval, as required, by the SFMTA.

5. Compensation and Reimbursement of Operating Expenses.

5.1. Amount of Contract. Compensation under this Agreement shall be based on a costs plus fixed fee structure, in accordance with the annual approved budgets, as described above. In no event shall the amount of this Agreement exceed One Hundred Eighteen Million, Five Hundred Ninety-Nine Thousand, Seven Hundred Ten Dollars (\$118,599,710), including the Management Fee, for the entire term of the Agreement. Further breakdown of Administrative Expenses and Management Fees associated with this Agreement is listed in Appendix B.

5.2. Payment. Reimbursement of Broker's Administrative Expenses and payment of the monthly Management Fee 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 Manager, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month.

City shall reimburse Contractor for Service Costs on a monthly basis based on estimated expenditures of subcontractors for the work. Contractor shall derive these estimates from the prior month's actual Service Costs. The Contractor will reconcile the actual Service Costs with the estimated Service Costs and will adjust the next month's invoice as appropriate.

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. City shall make payment to Contractor at the address specified in the Section entitled "Notices to the Parties."

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.

5.3. Management Fee. Broker shall be paid a Management Fee of \$674,277 under this Agreement (as set forth in Appendix B), pursuant to Broker's Proposal, provided that (a) Broker is not in default under this Agreement, or (b) an event has not occurred that, with the giving or notice or the passage of time, would constitute a default. The Management Fee shall be paid on a monthly basis: the Management Fee for the first three months of the Agreement shall be paid in three equal monthly installments; the Management Fee for each year thereafter shall be paid in 12 equal monthly installments. Should the Effective Date or the date of termination or expiration of this Agreement occur on any day other than the first day of a calendar month, the Management Fee for that particular month shall be prorated based on a 30-day month.

5.4. Reimbursement of Administrative Expenses Broker shall be entitled to reimbursement from the City for all Administrative Expenses properly incurred and paid by Broker in the performance of Broker's duties hereunder and as specified in the approved Budget in accordance with Section 5.6, subject to all City approvals required under this Agreement. City's obligation to reimburse Broker for

wages, salaries or benefits is limited to reimbursement for time that employees of Broker are actually working for the benefit of City.

5.5. Limitations on Payment of Fees. The City's obligation for payment of Management Fees incurred by the Broker in the performance of this Agreement shall not exceed the amount listed in the line item in the Budget for such fee. This Fee schedule for the duration of the contract will be negotiated for all contract years at the time the contract is approved. The City's obligation for payment and reimbursement of Administrative Expenses incurred by the Broker in the performance of this Agreement shall not exceed the total amount of the Administrative Budget for that year. If expenses for an individual line item in the Budget are expected to exceed the amount for that line item by more than five percent (5%) prior approval must be sought from the Manager. The City's obligation for payment of Management Fees and reimbursement for Administrative Operating Expenses in the aggregate shall not exceed the total approved Budget for these items without written approval by the SFMTA.

5.6. Budget Approval. Contractor shall submit its budget for each fiscal year, commencing July 1 and ending each following June 30 no later than the preceding January 15. SFMTA shall review, modify and approve the budget no later than May 31 following the submittal. The budget will consist of an Administrative Budget including the pre-negotiated Management Fee and a Service Budget for transportation provider operating expenses per mode. Approval of each budget shall be subject to available funding for the applicable fiscal year. The City is not authorized to make payments for any Administrative Expense for which funds have not been authorized under the approved Budget, except as expressly authorized by this Agreement.

5.7. Cost Principles. The Contractor acknowledges it is familiar with the provisions of Office of Management and Budget (OMB) Circular A-87, Cost Principles For State, Local, and Indian Tribal Governments; that it understands the City does not intend to pay the Contractor for costs under this Agreement which are not reimbursable to City from its funding agencies in accordance with Circular A-87; and that all payments under this Agreement are subject to audit and adjustment.

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.

10.1. Obligation of Contractor. 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. Possessory Interest Taxes. 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:

10.2.1. 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;

10.2.2. 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.

10.2.3. 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.

10.2.4. 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.

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.

15.1. 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:

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

15.1.2. 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

15.1.3. Commercial Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

15.1.4. 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.

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

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

15.2.2. 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.

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

15.4. 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.

15.5. 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.

15.6. 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.

15.7. 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.

15.8. 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.

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

15.10. 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. Security Deposits.

16.1. Performance Bond.

16.1.1. Amount of Bond. Contractor agrees that within five Days after notification from the SFMTA that all required City agencies have approved this Agreement, Contractor will deliver to the City a performance bond, which may be renewable annually, in the amount of \$4,500,000 to guarantee Contractor's performance obligations under this Agreement. If Contractor fails to deliver the initial performance bond within five Days, or fails to notify City annually of the renewal of the bond within five Days before each anniversary of the Effective Date, City will be entitled to cancel this Agreement. Contractor shall maintain the performance bond during the term of this Agreement. In the event this Agreement is assigned, as provided for in Section 31, City will return or release the performance bond not later than the effective date of the assignment, provided that the assignee has delivered to City an equivalent performance bond, as determined by City. In the event that the City exercises its option to extend this Agreement as provided in Section 2, then the performance bond must be re-issued in the amount of \$5,000,000 for the duration of the extension of the term of this Agreement. Notwithstanding anything to the contrary herein, in no event shall Surety's aggregate liability exceed the penal sum of the applicable bond amount; provided, however, that this limitation shall not affect Contractor's liability under this Agreement.

16.1.2. Sureties. 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 must be satisfactory to City. During the period covered by the Agreement, if any of the sureties upon the bond become insolvent or, in the opinion of the City, unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within 30 Days after notice given by the City to Contractor, must by supplemental bond or otherwise, substitute another and sufficient surety approved by City in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30 Day period to substitute another and sufficient surety, City may deem Contractor 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 to Contractor under the Agreement. The amount for which the surety will have justified on the bond and the moneys so deducted will be held by SFMTA as collateral, for the performance of the conditions of the bond.

16.2. Letter of Credit.

16.2.1. Requirements. As an alternative to the performance bond requirement provided in Section 16.1, within five Days after receiving notification of approval of the Agreement, Contractor shall provide to City and maintain, throughout the term of this Agreement or until all of its obligations under the Agreement have been completely performed, whichever is later, a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, in the amount of \$4,500,000. The letter of credit must have an original term of one year, with automatic renewals of the full \$4,500,000 amount throughout the initial term of the Agreement. If the City exercises the option to extend the term, the letter of credit shall be increased to \$5,000,000, to be renewed annually throughout the remainder of the extension of the term. 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.

16.2.2. 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, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating.

16.2.3. Extensions of Agreement. Should the City exercise the option to extend the Agreement as provided in Section 2, Contractor shall increase the letter of credit to \$5,000,000 for the term of the extension and throughout the performance of Contractor's obligations under the Agreement.

16.2.4. 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.

16.2.5. 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 under the terms of this Section 16.2. 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.

16.2.6. 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 2, 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 31, 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.

16.2.7. 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.

16.3. Fidelity Bond As a condition precedent to the formation of this Agreement, Contractor, at its own expense, shall have obtained and delivered to City an undivided or blanket fidelity bond in an amount of not less than \$300,000, covering all officials, employees and agents handling or having access to funds received or disbursed by Contractor under this Agreement or who are authorized to sign or countersign checks. Said bond or bonds shall also provide that thirty (30) days prior written notice of cancellation or material change of said bond or bonds shall be delivered to the SFMTA.

17. 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.

18. 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.

19. 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.

20. Incentives/Disincentives.

By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 of this Agreement, are delayed beyond the scheduled milestones and timelines as provided in Appendix A (or as they may be adjusted by the SFMTA for reasons beyond the Contractor's control) or do not meet the goals as described in Appendix A and Appendix F, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the disincentive payments set forth in Appendix F are not a penalty, but are a reasonable estimate of the loss that City will incur based on the failure to comply with the listed objective, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the disincentive payments 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 complete the objective as described unless the SFMTA agrees to any change in the objective.

Further, in the event that Contractor meets or exceeds the goals as set forth in Appendix F, SFMTA will pay Contractor incentives as set forth in Appendix F. **Total incentives paid per year shall not exceed \$50,000.**

21. Default; Remedies.

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

21.1.1. 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
- 10. Taxes
- 15. Insurance
- 24. Proprietary or confidential information of City
- 30. Assignment
- 37. Drug-free workplace policy,
- 53. Compliance with laws
- 55. Supervision of minors
- 57. Protection of private information
- 58. Graffiti removal

21.1.2. 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.

21.1.3. 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.

21.1.4. 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.

21.2. 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.

21.3. 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.

22. Termination for Convenience.

22.1. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor at least 60 days' written notice of termination. The notice shall specify the date on which termination shall become effective.

22.2. 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:

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

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

22.2.3. Terminating all existing orders and subcontracts.

22.2.4. 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.

22.2.5. Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders, leases, subcontracts, and employees.

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

22.2.7. 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.

22.3. 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:

22.3.1. 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.

22.3.2. 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.

22.3.3. 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.

22.3.4. 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.

22.4. 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).

22.5. 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.

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

23. Rights and Duties upon Termination or Expiration.

23.1. Cooperation. In the event of termination of this Agreement for any reason, Contractor shall cooperate fully in any transition of the contract to a new contractor.

23.2. Survival. 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
11. Payment does not imply acceptance of work
13. Responsibility for equipment
14. Independent Contractor; Payment of Taxes and Other Expenses
15. Insurance
16. Indemnification
17. Incidental and Consequential Damages
18. Liability of City
24. Proprietary or confidential information of City
26. Ownership of Results

- 27. Works for Hire
- 28. Audit and Inspection of Records
- 48. Modification of Agreement.
- 49. Administrative Remedy for Agreement Interpretation.
- 50. Agreement Made in California; Venue
- 51. Construction
- 52. Entire Agreement
- 56. Severability
- 57. Protection of private information

23.3. Subject to the immediately preceding paragraphs, 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.

24. 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.

25. 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.

26. 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: San Francisco Municipal Transportation Agency
 One South Van Ness Avenue, 7th Floor
 San Francisco, California 94103-1267
 Attention: Annette Williams
 email: annette.williams@sfmta.com
 Fax: 415-701-4728

To Contractor: Veolia Transportation Services, Inc.
 Mark L. Joseph
 CEO & Vice Chairman
 720 E. Butterfield Road, Suite 300
 Lombard, IL 60148-5601
 Fax: 630-495-1302

With a copy to: General Manager
Veolia Transportation Services, Inc.
68 12th Street, Suite 100
San Francisco, CA 94103-1297
Fax: 415-351-3136
marc.soto@veoliatransportation.com

Any notice of default must be sent by registered mail.

27. 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.

28. Works for Hire.

28.1. General. 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.

28.2. SFMTA Trademarks and Service Marks.

28.2.1. License. Contractor is licensed to use SFMTA's or Muni's name (SFMTA, Muni, SF Muni; San Francisco Municipal Railway) and the Muni "worm" logo (collectively, "SFMTA Property") on Contractor's "SF Paratransit" website in connection with its management of the Paratransit Program for City.

28.2.2. Limitations of License. SFMTA Property shall not be used in conjunction with any other licensed name, character, symbol, design, likeness or literary or artistic material, unless any such use is expressly permitted in writing by SFMTA. Contractor shall not alter SFMTA Property, as used on Contractor's Web site, in any way, including size, proportion, colors, or elements, without approval from SFMTA.

28.2.3. Promotions or Advertising. Contractor shall obtain City's approval for any text used in conjunction with this license on Contractor's website or in any promotional or advertising media produced by Contractor. SFMTA shall provide text, as requested by Contractor, and shall update the text regarding SFMTA's services when required.

28.2.4. Link to SFMTA Web Site. On Contractor's Website, there shall be a direct link to the SFMTA home page (<http://www.sfmta.com>). The text to accompany this link shall state as follows (unless otherwise updated by SFMTA): "For information about public transit (Muni) in San Francisco, visit the San Francisco Municipal Transportation Agency website or call 415-673-6864." The link shall have the following qualities:

(a) The link may be a text link or a graphics link using only a MUNI logo supplied by MUNI and displayed in accordance with this Agreement.

(b) The text or logo link to the SFMTA Web site must not require auxiliary client-side technology (e.g. cookies, JavaScript, Flash, Java, etc.) in order to work.

(c) The text or logo link to the SFMTA Web site shall be "stand alone; in other words, it shall not be imbedded in an item (*i.e.*, product) description.

(d) The text or logo link to the SFMTA Web site shall not put the SFMTA site in frames.

(e) There must not be a link to a URL containing "/home" or any page within that directory.

(f) If a logo link is used, the IMG tag for that logo must include an ALT attribute containing "SFMTA" or "SF Muni" or "Visit SFMTA" or "Visit SF Muni" or "Link to SFMTA" or "Link to Muni".

28.2.5. Link to Contractor's Web Site. SFMTA will provide a link on its web page to Contractor's website. Contractor shall provide SFMTA with the specific URL for the appropriate page on its website.

28.3. Trapeze Software License Agreement

28.3.1. Authorized User. Contractor shall be an Authorized User under the Software License Agreement between Trapeze Software Group, Inc., and the City and County of San Francisco, dated October 31, 2008, and shall be subject to the terms and conditions of said Software Agreement as they apply to an Authorized User. The Software Agreement is attached as Appendix C to this Agreement and incorporated by reference as though fully set forth.

28.3.2. Form 1. Contractor agrees to execute Form 1 to the Software Agreement and submit it to Trapeze Software Group, Inc. prior to its use of the Software.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.

34. Small Business Enterprise Program/Subcontractors.

Contractor agrees to comply with the requirements of the Small Business Enterprise (SBE) Program described in Appendix E and incorporated into this Agreement. No substitutions of SBE subcontractors shall be made at any time without the written approval of the Manager of the SFMTA Contract Compliance Office. In the event that an SBE subcontractor is unable to perform successfully and is to be replaced, the Contractor shall make good faith efforts to replace the original SBE subcontractor with another SBE subcontractor.

35. Nondiscrimination; Penalties.

35.1. 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.

35.2. 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 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.

35.3. 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.

35.4. 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.

35.5. 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) 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. Left Blank by Agreement of the Parties

43. 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.

44. Requiring Minimum Compensation for Covered Employees.

44.1. 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.

44.2. 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. All SF Access and Group Van contractors shall pay SFMTA-funded paratransit drivers a minimum wage as required by the City's Minimum Compensation Ordinance for the first 90 days of service and/or completion of the driver training requirements, whichever comes first. Currently the hourly wage required by the Minimum Compensation Ordinance is \$11.54 (\$11.03 per hour for non-profit entities). After that period, paratransit provider subcontractors shall pay SFMTA-funded SF Access drivers not less than \$14.80 per hour and Group Van drivers not less than \$12.97 per hour. These minimum wages shall increase on a yearly basis based on cost of living adjustments received by the contractors. All cost of living adjustments received by subcontractors shall be passed on to all SFMTA-funded paratransit drivers with at least a proportional wage adjustment.

44.3. 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 rebuttably presumed to be retaliation prohibited by the MCO.

44.4. 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.

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

44.6. 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.

44.7. 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.

44.8. 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.

44.9. 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.

45. Left Blank by Agreement of Parties (HCAO)

46. First Source Hiring Program.

46.1. 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.

46.2. 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:

46.2.1. 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.

46.2.2. 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.

46.2.3. 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.

46.2.4. 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.

46.2.5. 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.

46.2.6. Set the term of the requirements.

46.2.7. Set appropriate enforcement and sanctioning standards consistent with this Chapter.

46.2.8. 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.

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

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

46.4. 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.

46.5. Liquidated Damages. Contractor agrees:

46.5.1. To be liable to the City for liquidated damages as provided in this section;

46.5.2. 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;

46.5.3. 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.

46.5.4. 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;

46.5.5. 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.

46.5.6. 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.

46.6. 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.

47. 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.

48. 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.

49. 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%.

50. 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.

51. 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.

52. Construction.

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

53. 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."

54. 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.

55. 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.

56. Left blank by agreement of the parties.

57. 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.

58. 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.

59. 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.

60. 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.

61. U.S. DOT Provisions.

The provisions contained in the FTA Requirements for Personal Services Contracts in Appendix D 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.

62. 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.

63. Lease of Vehicles.

63.1. City as Lessor. City has procured the following Vehicles and leased them to the Contractor, who in turn has subleased the Vehicles to van Transportation Service Providers for the terms indicated on Table 1 below (the "Subleases").

63.1.1. 2006 Purchase. Through an intergovernmental procurement agreement with the State of California, City purchased from El Dorado Bus Sales, Inc., seventeen (17) modified paratransit vans (the "vans"), at a cost of \$1,007,179, and exercised an option to purchase three (3) additional vans at a cost of \$177,738.

63.1.2. 2008 Purchase. Through an intergovernmental procurement agreement with the State of California, City purchased from Bus West twenty-four (24) modified 22' paratransit vans (the "Type II vans"), and five modified 25' paratransit vans (the "Type III vans"). The City also purchased five minivans (the "minivans") from El Dorado Bus Sales, Inc. The total cost of these vehicles did not exceed \$2,055,000. Through a separate procurement agreement with San Mateo County Transit District, the SFMTA purchased from El Dorado Bus Sales, Inc., six (6) Type II vans at a cost of approximately \$445,800.

Table 1: Subleases of City-Owned Vehicles

Vehicle Year	# of Vehicles	Manufacturer	Vehicle Type	Sublease Term
2006	20	El Dorado	Type II van	September 5, 2006, - March 31, 2011
2008	6	El Dorado	Type II van	August 15, 2008, - March 31, 2011
2008	5	El Dorado	Minivan	September 18, 2008 - March 31, 2010
2008	14	Bus West	Type II van	October 10, 2008, - March 31, 2010
2008	10	Bus West	Type II van	January 1, 2009, through March 31, 2010
2008	5	Bus West	Type III van	March 1, 2009, - March 31, 2010

63.2. Extension of Subleases. Contractor shall extend the Subleases, as required, through the end of the contracts with the Transportation Service Providers.

63.3. Future Procurements of Vehicles. As the vans and the minivans reach or exceed the end of their useful lives (approximately four years), the City intends to procure replacement vehicles and lease them to Contractor, under the terms and conditions set forth in this Section 63. City expects the value of the replacement vehicles to approximate the value of the vans and the minivans, subject to cost of living adjustments. The lease of such replacement vehicles, including the terms of lease payments, shall be effected by an amendment to this Agreement executed by the Executive Director/CEO without the necessity of further approvals unless the value of the replacement vehicles exceeds the value of the vehicles being replaced by an amount above the contracting authority of the Executive Director/CEO.

63.4. Conditions Precedent to Possession of Vans. Contractor shall not be entitled to possession of the vans until Contractor has delivered to City the following:

63.4.1. Verification of Business Automobile Liability Insurance covering all vans, in accordance with the terms provided in this Lease and in Section 15 of Agreement; and

63.4.2. A fully executed copy of Contractor's assumption of the sublease with each San Francisco van Transportation Service Provider that will be operating the vans.

63.5. Sublease by Contractor (Van Agreements). Unless otherwise agreed to by City, Contractor shall sublease the vans throughout the term of this Lease to those van Transportation Service Providers participating in the Program. At a minimum, the subleases shall include (a) a regular maintenance and repair program for the vehicles; (b) reporting requirements for ADA van trips; (c) insurance and indemnification, as provided in this Lease Agreement; (d) a provision for a discounted cost for trips in lieu of sublease payments; and (e) incentives to enhance the quality of service to paratransit customers.

The terms of each sublease are subject to approval by City prior to execution of the sublease between Contractor and its subcontractor or subcontractors. If any subcontractor violates, in a material respect, any provision of its subcontract governing use of the vans, Contractor, with approval of City, shall terminate that sublease. In that event, Contractor, with approval of City, shall transfer use of the vans to another sublessee that is not in violation of any material provisions of its sublease.

63.6. Lease Payments.

63.6.1. Amount of Lease Payment.

(a) **2006 Purchase.** Lease payments or cost per trip discount shall be determined by negotiations with the selected van service providers, but in no event shall the lease payments be less than \$1,111 per vehicle per month, for the term of this Lease.

(b) **2008 Purchase.** Lease payments or cost per trip discount shall be determined by negotiations with the selected van service providers, but in no event shall the monthly lease payments for the term of the Lease be less than \$1,000 for each Type II vehicle, \$1,100 for each Type III vehicle, and \$900 for each minivan.

63.6.2. Procedure. Contractor's Lease payments shall be made concurrently with its monthly invoices, as provided in Section 5.2 of Agreement. Payments shall be made on a monthly basis and shall commence with the first regular invoice from Contractor to City after thirty (30) days after the effective date of this Amendment. Along with its payment, Contractor shall submit a monthly report detailing, for the van program, the number of passenger trips (one passenger/one way); and the number of trips credited to the Paratransit Program, as represented by the Lease payment, whether attributed to the van program or other paratransit taxi service. In the event Contractor is unable for any reason to make a monthly payment in full through a credit of no-cost trips, Contractor shall make said payment or portion thereof not represented by such a credit in cash collected from the sublessees to the extent that said amount is reasonably collectable, or deducted from amounts payable by Contractor to sublessees.

63.7. Obligations of Contractor. With respect to lease of the vans, Contractor shall:

63.7.1. Include language in each sublease requiring the sublessee to maintain and repair the vans in safe and reliable condition. Contractor shall conduct an independent inspection of the vehicles annually, in addition to oversight by SFMTA Fleet Maintenance staff.

63.7.2. Include language in each sublease requiring the vans to be operated in a safe manner consistent with all applicable provisions of Federal, State and local laws.

63.7.3. Report to City within thirty (30) days any occurrence that will prevent compliance with this section (e.g., accident rendering the vehicle inoperative, mechanical deterioration to the extent that repair is infeasible).

63.7.4. Include language in each sublease requiring that the van service providers, at their own cost, properly maintain and repair the vehicles.

63.7.5. Include language in each sublease that requires each sublessee, unless otherwise authorized by the City in writing, within five (5) days after termination of this Lease Agreement, to deliver the vans in good working condition and in good repair to City or City's authorized representative at a location to be designated by City.

63.7.6. Contractor shall take commercially reasonable steps to monitor and compel each sublessee's compliance with all sublease requirements.

63.8. Use of Vans. The vans shall be used solely for transporting qualified paratransit passengers as defined by Federal regulations and SFMTA-approved criteria.

63.9. Audit; Inspection of Records. In order to ensure compliance with this and other provisions of this Lease, City reserves the right to inspect and audit records maintained by Contractor and van service provider sublessees in the performance of this Lease. These records include, but are not limited to, dispatch reports and other records of communications between van service providers and paratransit patrons. Contractor shall include language in each sublease requiring van service provider sublessees to allow inspection and auditing by City or its agents during normal business hours, and to maintain all records generated in the performance of this Lease and the Paratransit Program for a period of at least three (3) years after the end of the Lease term. Any violation of the provisions of this Section will be considered a material breach of the Lease and/or sublease and subject Contractor or sublessee to all remedies for breach available under law, including, but not limited to, termination of the Agreement. Contractor and its sublessees shall also permit any State or Federal agency having jurisdiction over the

vehicles or City's compliance with the Paratransit Program to inspect and audit records, as provided in this section.

63.10. Insurance. During the full term of the Lease, Contractor shall require all van service providers operating the vans to maintain the following insurance on the vehicles:

63.10.1. Business Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-owned and Hired auto coverage, as applicable, and including physical damage coverages of comprehensive and collision for the actual value of the vehicle at the time of loss, with loss payable to City.

63.10.2. Contractor or its sublessees shall be responsible for payment of any insurance deductibles.

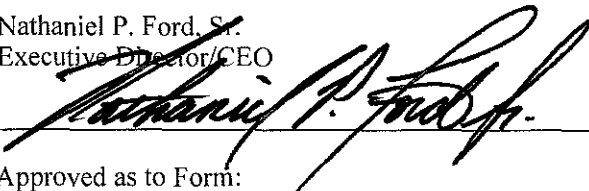

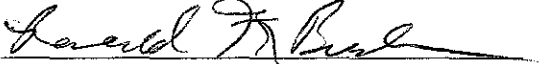
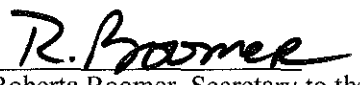

63.10.3. Contractor shall ensure that its Business Automobile Liability Insurance required under Section 15 of this Agreement includes coverage insuring both Contractor's and City's interest in the vans.

63.11. Insolvency. The vans shall be immediately returned to the possession of City upon the bankruptcy, reorganization (within the meaning of the Bankruptcy Code), dissolution or liquidation of Contractor or its sublessee(s).

63.12. Transfer of Vehicle. Except as provided in Section 63.4 of Agreement with respect to the sublease of the vans to a subcontractor or subcontractors approved by City, Contractor shall not transfer or otherwise dispose of the vans during the pendency of this Lease without the written approval of the Executive Director/CEO or his or her designee.



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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <p>Nathaniel P. Ford, Sr. Executive Director/CEO</p> 	<p>CONTRACTOR</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p>
<p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By:  Robin M. Reitzes Deputy City Attorney</p>	 Ronald K. Bushman Regional Vice President Veolia Transportation Services, Inc. 720 E. Butterfield Road, Suite 300 Lombard, IL 60148-5601 City vendor number:
<p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: <u>09-201</u></p> <p>Adopted: <u>December 1, 2009</u></p> <p>Attest:  Roberta Boomer, Secretary to the SFMTA Board of Directors</p>	<p>San Francisco Board of Supervisors</p> <p>Resolution No. <u>32-10</u></p> <p>Adopted: <u>January 26, 2010</u></p> <p>Attest:  Clerk of the Board</p>

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: Software Agreement
- D: FTA Provisions
- E: SBE Provisions
- F: Incentive/Disincentive Plan

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Appendix A
Paratransit Broker Agreement
Scope of Work
All tasks are continuous unless specified

SECTION I: ELIGIBILITY

Task Number	Eligibility-Related Activities	Tasks
1.	Administer an ADA-compliant user certification and recertification process for SFMTA and Department of Aging and Adult Services programs. This process shall include, but not be limited to, the following tasks.	<ul style="list-style-type: none"> a. Provide application forms and other program materials upon request to all prospective applicants of paratransit services. b. Evaluate applicants for eligibility within 21 days of receipt of completed application. c. If the eligibility determination is not made within 21 days, provide service based upon presumptive eligibility status until determination is made. d. In accordance with past statistical data, utilize second level assessments for a minimum of 90% of new applicants during the eligibility determination process. A minimum of 50% of those second level assessments must be in-person interviews. e. Process recertification applications as necessary to ensure that all ADA-eligible individuals undergo the recertification process once every three years. f. In accordance with past statistical data, utilize second level assessments for a minimum of 30% of applicants applying for recertification. g. Mail written documentation of ADA eligibility to consumers within 21st day of receipt of completed application h. Ensure that eligibility process is compatible with SFMTA policies and procedures governing the SF Paratransit Program.
2	Provide information to applicants during the eligibility process.	<ul style="list-style-type: none"> a. Establish and provide a list of community resources, to include at least 10 neighborhood-based agencies that are available to provide information and assistance to applicants completing applications b. Provide written notification to the applicant throughout the process such as: <ul style="list-style-type: none"> i. Acknowledgement of receipt of application after the applicant's basic information has been entered into the Broker Customer Management database; ii. Letter notification of a 2nd level assessment, if required; iii. A letter advising the applicant to schedule an in-person interview appointment, if necessary. iv. Once final determination is made, a registration packet with the Rider's Guide and a photo ID appointment letter or an "application denied" letter c. Provide telephone and in-person information to applicants regarding the eligibility process d. Hold information sessions upon request at community locations, for applicants or social service Providers. Session to include an overview of the eligibility process, a question and answer session and assistance with completing forms
3	Provide a first-time and ongoing	<ul style="list-style-type: none"> a. Provide training program for eligibility analysts.

Task Number	Eligibility-Related Activities	Tasks
	training program for eligibility analysts.	b. Provide ongoing refresher training on all aspects of eligibility determination, including current research in medical conditions as they relate to functional ability.
4	Administer and staff an ADA-compliant eligibility appeals process.	<ul style="list-style-type: none"> a. Conduct a management-level administrative review of the appeal. b. Provide appeals hearing within 30 days of request. c. Inform applicants of their right to an appeals hearing after a determination regarding eligibility is made. d. Recruit qualified medical and/or licensed professionals, fixed route representatives and consumers to serve as appeal panel members. e. Provide a comprehensive and ongoing training program for appeal panel members to ensure a sufficient number of trained consumer appeals panel members (at least 8 active participants) Provide option to appellants for a language interpreter, providing, at a minimum, translation in Russian, Spanish, Cantonese, and Mandarin (and make a good faith effort to provide translation for other languages as requested). Provide transportation to/from appeals hearing site f. Prepare appropriate information for all appeal panel members and conduct hearing under approved procedures g. Within 30 days of hearing, provide written notification to appellant of appeal panel's decision, citing specific bases for eligibility determination,
5	Register certified persons as active users of the program.	<ul style="list-style-type: none"> a. Maintain a current Customer Database (see Section III.1) b. Issue a photo ID card to registered SF Access and Taxi Customers that includes eligible category of service, conditions on the Customer's eligibility, and the eligibility expiration date. For paratransit Taxi Customers, their debit card is also their photo identification card.
6	Determine changes in eligibility.	a. Re-assess or revoke the eligibility of any Customer who Broker determines to be ineligible due to information on the application that is false, inaccurate, or that has changed sufficiently to warrant a change in eligibility with due process for an appeal.
7	Administer and conduct eligibility certification for Shopping Shuttle participants.	<ul style="list-style-type: none"> a. Distribute Shopping Shuttle registration forms to seniors and people with disabilities living in target neighborhoods or public housing sites. b. Review registration forms and assess eligibility based on policy guidelines. c. Track name, address, date of birth, and eligibility category in the Broker's Customer Management Database. d. Monitor service quality. e. Ensure that program rules are adhered to by Customers and Providers. f. Develop and produce outreach materials. g. Conduct outreach at community-based organizations in target neighborhoods. h. In conjunction with Providers, coordinate weekly ride schedules to ensure that at least seven riders are signed up for each scheduled trip.

Task Number	Eligibility-Related Activities	Tasks
8	Offer applicants the ability to participate in the Paratransit Plus program when they do not meet ADA-eligibility criteria but have demonstrated a high level of difficulty using regular bus and light rail service.	<ul style="list-style-type: none"> a. Develop updated eligibility guidelines in conjunction with SFMTA staff (within 90 days of Effective Date) b. Determine eligibility according to established guidelines c. Monitor program and provide ongoing statistical reports as requested by SFMTA
9	Process requests by visitors to San Francisco to use ADA paratransit services.	<ul style="list-style-type: none"> a. Process requests within two working days or sooner, by: <ul style="list-style-type: none"> i. confirming visitor's ADA status via phone or letter; or ii. registering individual on local and regional databases; or iii. providing information on fixed route and paratransit services; or iv. providing fare information for those individuals wishing to purchase tickets in advance or v. Providing service through established day-ahead reservations protocol directly with SF Access contractor.

SECTION II: CUSTOMER SERVICE/OUTREACH

Task Number	Customer Service/Outreach-related Activities	Tasks
1.	Serve as the principal Customer service representative for SF Paratransit Customers, and be available to Customers who visit the Broker's Office, or who seek information by telephone, mail or the internet.	<ul style="list-style-type: none"> a. Maintain an ADA-accessible office open to the public for paratransit-related business. b. Be available to customers in person and by telephone at least between 9:00 a.m. and 4:45 p.m. c. Customer information services shall be accessible via TTY or other comparable telecommunications access method. d. Provide a Customer service representative to answer the main phone line on a daily average of 98% of the 465 minutes during each business day. e. Answer in person at least 80% of all phone calls in 45 seconds or less, including TTY calls. Average call hold time during a business day may not exceed 60 seconds. All TTY calls must be transferred to an answering machine if not answered by a person within one minute. f. Respond to TTY and voicemail messages by the following business day at the latest. g. Assist customers to visit the Broker's Office within 15 minutes of their arrival. h. Provide professional, courteous, Customer service at all times. i. Provide written, telephone and in-person Customer services in English, Chinese, Russian, and Spanish. j. Provide American Sign Language interpretation or real-time captioning at the Broker's Office if a Customer gives at least 72 hours notice of the request for such accommodations.
2	Track Customers who request accessible formats and provide informational materials to each Customer in a format that is accessible.	<ul style="list-style-type: none"> a. Maintain accessibility information for each Customer in the Paratransit Broker Customer management database. b. Provide primary written information, such as eligibility forms, in the specific accessible format requested by each Customer.
3	Educate prospective users of paratransit services to increase the awareness of ADA paratransit services within the community, with particular attention to underserved populations (e.g., persons with limited English-speaking ability) within the community of potential ADA-eligible users.	<ul style="list-style-type: none"> a. Provide 20 information sessions/workshops annually to community-based agencies to assure awareness and understanding of the SF Paratransit Program. b. Maintain documentation of all such workshops with records of attendance and all instructional materials provided to attendees. c. Update and maintain the SF Paratransit website (www.sfparatransit.com) to provide information about the SF Paratransit Program (see Section III: Information Technology). The SF Paratransit website should include application forms, Taxi service increase request forms,

Task Number	Customer Service/Outreach-related Activities	Tasks
		<p>Riders' Guides, a method to submit complaints or commendations, an electronic payment mechanism, fare information, and other relevant policies and information. The website should be updated as necessary to provide up-to-date information</p> <ul style="list-style-type: none"> d. Develop an annual newsletter for consumers, providing paratransit service summaries, news, and information, to be disseminated to paratransit Customers and Group Van agencies. e. Ensure that outreach efforts include seniors and persons with disabilities, including those who do not speak English. Provide mailing services for at least three announcements to paratransit consumers annually as requested by SFMTA. f. Distribute <i>Community in Motion</i> video to appropriate community-based organizations and the public library; make the video available to applicants and potential applicants.
4	Staff public meetings and working groups on paratransit service issues to ensure community input in problem-solving to improve programs and services.	<ul style="list-style-type: none"> a. Staff the three modal subcommittees of the PCC Executive Committee -- the Taxi/Ramped Taxi Subcommittee, the Group Van Subcommittee and the SF Access Subcommittee b. In conjunction with the Chair of each Subcommittee, develop the agendas, take minutes, and mail the agenda packets. Provide meeting materials in accessible formats as requested. c. Prepare reports and analysis materials as needed for PCC related meetings d. Staff workgroup meetings, as required, to include members of the PCC and community stakeholders.
5	Maintain a consumer relations program to solicit ongoing feedback regarding Broker performance (also see Section VIII: SERVICE).	<ul style="list-style-type: none"> a. Provide information (in Riders' Guides and Broker newsletters) about the responsibilities of the service Providers, Broker, and Customers, acceptable standards of paratransit service and how to make complaints/commendations. b. Process Customer complaints and commendations. c. Maintain a database of Customer complaints and commendations that can be sorted by Mode, Customer, driver, date and general subject matter category d. Provide a Broker service quality staff person to work directly with the Provider's staff to address on-going concerns or issues as needed. e. Budget each year for an independent Customer satisfaction survey annually to measure and track Customer satisfaction with Paratransit Broker services and with Providers. f. Provide postage pre-paid Customer comment cards

Task Number	Customer Service/Outreach-related Activities	Tasks
		<p>available on paratransit vans and in the lobby of the Broker's Office.</p> <ul style="list-style-type: none"> g. Track Customer comment card responses. h. Analyze complaint trends i. Oversee the "Secret Rider" program, which allows SF Access and Ramped Taxi Customers to provide anonymous feedback: <ul style="list-style-type: none"> i. Recruit at least five Customers for the "Secret Rider" program on an on-going basis ii. Analyze Secret Rider report data and provide reports to the PCC quarterly.
6	Provide effective ongoing liaison services with community-based advocacy agencies that represent seniors and persons with disabilities.	<ul style="list-style-type: none"> a. Maintain direct communication links and designated contacts at community-based advocacy agencies such as Independent Living Resource Center, Lighthouse for the Blind, Senior Action Network, etc. to ensure an ongoing dialogue of consumer issues and awareness of new programs b. Hold problem-solving meetings, on a formal and informal basis, to ensure that Broker is responsive to issues as they arise
7	Administer a Paratransit Grievance Committee for Customers to submit grievances against Transportation Service Providers for on-going, unresolved complaints.	<ul style="list-style-type: none"> a. As needed, convene a Grievance Committee to mediate an acceptable solution to a Customer grievance b. As needed, address social service agencies' concerns regarding individual passengers or specific Providers
8	Provide travel training using certified travel trainers to encourage persons with disabilities to use the Muni system by increasing public transit skills and comfort level.	<ul style="list-style-type: none"> a. Conduct outreach to appropriate agencies to identify suitable candidates for travel training b. Offer travel training to individuals who applied for paratransit services and were determined ineligible c. Travel trainers will conduct individual and group training sessions, which will include taking at least one transit trip, provision of basic transit policy and operational information, instructions on how to read a Muni map, instructions on how to obtain accessible Muni information; as well as training in how to ride Muni by identifying stops, embarking, paying fare, using priority seating, grabbing rails, requesting stops, and disembarking. d. Maintain documentation of all travel training sessions with records of attendance and all instructional materials provided to attendees.
9	Sell paratransit Fare Media to Customers.	<ul style="list-style-type: none"> a. Make available Fare Media for purchase during business hours at the Broker's Office. b. Make Fare Media sales information available on the

Task Number	Customer Service/Outreach-related Activities	Tasks
		<p>internet</p> <ul style="list-style-type: none"> c. Implement a website capable of receiving secure Fare Media payments. d. Accept cash and personal checks with valid ID card as proof of identity. e. Broker Office staff shall be trained in procedures to accept payments when electronic cash registers or Contractor's computer systems are not operational. f. Administer and conduct eligibility certification and fare subsidy disbursements from donated private funds for the Helping Wheels Fund Fare Assistance Program. g. Maintain a separate corporate account for the Helping Wheels Fund. SFMTA must approve disbursements from this account. h. Monitor Helping Wheels Fund and provide statistical reports as requested by SFMTA.
10	Suspension of service	<ul style="list-style-type: none"> a. Document any basis for suspension of paratransit services to any Customer and issue a warning notice to Customers in advance of any suspension (except for life threatening activities) in accordance with the SF Paratransit Rules of Operation, as they may be amended. b. Include in the Notice of Suspension the date and duration of the suspension of paratransit services to the Customer, the reason for the suspension, and forms and instructions for the Customer to appeal the suspension decision. c. Implement all required appeal procedures for suspension determinations and document the process and outcome of the appeal.
11	SF Paratransit Rules of Operation	<ul style="list-style-type: none"> a. Enforce all policies and procedures stipulated in the SF Paratransit Rules of Operation, as they may be amended from time to time.

SECTION III: INFORMATION TECHNOLOGY

Task Number	Information Technology-Related Activities	Tasks
1.	Maintain Paratransit Broker Customer management database.	<ul style="list-style-type: none"> a. Maintain and update on a daily basis data for approximately 16,000 Customers for all Modes of service (Taxi, SF Access, SFMTA Group Van, Department of Aging and Adult Services Group Van, Paratransit Plus, Shop-n-Roll Shuttle). b. Maintain eligibility status, biographic data, and demographic data on each certified Customer, as well as client service information, such as no shows, complaints filed, etc. c. Maintain all daily individual Customer purchase transactions d. Establish a systematic data backup system with documentation e. Interface with Regional Eligibility Database. f. Interface with the Debit Card Central System.
2	Be responsible for the daily operation and management of the various components of the PDCS.	<ul style="list-style-type: none"> a. Provide management and operational support including new debit card account creation, debit card issuance, debit card account management, servicing and reporting, customer support, and Taxi company fare reconciliation, settlement and reporting. b. Provide ongoing operations training as needed for new hires, new software releases, and new PDCS features. c. Develop or use the established tracking protocol for all new versions of ITE hardware and firmware; maintain a record of any changes/updates. d. Process eligible customers to collect digital photographs and create unique magnetic stripe cards. e. Manage customer accounts to collect and post received funds, hotlist lost or stolen cards, suspend accounts where abuse is determined, perform card replacement, and respond to questions and disputes. f. Provide multiple methods for paratransit customers to add value to their debit card account, including in-person at the Broker offices, via Interactive Voice Response (IVR), and via a secure website, using check, credit card or checking account electronic funds transfer. g. Manage and procure debit card stock inventory h. Actively monitor debit card transactions utilizing reporting tools for the purpose of minimizing the risk of fraudulent or unauthorized use of paratransit debit cards (see also Section VIII: Service). i. Ensure that CabConnect's backup IVR system is fully functional. j. Provide a plan to manually process all debit card transactions should the entire PDCS, including the IVR system, become unavailable. k. Monitor CabConnect contract for compliance with service standards including service level monitoring/enforcement and invoice payment l. Manage and enforce PDCS warranty obligations. m. Establish and maintain a complete and accurate document control system, including PDCS contract management files, correspondence between Contractor, SFMTA, and the DCS

Task Number	Information Technology-Related Activities	Tasks
		<p>Provider, invoice and payment reports, and training documentation.</p> <ul style="list-style-type: none"> n. Operate and maintain any necessary PDCS peripheral equipment, including but not limited to, the debit card printer/encoder, report printer, debit card/report shredder, and secure facility for storing unused debit card stock. o. On-going - ensure that debit card training is available to all Customers newly certified in the Taxi or ramp Taxi program. Ensure that front line staff members are trained to orient new riders to the debit card program. Customer training may consist of individual demonstrations or weekly orientation sessions, as appropriate. p. Through contracts with individual color schemes or dispatch services and through the SF Taxi driver training programs, require that debit card training is available to Taxi company staff and drivers through a train-the-trainer model.
3	Interface with the San Francisco Bay Area regional ADA paratransit eligibility database	<ul style="list-style-type: none"> a. Ensure that data for the Regional Eligibility Database is downloaded automatically from the SF Paratransit customer database daily. b. Ensure that the Regional Eligibility Database downloads updated information to SF customer database on a daily basis. c. Check the Regional Eligibility Database to confirm ADA eligibility for non-SF Paratransit customers who may be using SF Paratransit services. d. Check the Regional Eligibility Database twice weekly to verify that ADA eligibility is updated for SF customers and communicate identified problems weekly to the Metropolitan Transportation Commission; actively coordinate in the development of solutions to problems that arise.
4	Maintain the SF Paratransit website (www.sfparatransit.com) that complies with the City's Department of Telecommunications and Information Services standards for website accessibility.	<ul style="list-style-type: none"> a. Electronic information shall comply with all accessibility standards of Section 508 of the Rehabilitation Act (29 U.S.C. § 794d). b. The website shall be capable of receiving secure Fare Media payments. c. The website shall provide general information about the SF Paratransit Program, eligibility requirements and application forms. d. The website shall operate in accordance with the following standards for availability, speed and security of data: <ul style="list-style-type: none"> i. Website Availability: The website must be available 99.5% of the 1440 minutes in a calendar day, 365 days a year. With prior SFMTA approval of proposed website maintenance dates, the website may be taken down for maintenance between the hours of midnight and 6 a.m. ii. Website Speed: The average page load time into the network may not exceed four seconds on any ISP with a connection speed faster than 56kb.

Task Number	Information Technology-Related Activities	Tasks
		<ul style="list-style-type: none"> iii. Website Security: Zero failures in encryption level and standardized intrusion testing routines.
5	Maintain a secure location for computer equipment and for archiving all electronic records.	<ul style="list-style-type: none"> a. Provide backup generating capability in the event of a natural disaster. b. Ensure regular archiving of all electronic data associated with the performance of the Agreement regardless of the failure of IT equipment or the intentional or negligent acts of any person that results in deletion or corruption of data.
6	Veolia Vision	<ul style="list-style-type: none"> a. Provide Veolia Vision software to paratransit van Providers and train Broker and Provider staff (within 120 days of full implementation of Mobile Data Computers (MDCs)) on the use of the program. b. Provide on-going training of Broker and Provider staff as necessary. c. Provide SFMTA staff with secure access to Veolia Vision over the internet. d. Work with Providers and Broker staff to ensure that real time information provided by Veolia Vision is used to predict or monitor late trips, proactively schedule trips throughout the day, and to set up a predictive calling mechanism to inform Customers of schedule changes.

SECTION IV: ASSET PROCUREMENT AND MANAGEMENT

Task Number	Asset Procurement and Management-Related Activities	Tasks
1	Develop and maintain a structured asset management protocol for all assets purchased with City funds.	<ul style="list-style-type: none"> a. Manage assets, including, but not limited to, City-owned vehicles, PDCS ITE, and all office furniture and equipment b. Maintain current list of inventory of all assets
2	Procure and install MDCs with GPS capability on 120 paratransit vans to be completed within the times indicated.	<ul style="list-style-type: none"> a. Develop technical specifications for the MDCs (30 days after NTP) b. Conduct procurement under FTA guidelines and execute contract with selected vendor (210 days after NTP) c. Install, configure and test MDCs (270 days after NTP) d. Begin staff training on MDCs (270 days after NTP) e. Begin pilot testing (300 days after NTP) f. Refine technology based on pilot testing (330 days after NTP) g. Complete installation (365 days after NTP) h. Maintain an inventory of MDCs installed in each paratransit van throughout the term of the Agreement i. Manage and enforce MDC warranty obligations
3	Manage, service, and track ITE through the end of the established ITE lease period (three years from the date of purchase).	<ul style="list-style-type: none"> a. Manage purchase agreements with the approved ITE vendors to allow Taxi companies to purchase additional and/or replacement ITE. b. Maintain an inventory of ITE installed in Taxis, including units that are replaced, destroyed, under repair or maintained as extra inventory. c. Require the Taxi companies to maintain an inventory of the ITE assigned to or purchased by them, including the location of the ITE. d. Manage and enforce ITE warranty obligations. e. Develop and implement an ITE inspection/audit program designed to identify unauthorized modifications to the equipment that may increase the risk of PDCS fraud.

SECTION V: OPERATING PROCEDURES, REPORTING AND RECORD RETENTION

Task Number	Operating Procedures, Reporting and Record Retention-Related Activities	Tasks
1.	Develop and implement an Operations Manual to include, but not be limited to, the following components:	<p>a. Develop the Operations Manual to include, but not be limited to, the following components (according to the stated purposes), said components to be completed within the timeframes listed:</p> <ul style="list-style-type: none"> i. Emergency Preparedness Protocol: To provide continuity of paratransit services in the event of any foreseeable interruptions in the availability of labor, vehicles, materials, supplies, power or communications, and to provide emergency transportation as directed by SFMTA in the event of a disaster (within 120 days of the Effective Date); ii. Service Quality Monitoring Program: To ensure systematic and comprehensive monitoring of key Service Standards (including on time reliability, complaints and accident/incident statistics) for all subcontractors, including a problem-solving component to develop long-term solutions to service quality issues (within 90 days of the Effective Date); iii. Driver Training Protocol: To ensure safe and courteous Customer service in compliance with Service Standards (within 60 days of the Effective Date); iv. Scheduling Protocol: To minimize delays in response to Customer requests for paratransit service (within 60 days of the Effective Date); v. On Time Reliability Methodology Protocol: To ensure a clear mechanism for tracking on time reliability in all modes of paratransit service (within 60 days of Effective Date); vi. IT Back-Up Procedures: To ensure regular archiving of all electronic data associated with the performance of the Agreement regardless of the failure of IT equipment or the intentional or negligent acts of any person that results in deletion or corruption of data (within 60 days of the Effective Date); vii. Vehicle Maintenance Inspection Procedures: For City-owned paratransit vans leased to the Broker (within 60 days of the Effective Date); viii. Asset Management Protocols: To track and monitor the condition of all assets purchased with City funds, including vehicles, hardware and software, furniture and equipment (within 60 days of the Effective Date); ix. Paratransit Grievance Committee Forms and Procedures: Written grievance forms and procedures for Customer complaints (within 90 days of the Effective Date). x. Customer Feedback Forms and Procedures: Written Customer feedback forms and procedures for responding to comments (within 90 days of the Effective Date); xi. Fraud Prevention Procedures: For controlling fraud and misuse of Fare Media (within 90 days of the Effective Date); xii. Customer Survey Form and Methodology: The form of a

Task Number	Operating Procedures, Reporting and Record Retention-Related Activities	Tasks
		<p>Customer survey and a methodology for implementing the survey (within 120 days of the Effective Date).</p> <p>b. Review the Manual with the PCC for input prior to completion and submittal to the SFMTA.</p> <p>c. Once the final deliverable is approved by the SFMTA in writing, Broker shall distribute the Manual to the SFMTA and to all Transportation Service Providers.</p> <p>d. Broker shall comply with the provisions of the Operations Manual and shall require all Providers to comply with the procedures set forth in the approved Operations Manual.</p>
2	Provide monthly and annual Performance Indicator Reports documenting all elements of Services provided under the Agreement.	<p>a. Provide quarterly report of service level statistics, including number of trips by subcontractor and mode, number of no-show trips and cancelled trips, number of stair assists performed, and number of trip denials.</p> <p>b. Prepare summaries of the number of (i) ADA certifications on a monthly basis, including the number of applications received; (ii) certifications of ADA-eligible users by category; (iii) eligibility denials; (iv) appeals processed; (v) recertifications; and (vi) levels of active and inactive users.</p> <p>c. Provide reports identifying service trends or patterns on a bi-annual basis, or as requested by SFMTA staff.</p> <p>d. Maintain records and prepare operating reports as required by the SFMTA, San Francisco County Transportation Authority, Department of Aging and Adult Services, the FTA, and other agencies.</p> <p>e. Provide monthly reports of trip costs.</p> <p>f. Compile all information requested by the SFMTA for the FTA's National Transit Database Section 15 Annual Report.</p> <p>g. In the course of SF Paratransit duties, each of Broker's and subcontractors' employees who personally witness any SF Paratransit vehicle accident or incident that may involve personal injury, property damage, or known safety violations, shall file reports of said events. Broker shall provide reports to the SFMTA by the next business day, and monthly Incident Report Summaries to SFMTA for each subcontractor.</p>
3	Retain all project records.	a. Maintain all project records (either hard copy or electronic) for at least three years after the termination of the Agreement.
4	Fund two independent outside audits of Broker performance.	a. As budget permits, conduct at least once during the initial five-year contract period (and once during the option period, if exercised), (i) one financial audit; and (ii) one performance evaluation audit based upon deliverables and performance indicators, at a time to be determined by the SFMTA. Auditors shall be subject to approval by the Executive Director/CEO or his or her designated representative.
5	Customer privacy	a. Maintain and secure personal information of Customers in its possession, including, but not limited to, legal documents such as powers of attorney and guardianship, contact information and medical information, in a manner that protects all rights of privacy of Customers.

SECTION VI: FINANCIAL MANAGEMENT

Task Number	Financial Management - Related Activities	Tasks
1	Control budgeted resources so that they will meet the demands of the Contract.	<ul style="list-style-type: none"> a. For Group Van: <ul style="list-style-type: none"> i. Ensure that Group Van Providers are formally notified of annual budgetary levels, unit cost per trip, monthly target expenditures, monthly trip level targets, appropriate invoice procedures, appropriate invoice procedures, and financial penalties; ii. Inform each Group Van Provider every month of its budget status, including payments received, number of trips, expenditures, and balance; iii. Inform agencies receiving Group Van services each month of the number of trips and trip data reported by the Provider, for verification purposes; iv. Provide Group Van Providers a minimum two-month notice if budget projections indicate that service expenditures are exceeding budgeted levels; v. Maintain billings for Group Van. b. Keep passenger lists updated for SF Access and Group Van Providers on a daily basis via Broker Customer software and verify that no passengers are served that are not ADA-certified. c. Receive, verify, and provide reimbursement to Providers for trips documented, according to provisions of Provider contracts.
2	Ensure fiduciary control of funds collected.	<ul style="list-style-type: none"> a. Maintain procedures to accept and control funds in the form of cash, checks, money orders and credit card transactions. b. Collect fare revenue from Providers. c. Maintain an electronic accounting/tracking program of all Customer accounts. d. Ensure that paratransit transactions are performed with a high level of office security, to include record keeping, staff training, staff responsibility, data generation, reporting procedures, and client access to records. <ul style="list-style-type: none"> i. Maintain physical security of paratransit funds collected, debit card value and passes; ii. maintain standard accounting procedures for handling and verification of daily cash, checks, and money orders; received, and daily verification of debit card value iii. Insure and bond Paratransit Accounts Manager and other employees handling financial transactions. e. Require all persons picking up paratransit Fare Media to present photo/signature identification
3.	Prepare monthly invoices of subcontractor and Broker revenue, for submittal to SFMTA.	<ul style="list-style-type: none"> a. Perform fare reconciliation for all Providers. b. Submit invoices to SFMTA each month with all revenues collected for services provided by subcontractors and Broker,

Task Number	Financial Management - Related Activities	Tasks
		<p>the dollar value of all debit card transactions and van tickets sold, trips provided, and year-to-date total in all categories.</p> <p>c. Submit all revenues collected monthly to SFMTA Finance.</p>
4	<p>Prepare monthly invoices of Broker expenses for submittal to SFMTA.</p>	<p>a. Review all Provider invoices for accuracy</p> <p>b. Submit invoice to SMTA each month detailing expenditures per Mode, and all Broker administrative expenses, including Department of Aging and Adult Services transportation and administrative costs.</p>
5	<p>Manage and document all transactions related to Fare Media and billing for Group Van, SF Access and Taxi, Inter-county and Shopping Shuttle services.</p>	<p>a. Disburse, collect and maintain fiduciary control over Fare Media.</p> <p>b. Broker shall not charge any Customer amounts for Fare Media in excess of the amounts approved by SFMTA.</p> <p>c. Manage and document all Customer information and transactions conducted as part of the PDCS.</p> <p>d. Manage and document payments made and received in accordance with regional Inter-County Paratransit Service agreements.</p>
6	<p>Disburse and Monitor Ramped Taxi Driver Incentives</p>	<p>a. As directed by SFMTA staff, disburse and monitor monthly Ramped Taxi driver incentive payments to Taxi companies, which will in turn disburse the funds to their drivers.</p>
7	<p>Fund a Paratransit Drivers of the Year Program</p>	<p>a. Award amount as specified by SFMTA (\$100 in 2009) for one driver from each of the van and Taxi Paratransit Service Providers, as well as two overall awards for a van driver and a Taxi driver of the year, as nominated by Customers. At least 15 drivers shall receive awards each year.</p>

SECTION VII: PERSONNEL

Task Number	Personnel-Related Activities	Tasks
1.	Provide a General Manager to act as a single point of contact for SFMTA.	<p>a. The General Manager shall act as the liaison between the Broker and the SFMTA and be responsible for the following:</p> <ul style="list-style-type: none"> i. overall implementation of the SF Paratransit program; ii. implementation of new Broker programs, specifically Shopping Shuttle, MDT/Veolia Vision procurement and implementation and other programs that parties may agree to. iii. service planning; iv. applying a structured process to problem-solving; v. preparing reports to summarize Broker activities and progress towards the resolution of identified problems, with progress toward implementation milestones.
2	Provide professional staff with high-level analytical skills in all management positions.	<p>(a) Unless otherwise approved by the SFMTA, Broker shall maintain the following positions throughout the term of the Agreement:</p> <ul style="list-style-type: none"> i. General Manager ii. Director of Finance/Admin iii. Contracts Admin iv. Director of Ops v. IT Manager vi. Finance Manager vii. Eligibility Manager viii. Shopping Shuttle Planner/Analyst
3	Provide skilled IT manager.	<p>a. Provide staff with sufficient skills and expertise to maintain the on-going operation and maintenance of the PDCS, Customer database, Regional Eligibility Database, all associated interfaces, manage the contract with the PDCS vendor, and oversee the on-going operation and maintenance of ITE.</p>
4	Demonstrate commitment in hiring practices to maintaining a diverse workforce with regards to race/ethnicity, gender, linguistic capability, and disability status.	<p>a. Work with and submit reports, as required, to the SFMTA Contract Compliance Office.</p>
5	Ensure that all Broker employee salaries comply fully with the City's Minimum Compensation Ordinance (MCO) and that employees receive provide health benefits.	<ul style="list-style-type: none"> a. All Broker employee wage rates shall meet or exceed the San Francisco MCO standards. For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. b. The hourly rate may increase on July 1 of each year; Contractor and subcontractors will be required to pay any such increases to covered employees during the term of the contract. c. Submit annual salary levels per employee to the SFMTA Manager of Accessible Services on an annual basis. d. Broker shall provide full medical coverage to all staff members.
6	Provide one out-stationed employee to assist SFMTA's Manager of Accessible Services	<ul style="list-style-type: none"> a. Outstationed employee shall serve as a liaison with the Paratransit Broker on fixed route concerns. b. Broker shall fund one full-time employee, including benefits, at an

Task Number	Personnel-Related Activities	Tasks
	with paratransit and accessible fixed route tasks.	hourly rate of \$28.41, with annual cost of living increases.
7	Staff to participate in and report on public meetings and working groups on paratransit service issue, including Customer and stakeholder committees of the PCC.	a. Broker shall staff all three modal committees of the PCC Executive Committee – the Taxi/Ramped Taxi Subcommittee, Group Van Subcommittee and the SF Access Subcommittee.

SECTION VIII: SERVICE

Task Number	Service-Related Activities	Tasks
1.	Select all van (SF Access, Group Van, Shopping Shuttle) Providers by competitive solicitation.	<ul style="list-style-type: none"> a. Extend current Group Van contracts for a period of no more than nine months from March 31, 2010. b. Procure through a competitive bidding process not less than two Group Van Providers and one SF Access Provider with SFMTA funding and not less than three Group Van Providers under the program funded by the Department of Aging and Adult Services. c. Ensure that all procurement processes meet FTA guidelines for federally funded contracts. d. Review draft Provider deliverables, minimum qualifications, and driver and vehicle standards with SFMTA prior to initiating contractor negotiations. e. Ensure that selected Providers retain competitive unit costs per trip, while meeting service quality-related criteria. f. In the bidding process, encourage prospective Providers to provide employee incentive plans, bonuses, awards, dental coverage, and other benefits.. g. Ensure as part of contract negotiations with Providers that limits on unit cost increases will be set by pegging increases to the Cost of Living Index for the Bay Area Statistical Metropolitan Area as determined by the U.S. Department of Labor and that all cost-of-living adjustments received by subcontractors shall be passed on to all SFMTA-funded paratransit drivers with at least a proportional wage adjustment. h. Set up bidding process to take into account that provision of Section 5310 vehicles to Providers should result in lower costs per trip. i. Selection process must include an opportunity for protests of the contract award to be directed to the SFMTA's Executive Director/CEO or his or her designee.
2	Ensure that subcontractors comply with the City's Minimum Compensation Ordinance.	<ul style="list-style-type: none"> a. See Section 44 of Agreement.
3	Ensure that van Providers afford health insurance to their employees.	<ul style="list-style-type: none"> a. Ensure that all van subcontractors provide full medical coverage to all SFMTA-funded paratransit drivers, or that documented equivalent medical services are being provided through other arrangements.
4	Ensure through bidding process that van Providers have minimum hardware and software capabilities and functional capacity to link to Broker-provided routing and scheduling software and Veolia Vision.	<ul style="list-style-type: none"> a. Include detailed IT specification and staff training requirements in bidding documents for selection of van Providers
5	Enter into contracts with Taxi company subcontractors.	<ul style="list-style-type: none"> a. Screen for compliance with minimum requirements for Program participation, including capacity to participate in the PDCS program.
6	Maintain a comprehensive service quality monitoring program	<ul style="list-style-type: none"> a. Monitor subcontracts through review of reports, data, and information obtained directly from Customers, Providers, and

Task Number	Service-Related Activities	Tasks
		<p>agencies for all subcontractors on a monthly basis for:</p> <ul style="list-style-type: none"> i. trip documentation and verification; ii. month-to-month budget review; iii. on-time reliability rating; iv. telephone response time; v. no-show and trip cancellation percentage; vi. complaints/compliments; vii. passenger trip logs; viii. field monitoring for driver performance, safety, and courtesy. <ul style="list-style-type: none"> b. Conduct telephone surveys monthly or quarterly (at least 12 annually) of Taxi, SF Access Customers, randomly selected. c. Oversee the Secret Rider program (see Section II: Customer Service). d. Coordinate with other City departments such as the Mayor's Office of Disabilities, and the Department of Aging And Adult Services to get feedback on paratransit Customer concerns and develop a strategic plan to seek resolution of these issues. e. Conduct "unannounced" monitoring of all modes of service for on-time reliability, in response to complaints or to poor performance indicators on reliability reports. Field monitoring activities shall include: <ul style="list-style-type: none"> i. monitoring contractor performance in the field; ii. conducting driver and vehicle inspections, site visits and other monitoring activities; iii. preparing reports used to measure contract and regulatory compliance; iv. Taxi Service Monitor will ensure proper inventory tracking of SFMTA-owned ITE and investigate trip/transaction irregularities. f. Use Veolia Vision software to monitor the SF Access and Group Van services for late pull-outs, slack time, driver breaks and on-time performance and to predict and displays potential problems so that dispatchers can take steps to proactively correct them (see also Section III: Information Technology). The priority shall be SF Access service, and Group Van shall be a second priority. g. Encourage contracted Providers to participate in consumer advisory group meetings. h. Utilize results of monitoring procedures, surveys, and feedback from workgroups to develop and implement action plans to address service quality issues. i. Implement a problem-solving component to the monitoring program and designate a point person to develop long-term solutions to service quality issues as they arise and ensure that problem-solving measures are implemented within agreed-upon milestones.

Task Number	Service-Related Activities	Tasks
7	Provide customer service representatives in the service quality monitoring program to provide telephone and in-person processing of Customer complaints and commendations.	<ul style="list-style-type: none"> a. Implement and maintain a procedure to accept written and verbal complaints; require Providers to provide a formal written response to each complaint, to include, as appropriate, a time-limited plan of correction; undertake follow-up punitive or problem-solving actions to each complaint; and provide a written response to all complainants within 14 days. b. Provide training to staff to ensure polite processing of complaints and implementation of effective resolution measures. c. Ensure that all Customers have a copy of the Paratransit Rider's Guide.
8	Monitor and enforce procedures to ensure Providers' contract compliance.	<ul style="list-style-type: none"> a. Enforce performance standards and incentive programs as detailed in Provider agreements with van and Taxi Providers (with a team approach to include drivers, dispatch, and schedulers) to ensure paratransit service reliability. b. Monitor contract provisions with regards to safety, driver training, driver courtesy, drug testing, worker's compensation, vehicle maintenance through field observations, and accident reporting. c. Work with Providers to enforce Customer rules to control the level of no-show trips in SF Access and Group Van contracts. d. Ensure that Providers conduct daily trip check-in electronically through Broker customer management software. e. Ensure contract compliance, through systematic monitoring and unannounced on-site visits, and require Providers to maintain the following: <ul style="list-style-type: none"> i. DMV printouts (pull notices), Live Scan documentation, CPR and First Aid training certifications of all paratransit drivers; ii. Adherence to Standard Operation Procedures detailed in the Driver Training Protocols; iii. Compliance with required vehicle replacement schedules; iv. Update Vehicle fleet inventory reports, annually and within 48 hours of any fleet changes; v. Perform and maintain vehicle maintenance and pre-trip inspection reports and produce such on request; vi. Timely reporting of incident/accident reports involving paratransit riders; vii. Demonstrate required insurance coverage and maintain Certification of Insurance, annually and upon renewal; viii. Maintain and provide driver trips sheets for Group Van service; ix. Through contracts, meet required driver training recertifications as required for Defensive Driving, PAT/Sensitivity, First Aid/CPR and any other required trainings every two years or as required to maintain certifications; x. Maintain daily checklist for drivers includes seatbelts,

Task Number	Service-Related Activities	Tasks
		<p>wheelchair loading and securement devices, grab rails and stanchions;</p> <ul style="list-style-type: none"> xi. As needed meetings conducted with social service agencies receiving paratransit service; xii. Participation by Providers in the FTA-mandated drug- and alcohol-testing program; xiii. An annual sensitivity training for Provider office staff. <ul style="list-style-type: none"> f. Conduct quarterly un-announced on-the-street monitoring of Group Van and SF Access services and document with written reports g. Conduct an annual review of paratransit driver sensitivity training classes for appropriateness. h. Conduct on-site vehicle inspections; semi-annually for City-owned vehicles i. In course of field monitoring Broker staff shall perform visual inspections of overall condition of other non City-owned provider vehicles, such as lift, safety equipment etc. and compliance with contract standards
9	Develop a method to coordinate with van and Taxi Providers to monitor and enforce Customer conditional eligibility.	<ul style="list-style-type: none"> a. Educate certified riders to understand their conditional eligibility status and establish a method for periodically reviewing a rider's use of service to verify that the rider's trip patterns reflect the rider's conditional eligibility status. b. Develop a protocol for enforcement of conditional eligibility for van, and taxi services. c. <i>Disseminate consumer education of conditional eligibility policies.</i>
10	Implement measures to promote the use of shared rides among Taxi users.	<ul style="list-style-type: none"> a. Working with the PCC and its subcommittees, initiate a marketing campaign through posters and other methods which would promote the benefits of Taxi ride sharing.
11	Monitor and verify Taxi use.	<ul style="list-style-type: none"> a. Actively monitor debit card transactions utilizing reporting tools for the purpose of minimizing the risk of fraudulent or unauthorized use of debit cards. b. Analyze trip patterns and follow up with Customer or Taxi company management as necessary to prevent wait trips, trips that have a meter rate that does not correspond with the actual mileage, time on the vehicle, and other potentially fraudulent trips. c. Enforce procedures to control against fraud and misuse of Taxi service.
12	Implement a program to facilitate consistent communication and follow through between Providers and social service agencies to ensure efficient delivery of services.	<ul style="list-style-type: none"> a. Implement Group Van memoranda of understanding with agencies receiving Group Van service which document the responsibilities of Providers, agencies receiving service and Broker staff. b. Maintain procedures to follow-through on service quality complaints arising from agencies, including coordinating problem-solving meetings and reporting follow-through actions

Task Number	Service-Related Activities	Tasks
		<p>implemented by Broker or Providers to complainants.</p> <ul style="list-style-type: none"> c. Monitor procedures for Group Van trip data collection, verification, review, and reconciliation with agency. d. Identify systemic service level problems and establish new procedures to address these problems.
13	Coordinate and monitor activities among Providers, including dissemination of Operations Manual.	<ul style="list-style-type: none"> a. Encourage service providers to share information regarding the availability of driver-training sessions to promote shared participation and cost savings. b. Participate in review of 5310 grant applications as requested by PCC Grant Review Committee, and encourage coordination of 5310 vehicles among paratransit Providers and within the paratransit program. c. Encourage leasing of social service agency vehicles to Providers through facilitation of negotiations between parties and encourage the execution of vehicle lease agreements. d. Encourage van Providers to cooperatively provide emergency back-up services for other Providers. e. Through SF Paratransit's Emergency Planning process, require SF Access Provider to provide emergency back-up service to Muni fixed route services, Police, and Fire Departments. f. Through SF Paratransit's Emergency Planning process, require all Providers to implement the Paratransit Emergency Plan procedures as stipulated in the Operations Manual. g. Through SF Paratransit service contracting and resultant MOU's, require Group Van drivers to receive on-site agency orientation for special needs populations. h. Encourage smaller providers to coordinate programs such as driver training, back-up service, and emergency preparedness planning. i. Through the SF Paratransit contracting process, require Contractors to have provisions in place to provide for back up services for themselves when demand exceeds capacity or when unforeseen circumstances tax existing resources..
14	Ensure compliance of van subcontractors with federal drug- and alcohol-testing requirements.	<ul style="list-style-type: none"> a. Confirm and monitor implementation of federally approved drug testing program by distributing FTA drug testing regulations to all Providers, and requiring evidence of Provider compliance with FTA drug testing regulations, (i.e. including a copy of drug and alcohol policy, copies of contracts with testing labs, copies of annual reports, proof of management and employee training, etc.) b. Coordinate program monitoring with SFMTA's Substance Abuse Program.
15	Maintain stair assist program for qualified wheelchair users with a method that contains costs	<ul style="list-style-type: none"> a. Ensure that SFMTA-approved screening for eligibility to stair assist program is conducted at the time of the initial registration. b. Enforce policy which limits the conditions under which a

Task Number	Service-Related Activities	Tasks
	over the long term.	<p>two-person stair assist is provided.</p> <p>c. Be willing to explore alternative, cost-effective stair assist procedures (i.e. portable stair glides) to make stairs more accessible to wheelchair users.</p> <p>d.</p>
16	Interface between service Providers for the provision of inter-county paratransit service to meet the needs of both San Francisco and visiting Customers	<p>a. Where applicable, maintain agreements with BART and/or AC Transit, Golden Gate Transit, and SamTrans and their paratransit providers (as needed) for trip reporting, cost sharing, and invoicing of inter-county trips.</p> <p>b. Monitor expenditure amounts for inter-county service and report inter-county trip data on a monthly basis.</p> <p>c. Provide inter-county riders with information regarding scheduling, fare payment, trip-making, transfer operations between different providers, identifying transfer points, emergency back-up trip information, and specific service operations procedures.</p> <p>d. Work with Regional Operators to promote coordination between regional and connecting paratransit operators for transfer trips by:</p> <ul style="list-style-type: none"> i. Educating SF service operators on protocols for regional trip provision between regional providers including coordination of hours of operations, methods of service delivery, lines of communication, travel procedures, driver/scheduler/ dispatcher training, recording of trip data, emergency back-up plans, etc.; ii. Reviewing scheduling protocols of inter-county Providers to allow waiting time, until arrival of transfer pick-up; iii. Explaining typical requirements of pre-trip confirmation by passenger and/or both service Providers for a trip transfer; iv. Explaining requirements of post-trip confirmation between providers that transfer/pick-up was completed; v. Requiring that service providers attend coordination meetings for regional providers as requested; vi. Review potential regional trip coordination changes with the PCC Executive Committee and with service providers as required; <p>e. Monitor inter-county service provided by local SF service providers and assist inter-county customers to resolve problems and issues as they arise.</p>
17	Ensure that training for Taxi drivers includes a comprehensive sensitivity training curriculum.	<p>a. Work with the SFMTA Taxi Regulatory Division to maintain and update the established Sensitivity Training Course for Taxi Drivers.</p> <p>b. Work with the SFMTA Taxi Regulatory Division to monitor Taxi company compliance with sensitivity training requirement for all</p>

Task Number	Service-Related Activities	Tasks
		<p>Taxi drivers.</p> <p>c. Work with SFMTA to contract for or provide for Passenger Assistance Techniques (PAT) and sensitivity trainers.</p>
18	<p>Implement the emergency preparedness protocol, as developed in the Operations Manual, to provide emergency transportation in the event of a natural disaster.</p>	<p>a. Broker shall serve as the facilitator and point of contact during an emergency for provision of emergency transportation for persons with disabilities during/after a natural disaster and report to the SFMTA Departmental Operations Center (DOC) as necessary</p> <p>b. Broker shall require of its Providers through the procurement and contracting process the development of an emergency response plan and monitor the implementation of each Provider's emergency response plan to include:</p> <ul style="list-style-type: none"> i. The contact protocol and liaison, by name, for each entity, including key telephone numbers, cellular phones numbers, two-way radio frequencies and locations of: San Francisco's Department of Emergency Management, Police, Fire, Muni Central Control, SFMTA's DOC, Broker's Office and other Providers; ii. Each Provider's resources and location, the chain of command within each agency and the responsibilities of management personnel; iii. In cases where the Broker's IT system is not being fully utilized by a Provider, the Provider shall be required to prepare and submit weekly hard copy print-out of updated Customer list, including address, phone number and mobility aid/disability noted; iv. Where required, contractually dedicated vehicles to emergency evacuation duty; v. Broker shall develop a brochure describing emergency plan for inclusion and publication in Riders' Guide; vi. Updates of the Emergency Plan annually and annual table top exercises to test the Plan.

**Appendix B
Calculation of Charges**

Veolia Budget Summary	4/1-6/30/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
DESCRIPTION						
ON SITE STAFF						
Labor	235,735	942,939	971,227	1,000,364	1,030,375	1,061,286
Fringe						
Payroll Taxes						
FICA	19,345	77,379	79,700	82,091	84,554	87,091
SUTA	1,762	7,049	7,049	7,049	7,049	7,049
FUTA	266	1,064	1,064	1,064	1,064	1,064
401K/Retirement	8,597	34,387	35,419	36,481	37,576	38,703
Health Insurance	36,000	143,999	148,580	153,288	158,148	163,144
Dental Insurance	1,969	7,874	8,107	8,346	8,594	8,848
Vision Insurance	297	1,188	1,221	1,262	1,297	1,338
Life Insurance	68	273	280	286	293	300
STD & LTD	761	3,045	3,127	3,217	3,304	3,399
EAP	103	410	422	434	447	460
Vacation & Other Paid Time Off	27,751	111,004	114,334	117,764	121,297	124,936
GM Car Allowance, Ins., Fuel & Maint.	2,735	10,940	11,268	11,606	11,954	12,313
Workers Comp. Insurance	2,464	9,855	10,151	10,455	10,769	11,092
Total Fringe	102,117	408,468	420,722	433,344	446,345	459,735
SUBTOTAL - ON SITE STAFF	\$ 337,852	\$1,351,407	\$ 1,391,949	\$ 1,433,708	\$1,476,720	\$ 1,521,021
G & A (INDIRECT)	\$ 35,537	\$ 149,747	\$ 160,078	\$ 161,655	\$ 163,030	\$ 167,260
CONTRACTED SERVICES						
DAJA	139,274	559,880	576,679	593,980	611,799	630,153
Center for Independent Living	3,750	15,000	15,450	15,910	16,390	16,880
Third Party Vehicle Inspection Services	4,500	18,000	18,540	19,100	19,670	20,260
In-Plant Vehicle Inspection Services	0	0	18,540	0	19,670	0
Miscellaneous Outside Services						
PCC Driver Gift Certificates	591	2,362	2,436	2,501	2,579	2,658
Passenger Transport Subscription	106	424	437	450	463	477
Aramark - bathroom	156	625	644	663	683	703

air fresheners, mats						
Helping Wheels account service fee	23	90	93	95	98	101
Commuter Check administrative costs	96	385	397	408	421	433
Locksmith services	133	531	547	563	580	598
Document shredding	250	1,000	1,030	1,061	1,093	1,126
Fire extinguisher maintenance	39	158	162	167	172	177
Electrician	77	308	317	327	337	347
Muzak service	458	1,830	1,885	1,941	2,000	2,060
Petty Cash small expenses	73	293	301	310	320	329
Support van fuel	127	508	523	539	555	571
Exterminator	276	1,104	1,137	1,171	1,206	1,243
Medical Supply	326	1,303	1,342	1,382	1,424	1,466
Total Miscellaneous Services	2,730	10,920	11,250	11,580	11,930	12,290
Costless Maintenance Services	10,338	41,350	42,590	43,870	45,190	46,550
Nelson/Nygaard Consulting	10,000	10,000	0	0	0	0
Corey, Canapary & Galanis Research & Counsel		22,000	22,660	23,340	24,040	24,761
Lan Do & Associates Translation Services	7,200	28,800	29,664	30,554	31,471	32,415
TOTAL CONTRACTED SERVICES	\$ 177,792	\$ 705,950	\$ 735,374	\$ 738,333	\$ 780,160	\$ 783,309
Veolia Budget Summary Page 2	4/1- 6/30/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
Utilities	3,655	14,620	15,060	15,510	15,980	16,460
Telephone & Internet	11,355	45,420	46,779	48,187	49,635	51,123
TOTAL UTILITIES	\$ 15,010	\$ 60,040	\$ 61,839	\$ 63,697	\$ 65,615	\$ 67,583
Off site storage	2,433	9,732	10,024	10,325	10,634	10,953
Facility rent - 12th Street	61,899	247,597	255,025	262,675	270,556	278,672
Common Area Maintenance & Utilities	3,333	13,332	13,732	14,144	14,568	15,005
Facility rent - 365 Main Street	4,759	19,034	19,605	20,194	20,799	21,423
HVAC Maintenance	405	1,620	1,669	1,719	1,770	1,823
TOTAL RENT	\$ 72,829	\$ 291,315	\$ 300,055	\$ 309,056	\$ 318,328	\$ 327,878
SF Access Ticket printing	1,875	7,500	7,725	7,952	8,192	8,434
Newsletter	3,000	12,000	12,360	12,731	13,113	13,506
Other Misc. Printing	4,068	16,270	16,755	17,257	17,775	18,310
TOTAL Printing COST	\$ 8,943	\$ 35,770	\$ 36,840	\$ 37,940	\$ 39,080	\$ 40,250
Office Supplies	8,250	33,000	33,990	35,010	36,060	37,140

Postage/Shipping	6,000	24,000	24,720	25,460	26,220	27,010
Security Expense						
ADT	750	3,000	3,090	3,183	3,278	3,377
Bay Alarm	338	1,352	1,393	1,434	1,477	1,522
Brinks	150	600	618	637	656	675
Travel	1,750	7,000	7,210	7,426	7,649	7,879
Education & Training	1,000	4,000	4,120	4,240	4,370	4,500
Insurance - G & L Policy	1,750	7,000	7,350	7,720	8,100	8,510
Legal Expenses	3,750	15,000	15,446	15,906	16,379	16,875
Computer & Other Equipment Maint. & Service Agreements	9,193	36,770	41,718	20,765	21,768	21,058
CabConnect Hosting Expense	82,500	357,500	393,900	429,000	450,450	472,973
Trapeze Maintenance Fees	16,470	65,880	69,174	72,633	76,264	80,078
SF Tax-Fees	3,750	15,000	15,450	15,910	16,390	16,880
Performance Bond Expense	9,000	36,000	36,000	36,000	36,000	36,000
TOTAL OTHER COSTS	\$ 144,651	\$ 606,102	\$ 654,178	\$ 675,323	\$ 705,062	\$ 734,476
Projected Equipment Purchases	0	2,500	96,633	79,880	0	7,650
TOTAL EQUIPMENT COSTS	\$ - 0	\$ 2,500	\$ 96,633	\$ 79,880	\$ 0	\$ 7,650
Management Fee	\$ 35,537	\$ 149,747	\$ 160,078	\$ 161,655	\$ 163,030	\$ 167,260
Total Budget	\$ 828,149	\$3,352,578	\$ 3,597,023	\$ 3,661,246	\$3,711,024	\$3,816,686
					Contract Total	
					4/1/10 -	
					6/30/15	\$18,966,707

APPENDIX C

AGREEMENT

Agreement between Veolia Transportation Services, Inc. (hereinafter Veolia)

And Trapeze Software Group, Inc. (hereinafter Contractor or Provider).

Within this Agreement, the term "Parties" shall mean Veolia and the Contractor. The term "Funding Entity" shall mean: the City and County of San Francisco, San Francisco Municipal Transportation Agency (SFMTA) and the San Francisco Department of Aging and Adult Services (DAAS)

This Agreement consists of this contract signature sheet, together with the following Attachments and all Exhibits thereto, all of which are incorporated into this Agreement and shall be construed together to form the agreement between the Parties:

- I. Services and Payment
- II. General Provisions
- III. Federal Provisions
- IV. TRAPEZE-DR Software License Agreement
- V. Trapeze Software Maintenance Agreement
- VI. Trapeze proposal dated August 25, 2006, and November 15, 2007 (Proposal)
- VII. Final Scope of Work, Project and Payment Schedules agreed to by the parties following completion of the OR report, if required.

In consideration of the mutual promises, covenants and the payment terms set forth on this page and in the Attachments and Exhibits, Contractor agrees that it shall deliver services for Veolia in accordance with the terms, conditions and standards of this Agreement.

Notices under this agreement should be delivered to:

For Veolia:
 Mr. Marc Soto
 General Manager
 Veolia Transportation Services, Inc.
 68 12th Street, Suite 100
 San Francisco, CA 94103-1297

For Contractor:
 Mr. Jeff Lougheed, Regional Manager
 Trapeze Software Group
 5800 Explorer Drive, 5th Floor
 Mississauga, Ontario
 L4W 5L4 Canada

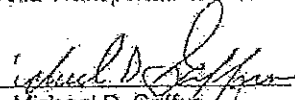
Fax: (415) 351-3136
 Voice: (415) 351-7010
 Email: marc.soto@veoliatransportation.com

Fax: (905) 238-8408
 Voice: (905) 629-8727 ext. 4837
 Email: jeff.lougheed@trapezegroup.com

Agreed and entered into this 31st day of October 2008.

Veolia Transportation Services, Inc.

Trapeze Software Group, Inc.


 by: Michael D. Griffus
 President & CEO


 by: Colin McKenzie
 General Manager

Dated: October 31st / 2008

Dated: OCTOBER 22nd / 2008

Veolia
Attachment I
Services & Payment

Statement of Work and Payment

STATEMENT OF WORK FOR:

Paratransit Routing & Scheduling, Complaint Tracking and Client Data Management Software & Transition: Migration from Mobility Master and Scrip Tracking to TRAPEZEDR (NOVUS or PASS) Solution for San Francisco Paratransit.

I. Background

Veolia Transportation Services, Inc. is the "Broker" for the San Francisco Paratransit program in San Francisco, CA since April 2000. The role of the "Broker" is to administer the day-to-day operations of the SF Paratransit program. Typical duties include contracting for service providers in a de-centralized operation where once certified, riders arrange directly for paratransit services with designated service providers. The "Broker" is also responsible for: administering service provider contracts and payments; recording and responding to all service-related complaints; selling paratransit taxi scrip, fare coupons, Muni Fast and Senior passes and pilot debit card payments; performing all passenger outreach; overseeing all program participant registrations; budgeting; federal, local and state reporting; and all other responsibilities related to program administration. The San Francisco Municipal Transportation Agency (SFMTA) funds most of the SF Paratransit program and oversees the performance of the "Broker." A small amount of funding is provided to SF Paratransit by the San Francisco Department of Aging and Adult Services (DAAS). On March 25, 2008, the current contract with the SFMTA was extended by the City/County of San Francisco to end March 31, 2010.

The Mobility Master Software (MM) is used remotely by service providers contracted to provide SF Access (ADA Lift-van and ADA Access) services and group van transportation. SF Access is the SFMTA's ADA Paratransit service (door-to-door) and the group van service is primarily subscription paratransit service provided to qualified group van agencies (e.g., Adult Day Healthcare, sheltered workshops, nutrition programs, etc.) in a many origins to one destination format.

The MM software is designed to support multiple carriers sharing the same database but independently routing and scheduling service using multiple end-user defined bill codes and supporting multiple carriers, carrier vehicles, and various vehicle types with multiple end users. Trips scheduled and tracked through MM range from 2500 to 3000 trips per weekday and total approximately 500,000 one-way trips annually. The ability of one service provider to see any other service provider's vehicles, routes, etc., is restricted by user log on.

MM works in conjunction with a custom-designed product called Scrip Tracking. Scrip

Tracking is the patron management component of the system software, and is described in more detail in *Section III., Description of Current Hardware and Software System and TRAPEZE-DR Requirements.*

II. Project Overview

The scope of this project is to transition, under the direction of Veolia's Contracting Officer's Technical Representative (COTR), the SF Paratransit operation from the current paratransit routing & scheduling software and client management software, Mobility Master (MM) & Scrip Tracking, to the Trapeze software solution (proposed as TRAPEZE-DR, Certification Module & Complaint module). This software solution shall duplicate all key functionality of the current Mobility Master and the eligibility management functionality of the Scrip Tracking Software. The migration will occur in conformance to the project description and the Trapeze Proposal, and the scope of work agreed upon by the parties following Operational Review. Where differences exist between the Proposal and the scope of work agreed upon by the parties following Operational Review, this agreement and the final negotiated scope of work shall have precedence over the contents of the Proposal.

This project shall begin with Operational Review (OR) after Veolia issues the first or limited Notice-to-Proceed (NTP) to Trapeze. The OR will be conducted during the first 45 days of contract performance after issuance of the first or limited NTP. The OR shall consist of a thorough review of the current software system, its functionality and its operation by multiple end-users with specific and detailed analysis given to currently required functionality of the eligibility, complaint processing, and accounting functions as well as the typical routing & scheduling functions and reports availability compared to the proposed solutions dated August 25, 2006 and November 15, 2007.

At the conclusion of the OR, Trapeze shall furnish Veolia with a clear summary of its findings including a recommendation as to which of the Trapeze-DR systems (NOVUS or PASS) better supports the identified key and essential functions of both Mobility Master & Scrip Tracking. Further, Trapeze will identify any additional functionality that is needed but not currently a part of the Proposal or the deliverables included in this agreement.

If after reviewing the OR report Veolia determines that it would like to modify the scope of work or functionality of the TRAPEZE-DR software, then the parties will negotiate, a modified scope of work and calculation of charges, if any, for the additional functionality before any further work under this agreement is undertaken. Upon Veolia's notice to Trapeze that no functionality modifications are required, or upon the parties' agreement on any modifications to specifications to the TRAPEZE-DR software's functionality and cost, Veolia will issue a second NTP for completion of the remainder of the work to be provided pursuant to this Agreement.

III. Description of Current Hardware and Software System and TRAPEZE-DR Requirements

Mobility Master, the current routing & scheduling software system, is an in-house product developed by ATC/Vancom, the rights to which have been acquired by Trapeze.. It works with another ATC/Vancom-developed custom product called Scrip Tracking. Scrip Tracking was specifically designed for the SF Paratransit program to record and track all paratransit taxi scrip sales and sales of other paratransit media (e.g., Muni Fast Passes, senior passes, ADA paratransit fare coupons, etc.) and to manage all passenger eligibility information. The SFMTA intends to replace the paratransit fare tracking aspects of the Scrip Tracking component with a new Paratransit Debit Card System (PDCS) software which will interface with TRAPEZE-DR. Generally, all SF Paratransit entries are made directly into Scrip Tracking and MM acts as a "slave" to Scrip Tracking. A number of van contractors use the MM part to accept ride requests, both standing and subscription ride requests and demand requests for both group van, ADA paratransit and then schedule these ride requests. The Broker enters complaints related to services directly into MM and maintains all passenger data, including new registrants and updated registrant information, via Scrip Tracking. The eligibility functionality of the Scrip Tracking system must be included as part of the TRAPEZE-DR system.

Mobility Master

Mobility Master contains the tools required to manage all aspects of Paratransit programs from reservations and scheduling to reports and planning. Mobility Master's tools are divided into five main categories: Reservations, Scheduling, Trip Check-In, Supervisor, and Reports. At a minimum, we expect the TRAPEZE-DR software solution to support the same job functions and business practices as the current Mobility Master and Scrip Tracking software.

Reservations

Every trip begins with a reservation. Mobility Master provides multiple ways of entering or creating reservation information. The Daily Trips form is used for the demand response trips. The Standing order form is used for trips that repeat on a set schedule every week. The SF Paratransit program uses both forms of reservations.

Scheduling

Mobility Master supports three modes of scheduling – interactive (on-line), batch or manual scheduling. In batch scheduling, Mobility Master schedules all trip records at once. Interactive or on-line scheduling allows Reservations Agents to tell callers what their approximate pick-up times

will be by scheduling the trip at the time of the reservation. It also allows for trip time negotiations. Mobility Master provides tools for the experienced scheduler to manipulate trip records manually and develop schedules. Currently, the contractors use a combination of batch and manual scheduling.

Reports

At a minimum, TRAPEZE-DR shall provide all standard TRAPEZE-DR reports and additionally, this contract requires the delivery of five (5) custom reports that will be identified by Veolia during the OR. The cost for any additional custom reports will be negotiated as part of the OR.

Queries

Currently, the SF Paratransit program is able to run queries of all existing data via Microsoft (MS) Excel. A connection to the database occurs via MS SQL using MS Excel. Using the SQL language, the data is queried out and ported out MS Excel. At a minimum, this capability must be replicated in TRAPEZE-DR and all data shall be accessible via this route.

Current Hardware-Software Configuration

Scrip Tracking and Mobility Master are SQL Databases which reside on a single server. The server also contains MS SQL 2000 Enterprise. There are a total of four servers located in our Network Operations Center (NOC) at 365 Main Street. The below list represents the servers and their roles and current users accessing them;

Server 1 Primary Domain Controller, user accounts, both local and remote [NOC]

Server 2 Scrip Tracking, Mobility Master and SQL Enterprise, live database, user accounts, both local and remote SQL account information [NOC]

Server 3 MS Terminal Server-1, user accounts (Veolia & Medsam), both local and remote [NOC]

Server 4 MS Terminal Server-2, user accounts (Mobility Plus Transportation), both local and remote [NOC]

Any additionally required hardware needed to properly operate the TRAPEZE-DR software will be provided by Veolia.

Scrip Tracking

The Scrip Tracking Module is used to manage information regarding client eligibility for Paratransit services. It is also used to keep track of fare media sales transactions made by the registered riders. The Scrip Tracking Module uses the same client database as Mobility Master. Clients are the core of the Scrip Tracking Module and Mobility Master. The Client Locator form and Client form are located under the Reservations/Intake menu. In a Client form, the Scrip Tracking Module and Mobility Master stores all basic information about the clients who use the transportation system: name, address, phone numbers, emergency contacts, disability information, billing information and other client specific information, a list of which has been included in **Appendix One of this contract**, along with all scrip purchases and transaction histories including dates of next eligible purchases, scrip purchase levels and transaction notes.

Eligibility Component of Scrip Tracking

Once an application has been received, the user, after identifying the client, will select the "Eligibility" button from the Client Locator form and a blank Eligibility form will appear. The header of the window will display the Client's name, address, home phone number and Client ID field. The tabbed pages will display information about the client's eligibility process for each type of Paratransit service. It is possible for clients to be eligible for multiple types of service simultaneously. Information entered on this form will be the factors that determine the amount, frequency and type of scrip that a client can purchase.

Veolia staff uses eligibility when processing eligibility applications and for certifying the rider as eligible or ineligible based on their mobility abilities and/or needs. Eligibility is based on two levels; full or conditional. Fully certified riders can access rides whereby conditional riders may be restricted based on their mobility condition.

Eligibility for certified riders is based on three categories:

[1] Inability to use the fixed route system; [2] Inaccessibility of the fixed route system; and, [3] Inability of the rider to get to/from the fixed route system.

MM/Scrip Tracking allows eligible riders to fall into three types: ambulatory, wheelchair or stretcher. Currently, "stretcher" is not used for purposes of the SF Paratransit program.

All entries in the eligibility tab within Scrip Tracking affect various riders' ability to travel and the mode of transportation. Two key fields in the eligibility section include Record Status and Billing Codes. These fields are verified in Mobility Master and the rider is either approved or denied to use the Paratransit system. The record status fields are either active or

inactive. If the record status is active, the rider is eligible to use the Paratransit system, and conversely, the rider cannot use the system if their status is inactive.

Built-in Forms

Scrip Tracking generates custom form letters to clients based upon their needs, requirements and whether they are denied or approved for Paratransit services. The forms include custom mailing labels as well (Avery 5160 Template) as staff members can mail to the various clients.

These form letters include but are not limited to: Eligibility Applications, Acknowledgement Letter, Application Completed Acknowledgement, Eligibility Determination Letter, Recertification Letter, Second Recertification Letter Reminder, Final Recertification Letter Reminder, Pay Letter, Signed Memo of Understanding, Photo ID Appointment letter, etc. Veolia will provide a complete summary of these forms to Trapeze in an electronic format with the first or limited NTP.

Although the debit card software (DCS) or middleware to be procured separately will replace most functionality currently in the Scrip Tracking system, the TRAPEZE-DR Certification module being purchased as part of this agreement must replicate some functionality of the Scrip Tracking's eligibility component to work effectively as an adjunct to the TRAPEZE-DR software so it effectively supplies the necessary information for the DCS to function properly.

Scrip Tracking Integration

Scrip Tracking is used to certify riders and determine their eligibility for using Paratransit services. If the client is not entered into Scrip Tracking, rides cannot be scheduled with Mobility Master. Clients are first entered into Scrip Tracking; their eligibility is established and the rider's information is then transferred to Mobility Master for the purpose of scheduling rides. Scrip Tracking is the primary interface to enter all pertinent client data details and then it is transferred to Mobility Master. Scrip Tracking software also tracks all sales of paratransit taxi scrip and associated data management.

Before the PDCS interface is active, Trapeze will create an interface with the current Scrip Tracking component of MM that will automatically import client information as defined in the final specification into the TRAPEZE-DR system as it is updated or created within the Scrip Tracking component. After the PDCS interface has been deployed and is active, Trapeze will interface to support the Debit Card system as herein

described.

With the activation of the PDCS interface, the current Scrip Tracking component will be decommissioned and the Trapeze-DR software will be employed to administer the eligibility functions through the adjunct Certification module being licensed through this agreement. The interface function between TRAPEZE-DR and the DCS will be an export from TRAPEZE-DR in the required format each time a client record is created, updated or edited.

TRAPEZE-DR Upgrades

Contractor warrants that all future upgrades to TRAPEZE-DR shall be incorporated into this version of TRAPEZE-DR and be compatible with all aspects of the previous TRAPEZE-DR version including custom features, by ensuring customizations developed pursuant to this agreement become features/functions of the off-the-shelf system.

As such, Contractor warrants that they will be subjected to the same quality control and testing systems as all Trapeze products before they are released to users and thus warrant that all upgrades shall be integrated to work smoothly and without problem, interruption or failure.

TRAPEZE-DR Customization for San Francisco

All custom features offered as part of this TRAPEZE-DR installation, either as part of this agreement, including but not limited to those agreed to by the parties after the completion of the OR, shall be tested and certified as working properly by the COTR and without problems, interruptions or failure. All customized features shall be documented as part of the end-user's manual required by Section VI paragraph 15 of this agreement, and updated annually and shall be delivered as part of the project and accepted by the COTR as described in Paragraph VI herein.

IV. Project Schedule and Term

Except as otherwise provided in Attachments IV and V of this agreement, the term of this Agreement shall be from the date of the first, limited Notice to Proceed and shall continue through June 30, 2010 unless earlier terminated.

The implementation of the Trapeze -DR software is anticipated to be completed by September 22, 2009, after conditional system acceptance has been given by the COTR. Then 45 days later, on or around October 10, 2009, full system acceptance will be given by the COTR, contingent on correction or repair of all operational problems previously identified by the COTR. Veolia, through its COTR may modify or update the specific

tasks, including steps and procedures, as needed to accommodate proper completion of deliverables but may not modify the overall project schedule. Adherence to the project schedule will be determined by measuring each deliverable's actual completion date with the due date for each deliverable listed in Section VI of this Attachment.

V. Payment Schedule

The total project cost may not exceed \$247,321 unless this contract is modified under the terms and conditions described in Section 2 of Attachment II to this contract. The COTR may not modify the total cost of this contract nor the deliverables or work described herein without written amendment to this agreement by the Veolia Contracting Officer (CO). A retainage totaling 10% (ten percent) of the total cost of the project shall be held by Veolia and paid within 30 days of full system acceptance by the COTR. Trapeze may invoice pursuant to the following schedule:

1. \$13,500 plus the cost of approved travel 30 days after the first NTP and upon completion of the Operational Review (OR) and submission of required reports unless the Veolia COTR, after completion of the OR and based on the OR's final report, decides to terminate this agreement as described in Paragraph 1, Section VI (Project Deliverables), of this Attachment I;
2. \$52,610 after 45 days from issuance of the second notice to proceed unless the COTR has determined that a proportional amount of anticipated deliverables have not been started or completed.
3. \$52,610 from the 75th day from the second notice to proceed unless the COTR has determined that a proportional amount of anticipated deliverables have not been completed or started.
4. \$52,610 from the 100th day from the second notice to proceed unless a proportional part of anticipated deliverables have not been completed or started.
5. \$52,663 after ten (10) days have passed from conditional system acceptance unless a proportional part of anticipated deliverables have not been completed or started.
6. Retainage equivalent to 10% of the total project cost or \$23,382 within 30 days from final full system acceptance.

VI. Project Deliverables

The key deliverables and their respective due dates are itemized below.

1. As it is part of Contractor's business practice to conduct an "Operational Review" (OR) as part of the initial part of the migration process, this agreement provides for the OR to be conducted during the first 45 days of contract performance. Following execution of this Agreement, Veolia will give Trapeze a limited NTP for the OR (only). The OR shall consist of a thorough review of the current software system, its functionality and its operation by multiple end-users with specific and detailed analysis given to currently required functionality of the eligibility, complaint processing, and accounting functions as well as the typical routing & scheduling functions and reports availability compared to the proposed solutions dated August 25, 2006 and November 15, 2007 functionality of the system described in the Proposal.

At the conclusion of the OR, Contractor shall furnish Veolia with a clear summary of its findings, including but not limited to how the TRAPEZE-DR, Certification module & Complaint module will perform the identified key and essential functions from both Mobility Master & Scrip Tracking. Further, Trapeze will identify any additional functionality that is needed but not currently a part of its proposal or deliverables included in this agreement. Following completion of the OR report, The two parties shall discuss and negotiate, if necessary, any additional cost for the needed or desired functionality before any further work under this agreement is undertaken. Veolia reserves the right to terminate this agreement upon completion of the OR without any further obligation to Trapeze except for payment of the cost of the OR and any approved travel. In such event, notwithstanding the cost provided for in paragraph 1, Article V, Payment Schedule, the cost of the OR shall not exceed \$21,000 plus the cost of approved travel (one trip) if Veolia decides, after the OR is completed and the OR report finalized, to terminate this agreement in accordance with the terms herein described. If this agreement is not terminated by Veolia after receiving the OR report, the total project price for this project as agreed to in December 2007 shall remain the total project price to be paid by Veolia; not including the cost for any new software modifications agreed to by both parties after the OR is completed. Any further work to be performed by Contractor on this project after the OR will be triggered by the issuance of a second and final NTP by Veolia.

Upon satisfactory completion of the OR and acceptable resolution of any open issues, Veolia will issue to Trapeze a final NTP. During the OR, Contractor shall understand the current software systems and understand key & essential current functionality and processes to be replicated by TRAPEZE-DR or the adjunct Complaint & Certification modules prior to issuing the final OR report and proceeding with the installation and deployment of TRAPEZE-DR software to ensure uninterrupted operation. No later than October 31, 2008, the parties will document an agreed-upon final migration plan with timelines for project completion, including data transfer, interim acceptance testing, customization, RED interface, training, successful pilot period and final acceptance. Contractor shall ensure that the OR includes a discussion with Veolia to understand current

reports and any additionally needed reports to see what will be satisfied by current TRAPEZE-DR standard reports, the design of the five (5) custom reports and the need for any additional customized reports;

To be completed within 45 days of first NTP

2. After the final NTP is issued, Contractor shall develop an Application Programming Interface (API) between Contractor's Trapeze-DR software and the planned PDCS (as described in Section III of this Attachment I). To the extent possible, this deliverable is required to take advantage of the Contractor's Trapeze-DR interface development tool and feature and to aid in avoiding the modification of base software code or the development of external elements to satisfy this requirement. Contractor shall identify, track, resolve and implement appropriate user interface features and functionality to satisfy all functional and technical requirements. This deliverable must include at a minimum an API development plan and process; API testing and documentation once it is developed; and API installation and configuration.

In the event that the Trapeze-DR software will not properly interface with the PDCS software, then Veolia will direct Contractor and the PDCS contractor to resolve the problem

The API will be developed and agreed upon by the parties prior to design. The API will be based on XML and an ICD and documentation will be provided to the PDCS contractor. Prior to implementation in the production environment, acceptance testing will be completed with the participation of Contractor, PDCS, Veolia and the SFMTA. Acceptance testing will be based on the final acceptance test plan created during the operational review.

Any issues that arise with the API during the production use will be resolved through the Trapeze customer care program described in Attachment V.

To be completed substantially by the 30th day after the second NTP and be completely tested and accepted by the COTR within 20 days of that date.

3. Contractor shall help develop and agree to a "sign off" list of tasks, including steps to be completed and functionality to be implemented, and any customization as part of the migration from MM and the eligibility functions of Scrip Tracking to TRAPEZE-DR including all actions required of SF Paratransit staff for the performance of this agreement;

To be completed within 21 days from the second NTP

4. Contractor shall identify the necessary geographic database to be used by TRAPEZE-DR, and shall procure, install and test such database to meet the functionality standards of this agreement;

To be completed within 30 days of the second NTP

5. Contractor shall ensure TRAPEZE-DR accepts all existing MM geographic data coordinates for client records or can usefully translate these data coordinates and all existing passenger trip histories and store them to the appropriate TRAPEZE-DR data storage location for ongoing use and reference;

To be completed within 30 days of the second NTP

6. Contractor shall prepare all client, trip, route, vehicle and historical data stored in the current, existing MM database for smooth electronic transfer of all fields into respective TRAPEZE-DR fields and including all historical trip data. Contractor shall ensure all Scrip Tracking Eligibility functionality (existing replication required) as agreed to and established following completion of Deliverable No. 1 and shall define and perform all necessary coding in advance of data transfer. For MM scrip transaction files and scrip historical files which are not to be transferred to TRAPEZE-DR, Contractor shall ensure such data is to be retained for future reference and available for easy access for at least 1 year after the initial data transfer is complete;

To be completed within 50 days of the second NTP

7. Contractor shall conduct a successful transfer of all data to TRAPEZE-DR including all current and indicated client master files, standing order files and other necessary data files;

To be completed within 50 days of the second NTP

8. Contractor shall test system for performance including all reports and customized features, including but not limited to, client eligibility custom features, custom reports, standard reports, bill codes, passenger codes, trip status codes, fare codes, and client needs codes;

To be completed within 60 days of the second NTP

9. Contractor shall install TRAPEZE-DR on servers described in Section III and in a manner approved by Veolia to ensure the smoothest transition and ongoing operation, and shall begin to outline and prepare all training materials for end-users;

To be completed within 20 days of the second NTP

10. Contractor shall perform TRAPEZE-DR end-user training for Broker staff (up to 10 people);

To be completed within 75 days of the second NTP

11. Contractor shall perform TRAPEZE-DR end-user training for designated staff of Veolia's subcontractors (up to 10 people);

To be completed within 80 days of the second NTP

12. Contractor shall work with Veolia to set up all users and rights;

To be completed within 80 days of the second NTP

13. Contractor shall work with Veolia and Veolia subcontractor staff to set up all user-defined elements of TRAPEZE-DR software (driver shifts, vehicle types, holidays, etc.);

To be completed within 50 days of the second NTP

14. Contractor shall perform a one-week on site PILOT testing period of TRAPEZE-DR software at both the Broker facility and Contractor facilities as indicated;

Scheduled to begin within 90 days of the second NTP

15. Contractor shall prepare and deliver 10 bound hard copies and one electronic copy of an end-users guide and two bound hard copies and one electronic copy of a system administrator's guide, including all documentation of customized features;

To be completed by the 100th day of the second NTP

16. Contractor shall meet with Veolia to review performance of TRAPEZE-DR software, functionality of software, customization of software, etc., in preparation for full system acceptance;

Scheduled to begin on or around June 1, 2009

17. Once software is fully operating and while Paratransit Debit Card system administration software is being selected, Contractor shall ensure that all Mobility Master Client File registration's current functionality and additionally needed customization is finalized in the TRAPEZE-DR software, including RED interface, in preparation for take over by TRAPEZE-DR of all MM operations and shall

ensure that such TRAPEZE-DR software effectively interfaces with Paratransit Debit Card Software System.

Scheduled to begin on or around June 30, 2009

VII. Other Matters

1. Liquidated Damages

a) Subject to the procedure set out in subsection (c) below, upon failure by Contractor to meet the following milestones in the Implementation Schedule:

Completion of tasks 6, 7, 8 and 14 of Section VI of this Attachment.

Contractor shall be subject to charges for liquidated damages and not as a penalty in the amount of one-hundred dollars (\$100) for each and every business day of delay up to a maximum of \$4,000.

b) The sum of liquidated damages (if any) will be deducted from the payments to be made to the Contractor. Whatever sum of money may become due and payable to Veolia by the Contractor under this Section may be retained out of money belonging to the Contractor in the hands and possession of Veolia. It is agreed that this Section shall be construed and treated by the parties of this Agreement as liquidated damages to compensate Veolia because of the failure of the Contractor to complete said work fully as specified in this Agreement.

c) Prior to assessing liquidated damages, Veolia must provide the Contractor written notice of the amount and the specific grounds for the intended assessment within five (5) business days of its intent to claim Liquidated Damages. Within 10 business days of the issuance of such written notice, the Contractor shall have the right to submit a written statement of any reasons that liquidated damages should not be assessed, citing specific facts and any pertinent laws or contract provisions that support Contractor's position. Veolia shall respond to Contractor's statement in writing within 10 business days, citing specific facts and any pertinent laws or contract provisions that support Veolia's position. Contractor shall also have the right to submit a revised Implementation Schedule. This Liquidated Damages Section shall apply to any mutually approved revised Implementation Schedule.

Any final payment (or offset) of liquidated damages by Veolia, upon written request by either party, may be made subject to the following dispute resolution procedure:

- 1) A meeting between the Veolia General Manager and an authorized senior member of the Contractor's Executive Team (CFO, President, etc.) shall be immediately effected to expedite a resolution.
- 2) If Step 1 is unsuccessful, parties may (if both agree) employ a mutually agreed upon California based, American Bar Association approved mediator. In said case, the losing party shall pay the cost of the mediator.

In such event the liquidated damages shall not be paid by Contractor, or withheld from payment by Veolia, nor shall Veolia be in breach of contract for withholding payment in the amount of the disputed liquidated damages, until such time as the dispute resolution procedure has concluded, but this shall not preclude Veolia making any and all other payments due to Contractor.

d) If the Contractor's delay or failure to meet the dates in the implementation schedule is caused in whole or in part by a delay or failure to perform by SFMTA, Veolia Transportation or its contractors, or by any event in the nature of Force Majeure, then the Contractor shall be entitled to an automatic extension of time equal to the period of such delay prior to the application of any liquidated damages. Notwithstanding anything to the contrary, no liquidated damages may be assessed in these circumstances described in this Section VII, paragraph 1(d) until the revised Implementation Schedule is agreed to in writing by both parties.

e) Liquidated damages shall not apply to the 100% error-free running of customizations. Given the nature of customized software, it is impossible for the Contractor to anticipate and remedy all possible errors until the software is being used operationally.

2. Travel Policy

All Contractor's travel under this Agreement shall be approved in advance by Veolia. All Contractor's travel shall be undertaken in accordance with SFMTA travel guidelines (to be furnished). Meals will be reimbursed on a per diem basis using the latest Federal government per diem rates for travel to the City of San Francisco. Contractor's employees (or its contractors) assigned to this project will lodge at the Hotel Whitcomb, if available, using a government rate.

Appendix One

List of Client Specific Information stored in Scrip Tracking

Provided separately on DVD

GENERAL PROVISIONS

1. Independent Contractor

The Contractor at all times shall be an independent contractor. Contractor shall administer its own payroll and make all necessary payroll deductions and payments to federal, state, and local governments. No contractual relationship shall be established between Veolia and any employee, subcontractor or supplier of the Contractor by virtue of this Agreement. The Contractor represents and warrants that it is duly organized, validly existing and in good standing under the law of the state where organized and of the state where services are to be performed under this agreement. This Agreement is solely for the benefit of Veolia and the Contractor.

2. Amendments

This Agreement may be amended by the parties. No amendment to this Agreement shall be effective until and unless it is reduced to writing and signed by both parties.

3. Termination without cause

Except as otherwise provided in Attachments IV and V, either Party may terminate this agreement without cause upon thirty (30) days written notice to the other party. Upon such termination without cause, Provider shall be entitled to payment, in accordance with the payment provisions, for services rendered up to the termination date and Veolia shall have no other obligations to Provider. Provider shall be obligated to continue performance of contract services, in accordance with this contract, until the termination date and shall have no further obligation to perform services after the termination date.

4. Termination for Default

Either party may terminate this Agreement for default, in accordance with this paragraph, if the other party fails to perform the services in a timely manner and in accordance with the Attachments or fails in any other way to conform to the terms of this agreement. Prior to termination for default, the terminating party shall give the alleged defaulter a Notice of Default setting forth the circumstances of the default. Said party shall have ten (10) days to cure such default (measured from receipt of the Notice of Default). If the party fails to cure the default or submit a plan for curing the default which is acceptable to the other party before the expiration of the ten (10) day cure period, the Agreement shall be terminated upon the expiration of the cure period and the terminating party shall be entitled to equity under the law. Neither party shall be found in default for events arising due to Acts of God, war, insurrections, strikes and unusually severe weather.

5. Assignment

Neither this agreement, nor any part of this agreement may be assigned by Contractor to another entity without the prior, written consent of Veolia, which shall not be unreasonably withheld.

6. Auto Liability Insurance

Provider shall purchase and maintain auto liability insurance on all vehicles used to provide services under this Agreement (including non-revenue vehicles) regardless of whether said vehicles are owned by the Provider or supplied to Provider by Veolia, the

Funding entity or some other party. Auto liability insurance shall provide minimum limits of two one million dollars (\$1,000,000) per occurrence combined single limit for bodily injury liability and property damage liability including liability to passengers. Said insurance shall provide coverage for "all vehicles" or "all hired, owned and non-owned vehicles." For vehicles not owned by Provider, insurance coverage shall also be maintained for physical damage to the vehicles including comprehensive and collision coverage equal to the cash value of the vehicles. Provider shall provide to Veolia, prior to beginning service under this agreement a certificate of insurance, specifying coverages as required in this paragraph, underwritten by a carrier acceptable to Veolia (and having a most recent published rating by A. M. Best Company of "A" or better) that indicates that Veolia and the Funding Entity, the officers, agents, employees, and volunteers of Veolia and the Funding Entity, individually and collectively and any subcontractor or agent of Provider engaged in any work under this agreement are named as additional insureds on the policy. The certificate of insurance shall contain an endorsement providing that Veolia shall be given thirty (30) days notice before cancellation of the policy and an endorsement that such insurance is primary and no insurance of Veolia, the Funding entity, or subcontractor will be looked upon to contribute to any loss.

7. General liability insurance

Provider shall obtain Comprehensive General Liability insurance in the amount of one million dollars (\$1,000,000) per occurrence. Said coverage shall be "broad form" and shall specifically cover contractual liabilities including the hold harmless provisions of this Agreement. Prior to the start of service under this agreement, Provider shall provide Veolia a certificate of insurance, specifying coverages as required in this paragraph, underwritten by a carrier acceptable to Veolia (and having a most recent published rating by A. M. Best Company of "A" or better) indicating that Veolia and the Funding Entity the officers, agents, employees, and volunteers of Veolia and the Funding Entity, individually and collectively and any subcontractor or agent of Provider engaged in any work under this agreement are named as additional insureds on the policy. Said policy shall contain a provision that Veolia shall be given thirty (30) days written notice before the cancellation of the policy and an endorsement that such insurance is primary and no insurance of Veolia, the Funding entity, or subcontractor will be called upon to contribute to any loss.

8. Worker's Compensation Insurance

Contractor shall maintain a policy of insurance covering Workers Compensation risks in the amount of one million dollars (\$1,000,000) and with such coverage as required by the laws of the State of California. Prior to the start of service under this agreement, Contractor shall provide Veolia a certificate of insurance, specifying coverages as required in this paragraph, underwritten by a carrier acceptable to Veolia (and having a most recent published rating by A. M. Best Company of "A" or better) indicating that Veolia, the Funding Entity and any subcontractors are included as additional insureds on said policy. The policy shall contain a provision that Veolia shall be given thirty (30) days

written notice before the cancellation of the policy; that such insurance is primary and no insurance of Veolia, the Funding Entity, or subcontractor will be called upon to contribute to any loss.

9. Indemnification and liability

Trapeze shall indemnify Veolia and the Funding Entity as provided in the Trapeze License Agreement (Attachment IV).

10. Disputes

Any dispute concerning a question of fact or law arising under or related to this Agreement that is not disposed of by agreement shall be submitted by Contractor in writing to the Project Manager. Thereafter, the Parties shall have thirty (30) days to reach an agreed resolution of the dispute. In the event no agreement is reached, the decision of the Project Manager shall be the final decision, unless, within thirty (30) days the matter is referred to arbitration. Either party may submit the matter to arbitration by doing so in writing within the thirty (30) day period above specified. An arbitrator will be selected by alternate strikes of a list of five arbitrators supplied by the local office of the American Arbitration Association. The first strike shall be determined by lot. The parties shall alternately strike proposed arbitrators until only one arbitrator remains. This person shall hear the dispute. The decision of the arbitrator shall be final and binding and the cost of the arbitration shall be borne by the losing party. Notwithstanding any disagreement, the Contractor shall proceed during the pendency of any appeal with the services in accordance with the Project Manager's decision. Contractor shall be responsible for requesting instructions or interpretations when an ambiguity is apparent, and is liable for any cost or expenses arising from its failure to do so. The Contractor's failure to appeal the Project Manager's decision within the thirty (30) day period shall constitute a waiver of its rights to further appeal.

11. Records

Contractor shall maintain (in accordance with generally accepted accounting procedures) and make available for inspection, audit and /or reproduction by any authorized representative of Veolia, the Funding Entity, or any other authorized governmental agency; adequate books, documents and other evidence pertinent to the costs and expenses of this Agreement. This shall include direct and indirect costs of labor, material, equipment, supplies, services and all other costs and expenses of whatever nature for which reimbursement is claimed under the provisions of this Agreement. All records required by this Agreement or by law shall be maintained until an audit is completed and all questions arising therefrom are resolved or five (5) years after completion of this Agreement, whichever occurs first; except that records will be retained beyond the fifth year if an audit is in progress and/or the findings of a completed audit have not been resolved satisfactorily.

12. Notices

Notices in connection with this Agreement shall be in writing and delivered by regular, registered, or certified mail or hand carried to the individual designated on the signature page to receive such notice. Telephone calls and facsimile machines may be used to expedite communications, but shall not be official communication unless confirmed in writing and delivered in accordance with this paragraph.

The parties designated to receive notice and/or addresses for delivery of notices may be changed from time to time by written notice.

13. Federal State and Local Taxes

All prices set forth in the payment provisions of this agreement are inclusive of all applicable taxes and Veolia shall not be liable to Contractor for any taxes, including payroll taxes and sales taxes not included within said prices.

14. Licenses and permits

The Contractor shall, without additional expense or obligation to Veolia, be responsible for obtaining any necessary licenses, permits, and approvals necessary for complying with any federal, state, county, municipal or other law, code or regulation applicable to the performance of the services to be provided under this agreement.

15. Compliance with Law

The Contractor shall perform all services required by this Agreement in accordance with all applicable federal, state and local laws and regulations. The Contractor shall use only licensed personnel to perform work required by law or regulation to be performed by such personnel.

16. Privacy of data

Contractor shall comply with all federal state and local data privacy laws, regulations, and requirements applicable to data collected or used by Contractor in the provision of services under this agreement.

17. Interest of Contractor

No Board member, owner or employee of Contractor shall have any interest in Veolia or become an employee of Veolia or member or employee of the Funding Entity.

18. Governing Law

This Agreement and the rights, obligations and remedies of the parties under it shall be governed by the law of the state in which the Funding Entity, if a unit of state or local government, is created, or, if the Funding Entity is not a unit of state or local government, the state in which the majority of services under this Agreement are delivered.

19. Notice of Labor Disputes

If the Contractor has knowledge of any actual or threatened labor dispute that is delaying or threatens to delay the timely or proper performance of this Agreement, the Contractor shall immediately give Veolia notice of the dispute, including all relevant information.

20. Publicity Releases

All publicity releases or releases of reports, papers, articles, maps or other documents in any way connected with this Agreement or the work under this Agreement which Contractor desires to make shall be subject to the prior approval of Veolia. Contractor shall promptly notify Veolia of all enquiries it receives from members of the media regarding the performance of the work under this Agreement. Veolia shall have unrestricted authority to reproduce, distribute, or use in whole or in part, without payment of any kind, photos of the Contractor's employees and vehicles and any reports, data or materials submitted by Contractor associated with any services provided under this Agreement.

21. Equal Opportunity

During the performance of this Agreement, the Contractor agrees that it will, in good faith, afford equal opportunity required by applicable federal, state, or local law to all employees and applicants for employment without regard to race, color, religion, sex, sexual orientation, age, disability or national origin. The

Contractor further agrees to afford equal opportunity required by applicable federal, state, or local law to subcontractors and vendors which are "disadvantaged business enterprises" or "women owned enterprises" (both as defined by federal law or regulation in effect on the date of this Agreement). The Contractor agrees to insert the substance of this clause in all subcontracts and purchase orders.

22. Complete Agreement, Savings Clause, Waiver

This agreement together with all attachments and exhibits is the complete agreement between the parties. If any provision of the Agreement is found to be invalid or unenforceable, the remaining

provisions shall not be impaired. Failure or delay of Veolia (a) to insist in any one or more instances upon performance of any of the terms and conditions of this Agreement or (b) to exercise any rights or remedies, or (c) to approve the services, shall not release the Contractor from any obligations under this Agreement and shall not be construed as a waiver or relinquishment of Veolia's rights (a) to require strict performance of the Contractor's obligations or (b) to require the future performance of any terms and conditions, but the Contractor's obligations with respect to such performance shall continue in full force and effect.

Veolia
ATTACHMENT III

FEDERAL PROVISIONS

The federally required contract clauses and provisions in this Attachment apply to all Federally assisted contracts. These provisions supersede and take precedence over any other conflicting clause or provision of the Agreement.

1. Equal Opportunity

During the performance of this Agreement, the Contractor agrees that it shall not discriminate against any employee or applicant for employment because of race color, creed, sex, disability, age or national origin. The Contractor shall take affirmative action to ensure that applicants are employed and the employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. This shall include, but not be limited to: 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. The Contractor shall include the provision of this section in every subcontract or purchase order except for standard commercial supplies or raw material and construction.

2. Disadvantaged Business Enterprise Program

It is the policy of the Department of Transportation that Disadvantaged Business Enterprises (DBEs) as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or part with Federal funds. Consequently, the DBE requirements of 49 CFR Part 23 apply to this Agreement. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The requirements of 49 CFR Part 23 are incorporated in this Agreement by reference. Failure by the Contractor to carry out these requirements is a material breach of the Agreement, which may result in termination or other appropriate remedy.

3. Interests of Members of Congress

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Agreement or to any benefit arising from it. However, this clause does not apply to this Agreement to the extent that this Agreement is made with a corporation for the corporation's general benefit.

4. Restrictions on Lobbying

The Contractor shall timely comply with the requirements of the lobbying restrictions set forth in Section 301 of Public Law 101-121 as implemented by the Department of Transportation in 49 CFR Part 20, and as those authorities may be hereafter amended.

**5. Contract Work Hours and Safety Standards Act-
Overtime Compensation**

(a) Overtime requirements. No Contractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess for forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1-1/2) times the basic rate of pay for all hours worked in excess of forty (40)

hours in such workweek.

(b) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory to such District or to such territory), 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 provisions set forth in paragraph (a) of this clause 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 or forty (40) hours without payment of the overtime wages required by the provision set forth in paragraph (a) of this clause.

(c) Withholding for Unpaid Wages and Liquidated Damages. Veolia 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 Contractor or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same 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 provision set forth in paragraph (b) of the clause.

(d) Payrolls and Basic Records

(1) The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of Agreement work and shall preserve them for a period of three (3) years from the completion of the Agreement for all laborers and mechanics working on the Agreement. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5 (a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d) (1) of this clause shall be made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of Veolia or the Department of Labor. The Contractor or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the provisions set forth in paragraphs (a) through (c) of this clause and also a provision requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

6. Title VI Civil Rights Act of 1964

During the performance of this Agreement, the Contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

(a) Compliance with Regulations. The Contractor 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.

(b) Nondiscrimination. The Contractor, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in 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.

(c) Solicitations for Subcontracts, Including Procurement of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, disability, religion, color, sex, age, or national origin.

(d) Information and Reports. The Contractor shall provide all information and reports required by the Regulations or directive issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Veolia, the Funding entity, or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information is required and the information is in the exclusive possession of another who fails to or refuses to furnish this information, the Contractor shall so certify to Veolia, the Funding entity or the FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(e) Sanctions for Noncompliance. In the event of the Contractor's noncompliance with the nondiscrimination provision of this Agreement, Veolia shall impose such contract sanctions as it or the Funding entity or FTA may determine to be appropriate, including, but not limited to:

(1) Withholding of payment to the Contractor under the Agreement until the Contractor complies; and/or

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

(f) Incorporation of Provision. The Contractor shall include the provision of paragraphs (a) through (e) of this clause in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as Veolia, the Funding Entity or FTA may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that, in the event a Contractor becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the Funding Entity to enter into such litigation to protect the interests of the Funding entity and, in addition, may request the Attorney General of the United States to enter into such litigation to protect the interests of the United States.

7. Clean Air and Water Acts

(a) Definitions:

(1) "Air Act" as used in this clause means the Clean Air Act (42 USC 7401 et. seq.).

(2) "Clean Air Standards" as used in this clause means:

(i) Any enforceable rule, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738.

(ii) An applicable implementation plan as described in Section 110(d) of the Air Act (42 USC 7410(d))

(iii) an approved implementation procedure or plan under Section 110(c) or Section 111(d) of the Air Act (42 USC 7411(c) or (d)); or

(iv) An approved implementation procedure under Section 112 (d) of the Air Act (42 USC 7412 (d)).

(3) "Clean water standards" as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program as authorized by Section 402 of the Water Act (33 USC 1342) or by local government to ensure compliance with pre-treatment regulations as required by Section 307 of the Water Act (33 USC 1371).

(4) "Compliance" as used in this clause, means compliance with:

(i) Clean air or water standard; or

(ii) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

(5) "Facility" as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised, by a Contractor or subcontractor used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee of the Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

(6) "Water Act" as used in this clause, means Clean Water Act (33 USC 1251 et. seq.).

(b) The Contractor agrees:

(1) To comply with all the requirements of Section 114 of the Clean Air Act (42 USC 7417) and Section 308 of the Clean Water Act (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in Section 114 and Section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this Agreement.

(2) That no portion of the work required by this Agreement will be performed in a facility listed on the Environmental Protection Agency list of Violating Facilities on the date when this Agreement was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best effort to comply with Clean Air standards and clean water standards at the facility in which the Agreement is being performed; and

(4) To insert the substance of this clause into any nonexempt subcontract, including this paragraph (b) (4).

8. Energy Policy and Conservation Act

The Contractor shall recognize mandatory standards and policies relating to energy efficiency contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et. seq.)

9. Access Requirements for Individuals with

Disabilities

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC 12101 et. seq. and 49 USC 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC 794; Section 16 of the Federal Transit Act, as amended, 49 USC app 1612; and the regulations thereto.

10. Audits and Inspection of Records

(a) This clause is applicable if this Agreement was entered into by means of negotiation and shall become operative with respect to any modification to this Agreement whether this Agreement was initially entered into by means of negotiation or by means of formal advertising.

(b) The Contractor shall maintain records, and Veolia, the U. S. Department of Transportation, the United States Department of Health and Human Services, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of such Contractor, involving transactions related to the Agreement, for the purpose of making audit, examination, excerpts and transcriptions.

(c) The Contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees the Veolia, The United States Department of Transportation, the United States Department of Health and Human Services, and the Comptroller General of the United States or any of their duly authorized representatives shall, until the expiration of three years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers, and records of such subcontractor, involving transactions related to the subcontract, for the purpose of making audit, examination, excerpts and transcriptions.

11. Privacy

Should the Contractor or its subcontractors or employees administer any system of records on behalf of the Funding Entity or the Federal Government, the following terms and conditions are applicable:

(a) The Contractor agrees:

(1) To comply with the Privacy Act of 1974, 5 USC Section 552a (the Act) and regulations thereunder, when performance under the Agreement involves the design, development, or operation of any system of records on individuals to be operated by the Contractor, its subcontractors or employees to accomplish a Funding Entity function.

(2) To notify Veolia, when the Contractor anticipates operating a system of records on behalf of the Funding Entity in order to accomplish the requirements of the Agreement, if such system contains information about individuals, which information will be retrieved by the individual's name or other identifier assigned to the individual. A system of records subject to the Act may not be employed in the performance of this Agreement until the necessary approval and publication requirements applicable to the system have been carried out. The Contractor agrees to correct, maintain, disseminate, and use such records in accordance with all applicable requirements of the Act;

(3) To include the Privacy Act Notification contained in the Agreement in every third party contract solicitation and in every third party contract when the performance of work under that proposed third party contract may involve the design, development, or operation of a system of records on individuals to be operated under the Agreement to accomplish a Funding Entity function; and

(4) To include this clause, including this paragraph, in all third

party contracts under which work for this Agreement is performed or which is awarded pursuant to this Agreement or which may involve the design, development, or operation of such a system of records on behalf of the Funding Entity.

(b) For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a Funding Entity function, the Contractor, third party contractors and any of their employees are considered to be an employee of the Funding Entity with respect to the Funding Entity function. Failure to comply with the provisions of the Act or this clause will make this Agreement subject to termination.

(c) The terms used in this clause have the following meaning:

(1) "Operation of a system of records" means performance of any of the activities associated with maintaining the system of records on behalf of the Funding Entity including the collection, use and dissemination of records.

(2) "Record" means any item, collection, or grouping of information about an individual that is maintained by the Contractor on behalf of the Funding Entity, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

(3) "System of records" on individuals means a group of any records under the control of the Contractor on behalf of the Funding Entity from which information is retrieved by the name of the individual or by some identifying number, symbol or other identifying particular assigned to the individual.

12. Buy America Provision

This Agreement is subject to the Buy America provisions of the Surface Transportation Assistance Act of 1982, as amended, and the Federal Transit Administration's implementing regulations found at 49 C.F.R. Part 661. The provisions of that Act and its implementing regulations are hereby incorporated by reference into this Agreement.

Attachment IV
SOFTWARE LICENSE AGREEMENT

This Agreement effectively made this 31st day of October, 2008, between:

Name and Address of Licensor:

Trapeze Software Group, Inc, an Arizona corporation
("Trapeze"), with its principal place of business at:

8360 East Via de Ventura, Suite L-200
Scottsdale, Arizona 85258
United States of America

Name and Address of Licensee:

City and County of San Francisco ("Licensee"), a
municipal corporation with its principal place of
business at:

City and County of San Francisco
Municipal Transportation Agency
1 South Van Ness Ave.
San Francisco, CA, 94103
United States of America

This Agreement represents the complete and exclusive agreement between Trapeze and Licensee concerning Licensee's use of the Software and all related matters and supersedes all prior agreements, negotiations, or understandings between Trapeze and Licensee in any way relating to these matters. No other terms, conditions, representations, warranties or guarantees, whether written or oral, express or implied, will form a part of this Agreement or have any legal effect whatsoever. In the event of any conflict or inconsistency between the provisions of this Agreement and the documents listed in Exhibit B, the terms and conditions of this Agreement will govern to the extent of such inconsistency. This Agreement may not be modified except by a later written agreement signed by both parties.

Trapeze and Licensee acknowledge having read and understood this Agreement and hereby agree to be bound by its terms and conditions.


TRAPEZE SOFTWARE GROUP, INC.

LICENSEE

Signature:

Name:

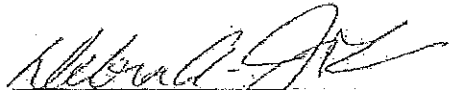
Title:


Colin McKenzie
General Manager

Signature:

Name:

Title:


Nathaniel P. Ford, Sr.
Executive Director/CEO

TERMS AND CONDITIONS

NOW THEREFORE, the parties agree as follows:

1. Definitions In this Agreement the capitalized words set out below will have the following meanings:

- "Agreement" this software license agreement effectively made as of the 29th day of October, 2007, between Trapeze and Licensee, and the attached exhibits, all of which form an integral part of this Agreement;
- "Authorized User" the third party operator of the Software authorized by the Licensee, and must have signed and returned a Form 1;
- "Documentation" the user documentation pertaining to the Software as supplied by Trapeze;
- "Form 1" the template document attached as Exhibit C, that must be completed and fully executed as part of the process to specify an Authorized User;
- "Gross License Fees" the license fees before discount for the Trapeze-DR Paratransit Suite Software, and the Malteze Database which only includes Trip Booking/Scheduling/Dispatch, Coordinated Transportation (Security), Mobility Master Client Import Interface, Complaints, Workstations and REDS Interface (export and import). These license fees total, before taxes, \$187,500.
- "Licensee" the City and County of San Francisco, a municipal corporation with its principal place of business at Municipal Transportation Department, City Hall, Room 430, 1 Dr. Carlton B. Goodlett Place, San Francisco, California, U.S.A. 94102-4685;
- "Licensee Terms and Conditions" the terms and conditions as identified in Exhibit D of the Agreement;
- "Maintenance Agreement" the agreement effectively made as of the 29th day of October, 2007, between Trapeze and Licensee setting out the terms and conditions by which Trapeze agrees to supply long-term maintenance and support services related to the use of the Software by Licensee, and the attached exhibits;
- "Software" the certain software as identified in Exhibit A of this Agreement;
- "Summary of Proposed Pricing" the summary of pricing information related to the Software, as annexed to Exhibit B;
- "Trade Secrets" the Software, Documentation, and other related information (including all modifications of the Software developed for Licensee) disclosed to Licensee under this Agreement, including trade secrets and other confidential and proprietary information of Trapeze.

2. License Trapeze grants to Licensee a perpetual, personal, non-transferable and non-exclusive license restricted for use by Licensee at their place of business:

- (a) to use one production copy of the executable code version of the Software in the form supplied by Trapeze, on hardware approved by Trapeze, and in accordance with the further specifications set out in Exhibit A hereto; and
- (b) to use the Documentation, but only as required to exercise this license.

Licensee may make two back-up copies of the Software. Licensee may use the production copy of the Software solely to process Licensee's proprietary data. The Software may not be used on a service bureau or similar basis to process data of any third parties.

An Authorized User shall be allowed to operate and use the software solely on behalf and for the exclusive benefit of the Licensee as long as they have been authorized to do so by the Licensee and have signed and returned a copy of the Form I, attached hereto, to Trapeze.

The license to use the Trapeze™ Malteze Transit Database is granted to Licensee solely for the development of internal reports by Licensee and for the integrated operation of Trapeze software components. Unless expressly included herein, all other access rights to the Trapeze™ Malteze Transit Database are excluded from this Agreement, and the Licensee shall not develop or use, or authorize the development or use of, any other application interfaces to or from the Trapeze™ Malteze Transit Database.

Licensee will not attempt to reverse compile, disassemble, or otherwise reverse engineer all or any part of the Software. Other than the rights of use expressly conferred upon Licensee by this paragraph, Licensee will have no further rights to use the Software or Documentation. Licensee will not copy, reproduce, modify, adapt, translate or add new features to the Software or the Documentation without the express written consent of Trapeze. Licensee will not permit disclosure of, access to, or use of the Software or the Documentation by any third party unless authorized in writing by Trapeze.

3. Services As itemized in the Summary of Proposed Pricing, Trapeze will perform for the benefit of Licensee services related to Licensee's use of the Software (the "Services"). Such services may include installation, modification, testing, training and additional services.

4. Acceptance Procedure Upon completing the delivery, installation, and testing of the Software, Trapeze will notify Licensee in writing. Licensee will then have thirty (30) business days in which to conduct acceptance tests in order to ensure that the Software operates in all material respects as specified in the Documentation. At the end of this period, Licensee will be deemed to accept the Software unless Trapeze receives prior written notice outlining the nature of the perceived defects in the Software.

Notwithstanding the above, Licensee will be deemed to accept the Software when the Licensee puts the Software into operational and functional use. Without limiting the foregoing, the Software will be deemed to be in operational and functional use when the Licensee first uses the Software to support its then current operations in any capacity. Upon the deemed acceptance of the Software in accordance with this paragraph, Licensee will provide Trapeze with a written acknowledgement to confirm such acceptance.

5. Payment Trapeze will invoice Licensee for the Software license fee(s) as set out in and according to the Summary of Proposed Pricing attached as Exhibit B. The full amount of the license fee is set out in Exhibit A. Trapeze will invoice Licensee monthly for the Services provided, in accordance with the Summary of Proposed Pricing. The total amounts due for all service fees and modifications fees, as those fees are set out in the Summary of Proposed Pricing, are firm fixed amounts and will be invoiced on that basis. Trapeze will also invoice Licensee monthly for related expenses that will be calculated based on actual expenses incurred. Expenses related to the Services are not to exceed those amounts set out in the Summary of Proposed Pricing. Subject to receipt of an accurate invoice, Licensee will pay invoices within thirty (30) days of receipt. Licensee will be responsible for payment of all applicable taxes and other levies, including sales and use taxes, and this obligation will survive termination of this Agreement. If Licensee has a tax exemption certificate, a copy of the certificate must be provided to Trapeze upon signing of this Agreement to avoid payment of the applicable tax to Trapeze.

6. Trade Secrets Licensee acknowledges that the Trade Secrets are owned by Trapeze or Trapeze has the applicable rights of use and Licensee will maintain the Trade Secrets in strict confidence and not disclose the Trade

Secrets to any third party without Trapeze's prior written consent. These obligations of confidentiality will survive termination of this Agreement.

7. Media and Publication Upon reasonable notice and consultation with the Licensee, Trapeze shall be entitled to publish press releases and other general marketing information related to this Agreement and the work done hereunder. Except for the foregoing, and subject to the strict requirements of the law, neither party will communicate with representatives of the general or technical press, radio, television, or other communication media regarding the work performed under this Agreement without the prior written consent of the other party.

8. Warranty Trapeze warrants the Software to operate in all material respects as specified in the Documentation up until the date upon which the Software is first put into operational and functional use, as defined in the "Acceptance Procedure" paragraph herein. The sole remedy of Licensee for any breach of this warranty will be to require Trapeze to use reasonable efforts to correct, at its own expense, any defects in the Software that are brought to Trapeze's attention by Licensee.

This warranty is in lieu of all other warranties, conditions or other terms, express or implied, concerning the Software. It explicitly excludes any other warranty, condition or other term which might be implied or incorporated into this Agreement, whether by statute, regulation, common law, equity or otherwise, including without limitation any implied warranties or conditions of quiet usage, merchantability, merchantable quality, fitness for a particular purpose, or from the course of dealing or usage of trade as allowed by law. In particular, Trapeze does not warrant that: (i) the Software will meet any or all of Licensee's particular requirements; (ii) that the operation of the Software will operate error free or uninterrupted; or (iii) all programming errors in the Software can be found in order to be corrected.

9. Indemnity Trapeze will defend and indemnify Licensee in respect of any loss, cost, damage, injury, liability and claim brought against Licensee by a third party based on the claim that the Software infringes the intellectual property rights of that third party. Trapeze will pay any award rendered against Licensee by a court of competent jurisdiction in such action, provided that Licensee gives Trapeze prompt notice of the claim and Trapeze is permitted to have full control of any defense. If all or any part of the Software becomes, or in Trapeze's opinion is likely to become, the subject of such a claim, Trapeze may either modify the Software to make it non-infringing, so long as it continues to perform in a functionally equivalent manner, procure for Licensee the right to continue to use the Software, direct Licensee to cease use of the infringing portion of the Software, and substitute equivalent non-infringing software which performs in a functionally equivalent manner, or if none of the foregoing is economically possible, refund to Licensee the fees paid to Trapeze applicable to the infringing portion of the Software, less a reasonable amount for Licensee's use of the infringing portion up to the time of the refund. This is Trapeze's entire liability concerning intellectual property infringement. Trapeze will not be liable for any infringement or claim based upon any modification of the Software developed by Licensee, or use of the Software in combination with software or other technology not supplied or approved in advance by Trapeze, or use of the Software contrary to this Agreement or the Documentation.

10. Exclusion of Liability

a) Trapeze and Licensee do not rely on and will have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to Licensee for breach of warranty is for breach of contract under the terms of this Agreement. This does not preclude a claim for fraud.

b) Trapeze does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through the internet or any information stored in any system connected to the internet. Trapeze shall not be responsible for any claims, damages, costs or losses whatsoever arising out of or in any way related to Licensee's connection to or use of the internet.

c) Trapeze will not be liable to Licensee or any third party for any claims, expenses, damages, costs or losses whatsoever arising out of or in any way related to:

(i) Licensee's use of map or geographical data, owned by Licensee or any third party, in conjunction with

the Software or otherwise; or

(ii) Licensee's use of the Software insofar as such Software may be used to store, transmit, display, disclose or otherwise use data or information which is considered private, confidential, proprietary or otherwise exempt from public disclosure under applicable law.

(d) Trapeze's entire liability and responsibility for any claims, damages, costs or losses whatsoever arising either jointly or solely from or in connection with this Agreement or the Software Maintenance Agreement, or the use of the Software (whether or not in the manner permitted by this Agreement), including claims for breach of contract, tort, misrepresentation, or otherwise, or the development, modification or maintenance of the Software will be absolutely limited to the amount of the Gross License Fees.

(e) Trapeze will not be liable to the Licensee or any third party for losses or damages suffered by Licensee or any third party which fall within the following categories:

- i) incidental or consequential damages, whether foreseeable or not;
- ii) special damages even if Trapeze was aware of circumstances in which special damages could arise;
- iii) loss of profits, anticipated savings, business opportunity, goodwill, or loss of information of any kind.

(f) Paragraphs (d) and (e) do not apply to claims arising out of death or personal injury caused by either party's gross negligence or fraudulent misrepresentation.

11. Termination

(a) The license granted by this Agreement is perpetual unless it is terminated for default or breach of the license terms and conditions.

(b) Trapeze has the right to terminate the license granted under this Agreement if Licensee is in default of any term or condition of this Agreement, and fails to cure such default within seven (7) days after receipt of written notice of such default. Without limitation, the following are deemed Licensee defaults under this Agreement: (i) Licensee fails to pay any amount when due hereunder; (ii) Licensee becomes insolvent or any proceedings will be commenced by or against Licensee under any bankruptcy, insolvency or similar laws.

(c) If Licensee develops software that is competitive with the Software, or Licensee is acquired by or acquires an interest in a competitor of Trapeze, Trapeze shall have the right to terminate this Agreement immediately.

(d) If the license granted under this Agreement is terminated, Licensee will immediately return to Trapeze all copies of the Software, the Documentation and other materials provided to Licensee pursuant to this Agreement and will certify in writing to Trapeze that all copies or partial copies of the Software, the Documentation and such other materials have been returned to Trapeze or destroyed.

12. Force Majeure Trapeze will not be responsible for, and its performance of obligations will automatically be postponed as a result of, delays beyond Trapeze's reasonable control, provided that Trapeze notifies the Licensee of its inability to perform with reasonable promptness and performs its obligations hereunder as soon as circumstances permit.

13. Assignment This Agreement is for the sole benefit of Licensee and may not be assigned by Licensee without the prior written consent of Trapeze.

14. Applicable Law This Agreement will be governed by and construed in accordance with the laws of the State of Arizona.

15. Third Parties No party other than Licensee shall be licensed to use the Software by this Agreement, unless such use is expressly permitted by the terms of this Agreement. In the event that this Agreement does allow for the use of the Software by certain designated third party service providers, the Licensee shall be responsible for taking all reasonable steps to ensure that the service provider is fully compliant with the terms of this Agreement including without limitation any restrictions on use of the Software and obligations of confidentiality. Trapeze does not assume, and hereby expressly excludes, any obligations or duties to any third parties, whether expressly named in this Agreement or not, which may be inferred or implied by statute, regulation, common law, equity or otherwise.

16. Notices All notices must be in writing and will be duly given if delivered personally or sent by registered or certified mail to the respective addresses of the parties appearing on page one of this Agreement. Any notice given will be deemed to have been received on the date it is delivered if delivered personally, or, if mailed, on the fifth business day next following its mailing. Either party may change its address for notices by giving notice of such change, as required in this section.

17. Audits Trapeze may perform audit(s) on the use of the Software and Documentation upon giving Licensee written notice of at least five (5) business days. Licensee agrees to make the necessary operational records, databases, equipment, employees and facilities available to Trapeze for the audit(s). The purpose of the audit will be to verify compliance with the terms and conditions of this Agreement.

19. Licensee Terms and Conditions. The terms and conditions listed in Exhibit D "Licensee Terms and Conditions" are also terms and conditions of this Agreement. Unless specified otherwise, where there are conflicts between the terms and conditions of Exhibit D and the terms and conditions in the main body of the Agreement, the terms and conditions of the body of the Agreement shall prevail.

EXHIBIT A

Item	Licensed Product	Product Description	Configuration	Gross License Fee	License Date
1.	TRAPEZE-DR	Trip Booking, Reservations, Scheduling and Dispatch System	Base Station	waived	Effective date of this Agreement
2.	TRAPEZE-DR CERT	Desktop tool to automate the administration of the certification program and integrate this effort with client data maintained through Trapeze-PASS.	Base Station	waived	Effective date of this Agreement
3.	TRAPEZE-DR COM	Customer Complaints and Commendations	Base Station	waived	Effective date of this Agreement
4.	TRAPEZE Seat Licenses	Concurrent workstations for any of the licensed applications (DR/CERT/COM)	15 licenses	waived	Effective date of this Agreement
5.	API Debit Interface	Special Export Interface – designated client information to debit card central system	Base Station	waived	Effective date of this Agreement
6.	RED Client System Interface	Import interface with clients current Client Management System	Base Station	waived	Effective date of this Agreement
7.	Trapeze-Malteze Database	For the purposes of Report Writing only	Network	Included	Included
	TOTAL			\$0	

1. Licenses are provided for an operation of up to 1,725 average weekly booked trips and 13,255 active clients, and up to 15 concurrent workstations.
2. Third Party Runtime licenses, if required to operate the Software, are not included.
3. Proposed software solution is designed for the Windows operating environments, with an ODBC database infrastructure (the Malteze Transit Database) designed by and proprietary to Trapeze, configured for the current Oracle database engine.
4. Third Party data, hardware and system/operating software are not included within the license granted under this Agreement and are not included in the License fees.

5. Upon request, Trapeze will assist in reviewing hardware specifications, however the Licensee is responsible for purchasing hardware and any other pre-requisite products. Any hardware that must be tested by Trapeze may require additional service days not included in this Agreement.
6. Any components may be operated on any of the licensed workstations within a configuration approved by Trapeze. Licenses for additional local or remote workstations may be purchased at the then current rates.

Exhibit B

Summary of Proposed Pricing

Item	Description	NOVUS	Complaints	Eligibility	Debit Interface
1.	License Fees	187,500	29,375	34,500	34,500
2.	Implementation Services	81,000	27,675	33,413	
3.	Client Specific Customization	60,750	-	30,983	13,500
4.	Expenses				
5.	Purchase Incentives	(187,500)	(29,375)	(34,500)	(34,500)
	Total (US \$)	\$141,750	\$27,675	\$64,395	\$13,500

EXHIBIT C "FORM 1"

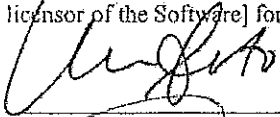
Form 1

Operator Designation

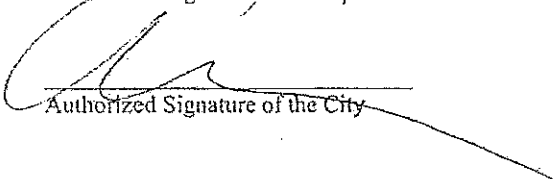
Date: 10-31-2008

The undersigned corporation Veolia Transportation (the "Operator"), has been designated by the City and County of San Francisco (the "City"), a municipal corporation with its principal place of business at City Hall, Room 430, 1 Dr. Carlton B. Goodlett Place, San Francisco, California 94102-4685, to act as the using operator of the Trapeze Trapeze-DR Software (the "Software") licensed under the License Agreement (the "Agreement") dated October 31st, 2008, exclusively for the benefit of the City.

The Operator agrees to be bound by the terms and conditions of the Agreement and the related Maintenance Agreement [also dated October 31st, 2008], and directly responsible to Trapeze Software [the licensor of the Software] for conforming to said terms and conditions.


5/7/09

Authorized Signature of the Operator



Authorized Signature of the City

Operator Termination

Date:

The City has terminated the Operator listed on this Form 1 as of _____, and said Operator is no longer designated as the Operator of the Software.

Authorized Signature of the City

EXHIBIT D "LICENSEE TERMS AND CONDITIONS"

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 of this Agreement.

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

* * *

Guaranteed Maximum Costs

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

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

c. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification

by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

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.

* * *

Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Section 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 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 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. (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.

* * *

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, the Licensed Software, although the unsatisfactory character of such work, or Licensed Software may not have been apparent or detected at the time such payment was made. Software, 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.

* * *

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.

* * *

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 means 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 or misuse of such equipment.

* * *

Indemnification and General Liability

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 from Contractor's performance of this Agreement, 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 to the extent that such loss, damage, injury, liability or claim is the result of 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.

* * *

Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN ATTACHMENT I, PARAGRAPH V. 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.

* * *

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 the 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.

* * *

Protection of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code ("Protection of Private Information"), including the remedies provided. The provisions of Chapter 12M 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 Chapter 12M. Consistent with the requirements of Chapter 12M, Contractor agrees to all of the following:

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

(1) The disclosure is authorized by this Agreement;

(2) The Contractor received advance written approval from the Contracting Department to disclose the information; or

(3) The disclosure is expressly required by a 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 Chapter 12M 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.

* * *

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 the City's Campaign and Governmental 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.

* * *

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 years. The Controller will not consider Contractor's use of profit as a violation of this section.

* * *

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 a material breach of this Agreement.

* * *

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.

Attachment V
SOFTWARE MAINTENANCE AGREEMENT

This Agreement effectively made this 31st day of October, 2008, between:

Name and Address of Licensor:

Trapeze Software Group, Inc., an Arizona corporation
("Trapeze"), with its principal place of business at:
8360 East Via de Ventura, Suite L-200
Scottsdale, Arizona 85258
United States of America


Name and Address of Licensee

City and County of San Francisco ("Licensee") with its
principal place of business at:
City and County of San Francisco
Municipal Transportation Agency
1 South Van Ness Ave.
San Francisco, CA, 94103
United States of America

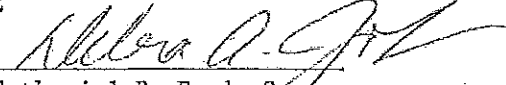
This Agreement represents the complete and exclusive agreement between Trapeze and Licensee concerning long term support and maintenance services and all related matters and supersedes all prior agreements, negotiations, discussions or understandings between Trapeze and Licensee in any way relating to these matters. No other terms, conditions, representations, warranties or guaranties, whether written or oral, express or implied shall form a part of this Agreement or have any legal effect whatsoever. This Agreement may not be modified except by a later written agreement signed by both parties.

Trapeze and Licensee acknowledge having read and understood this Agreement and agree to be bound by its terms and conditions.

TRAPEZE SOFTWARE GROUP, INC.

Signature: 
Name: Colin McKenzie
Title: General Manager

LICENSEE

Signature: 
Name: Nathaniel P. Ford, Sr.
Title: Executive Director/CEO

TERMS AND CONDITIONS

NOW THEREFORE the parties agree as follows:

1. Definitions In this Agreement, unless the context requires otherwise, the capitalized words set out below shall have the following meanings:

"Agreement"	this software maintenance agreement effectively made as of the 29 th day of October, 2007, between Trapeze and Licensee, setting out the terms and conditions by which Trapeze agrees to supply maintenance and support services to Licensee related to the use of the Software by Licensee, and the attached exhibits;
"Confidential Information"	all information obtained by the parties from each other under this Agreement, but does not include any information, which at the time of disclosure is generally known by the public.
"License Agreement"	the software license agreement effectively made as of the 29 th day of October, 2007, between Trapeze and Licensee, and the attached exhibits;
"Licensee Terms and Conditions"	the terms and conditions as identified in Exhibit B of the Agreement;
"New Product"	any update, new feature or major enhancement to the Software that Trapeze markets and licenses for additional fees separately from Upgrades;
"Upgrades"	generic enhancements to the Software that Trapeze generally makes available as part of its long term software support program.

All other capitalized words or phrases in quotations marks as used in this Agreement shall have the same meaning as in the License Agreement.

2. Maintenance and Support Services Trapeze agrees to provide the following software maintenance and support services during the term of this Agreement:
 - (a) Trapeze will maintain the Software so that it operates in conformity, in all material respects, with the descriptions and specifications for the Software set out in the Documentation.
 - (b) If Licensee detects any errors or defects in the Software, Trapeze will provide reasonable support services through a telephone software support line from Monday to Friday, 8 a.m. to 8 p.m. EST. Upon registration by Licensee, Trapeze will also provide Licensee with access to its software support website.
 - (c) Trapeze will provide written updates to Licensee detailing the Upgrades of the Software and New Products.
 - (d) At Licensee's request, Trapeze shall provide Licensee with Upgrades of the Software at no additional charge.
- (e) Licensee shall be entitled to acquire a license to New Products for Trapeze's then current license fees. Software Upgrades and New Products will be provided with updated Documentation where available and appropriate.
3. Extras The support services shall not include, and Licensee shall pay additional fees for, any and all consulting, implementation, customization, education and training related services.
4. Fee Licensee shall pay an annual maintenance fee to Trapeze as provided in Exhibit A. This fee shall be subject to change as set out in Exhibit A. Licensee shall issue a Purchase Order annually specifying the amount set forth in the Trapeze invoice for maintenance services in accordance with Exhibit A. The Purchase Order shall be governed by the terms and conditions of this Agreement.
5. Restricted Use All Documentation, Upgrades, New Products, and any other materials provided to Licensee under this Agreement will be subject to the same terms and rights of use as apply to the Software and Documentation under the License Agreement.
6. Remote Access Licensee shall at its expense and at Trapeze's request provide Trapeze with the right of remote access to Licensee's computers on which the Software is installed, so as to enable Trapeze to monitor the operation of the Software and provide maintenance and support services under this Agreement.
7. Extra Fees, Interest on Overdue Accounts and Taxes Trapeze will invoice Licensee for any services outside the scope of this Agreement (including installation, customization, training and other services) and related expenses on a monthly basis for such services performed and expenses incurred during each month. All such services shall be performed under a written work order to be agreed to by both parties. Licensee will also be responsible for payment of all taxes and other levies, including sales and use taxes, and this obligation shall survive termination of this Agreement.
8. Confidentiality The parties will not disclose Confidential Information to third parties, without the prior written consent of the other party.
9. Term The initial term of this Agreement shall be for a period of one (1) year commencing on the date of the warranty period set out in the "Warranty" paragraph of the License Agreement, and it shall be renewed upon Licensee's written renewal notification as long as Licensee remains licensed by Trapeze to use the Software, unless earlier canceled in writing by either party at any time upon 90 days written notice. Licensee shall provide written renewal notification no later than 60 days before expiration of the annual maintenance term. If this Agreement is terminated by Licensee or is not renewed annually by provision of the written renewal notification, Licensee acknowledges there may be additional costs and fees associated with and the issuance of a new Software Maintenance Agreement.
10. Termination
 - (a) This Agreement shall automatically terminate within thirty (30) days if Trapeze or Licensee terminates the License Agreement.

- (b) Either party has the right to terminate this Agreement if the other party fails to perform any obligation hereunder, and if such default has not been cured within fifteen (15) days after receipt of notice of such default.
 - (c) Either party may terminate this Agreement by written notice if the other party becomes insolvent or bankrupt.
 - (d) The obligations of each party pertaining to Confidential Information and taxes shall survive the termination of this Agreement.
11. Force Majeure Trapeze shall not be responsible for, and its performance of obligations shall automatically be postponed as a result of, delays beyond Trapeze's reasonable control, provided that Trapeze notifies the Licensee of its inability to perform with reasonable promptness and performs its obligations hereunder as soon as circumstances permit.
12. Limited Warranty Trapeze warrants that during the term of this Agreement, it will maintain the Software in accordance with the terms and conditions of this Agreement, based on the professional standards that it utilizes for all of its customers in the transit industry within North America.

Except as explicitly stated in this Agreement, there are no conditions, warranties or other terms binding on the parties concerning the services contemplated under this Agreement. This Agreement excludes any condition, warranty or other term which might be implied or incorporated into this Agreement, whether by statute, regulation, common law, equity or otherwise, including any implied warranties or conditions of quiet usage, merchantability, merchantable quality and fitness for a particular purpose, or from the course of dealing or usage of trade (as allowed by law). In particular, Trapeze does not warrant that: (i) the Software will meet any or all of Licensee's particular requirements; (ii) that the operation of the software will operate error free or uninterrupted; or (iii) all programming errors in the software can be found in order to be corrected.

13. Exclusion of Claims and Liability

- a) Trapeze and Licensee do not rely on and will have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. The only remedy available to Licensee for breach of warranty is for breach of contract under the terms of this Agreement. This does not preclude a claim for fraud.
- b) Trapeze does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through the internet or any information stored in any system connected to the internet. Trapeze shall not be responsible for any claims, damages, costs or losses whatsoever arising out of or in any way related to Licensee's connection to or use of the internet.
- c) Trapeze will not be liable to Licensee or any third party for any claims, expenses, damages, costs or losses whatsoever arising out of or in any way related to:
 - (i) Licensee's use of map or geographical data, owned by Licensee or any third party, in conjunction with the Software or otherwise; or
 - (ii) Licensee's use of the Software insofar as such Software may be used to store, transmit, display, disclose or otherwise use data or information which is considered private, confidential, proprietary or otherwise exempt from public disclosure under applicable law.
- (d) Trapeze's entire liability and responsibility for any claims, damages, costs or losses whatsoever arising either jointly or solely from or in connection with this Agreement or the Software License Agreement, or the use of the Software (whether or not in the manner permitted by this Agreement), including claims for breach of contract, tort, misrepresentation, or otherwise, or the development, modification or maintenance of the Software will be absolutely limited to the amount of the Gross License Fees paid by Licensee.

(e) Trapeze will not be liable to the Licensee or any third party for losses or damages suffered by Licensee or any third party which fall within the following categories:

- i) incidental or consequential damages, whether foreseeable or not;
- ii) special damages even if Trapeze was aware of circumstances in which special damages could arise;
- iii) loss of profits, anticipated savings, business opportunity, goodwill, or loss of information of any kind.

(f) Paragraphs (d) and (e) do not apply to claims arising out of death or personal injury caused by either party's gross negligence or fraudulent misrepresentation.

14. Assignment This Agreement is for the sole benefit of Licensee and may not be assigned by Licensee without the express written consent of Trapeze.

15. Applicable Law This Agreement shall be governed by and construed in accordance with the laws of state of Arizona.

16. Notices All notices must be in writing and will be duly given if delivered personally or sent by registered or certified mail to the respective addresses of the parties appearing on page one of this Agreement. Any notice given will be deemed to have been received on the date it is delivered if delivered personally, or, if mailed, on the fifth business day next following its mailing. Either party may change its address for notices by giving notice of such change, as required in this section

17. Licensee Terms and Conditions. The terms and conditions listed in Exhibit B "Licensee Terms and Conditions" are also terms and conditions of this Agreement. Unless specified otherwise, where there are conflicts between the terms and conditions of Exhibit B and the terms and conditions in the main body of the Agreement, and the terms and conditions of the main body of the License Agreement, the terms and conditions of the body of the Agreement and the terms and conditions of the main body of the License Agreement shall prevail.

EXHIBIT A

Item	Licensed Product	Product Description	Configuration	Initial Maintenance Fee	First Year Maintenance Fee (i.e. Warranty Fee)
1.	TRAPEZE-DR	Trip Booking, Reservations, Scheduling and Dispatch System	Base Station	\$37,500	Upon operational and functional use
2.	Complaint Module	Customer Complaints and Commendations	Base Station	\$5,875	Upon operational and functional use
3.	Certification Module	Desktop tool to automate the administration of the certification program and integrate this effort with client data maintained through Trapeze-DR.	Base Station	\$6,900	Upon operational and functional use
4.	Trapeze Seat Licenses	Concurrent workstations for any of the applications (Trapeze DR/CERT/COM)	15 licenses	Not Applicable	Upon operational and functional use
5.	API Debit Interface	Special Export Interface -- designated client information to debit card central system	Base Station	\$6,900	(optional -- but if taken, upon operational and functional use)
6.	RED Client System Interface	Import interface with clients current Client Management System	Base Station	\$4,000	Upon operational and functional use
7.	Trapeze-Malteze Database	For the purposes of Report Writing only	Network	Included	Included
	TOTAL			\$61,175	

* First year fee only. For all subsequent years, the annual maintenance fee, to be billed on the anniversary date of the first year, will be limited to an increase of no more than 5% of the first year cost.

Exhibit B "Licensee Terms and Conditions"

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 of this Agreement.

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

* * *

Guaranteed Maximum Costs

- a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.
- b. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City.
- c. The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.
- 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.

* * *

Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code Section 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 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 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. (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.

* * *

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, the Licensed Software, although the unsatisfactory character of such work, or Licensed Software may not have been apparent or detected at the time such payment was made. Software, 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.

* * *

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.

* * *

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 means 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 or misuse of such equipment.

* * *

Indemnification and General Liability

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 from Contractor's performance of this Agreement, 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 to the extent that such loss, damage, injury, liability or claim is the result of 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.

* * *

Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN ATTACHMENT I, PARAGRAPH V 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.

* * *

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 the 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.

* * *

Protection of Private Information

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code ("Protection of Private Information"), including the remedies provided. The provisions of Chapter 12M 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 Chapter 12M. Consistent with the requirements of Chapter 12M, Contractor agrees to all of the following:

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

- (1) The disclosure is authorized by this Agreement;
- (2) The Contractor received advance written approval from the Contracting Department to disclose the information; or
- (3) The disclosure is expressly required by a 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 Chapter 12M 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.

* * *

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 the City's Campaign and Governmental 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.

* * *

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 years. The Controller will not consider Contractor's use of profit as a violation of this section.

* * *

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 a material breach of this Agreement.

* * *

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.

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 Maintenance 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 Maintenance 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 Maintenance 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 Maintenance Agreement.

b. Payment of Taxes and Other Expensed. 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 Maintenance 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 Maintenance 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 Maintenance 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 Maintenance Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.



APPENDIX D

FTA REQUIREMENTS FOR PERSONAL SERVICES CONTRACTS

I. DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

II. FEDERAL CHANGES

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

III. ACCESS TO RECORDS

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

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

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

IV. DEBARMENT AND SUSPENSION

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

V. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

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

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

VI. CIVIL RIGHTS

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

B. Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:

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

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

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

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

VII. PATENT RIGHTS (applicable to contracts for experimental, research, or development projects financed by FTA)

A. 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.

B. 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.

C. 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.

VIII. RIGHTS IN DATA AND COPYRIGHTS (Applicable to contracts for planning, research, or development financed by FTA)

A. 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.

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

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

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

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

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

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

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

required to indemnify the Federal Government for any such liability arising out of the wrongful acts of employees or agents of the Federal Government.

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

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

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

C. 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.

D. 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.

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

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

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

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

be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

X. 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.

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

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

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

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

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

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

XIII. 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.

XIV. 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.

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

See Agreement Terms and Conditions.

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

See Agreement Terms and Conditions.

XVII. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

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

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

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

XVIII. 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.

XIX. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, are hereby incorporated by reference. Anything to

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

XX. 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)

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

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

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

3. Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas – If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

B. 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.

APPENDIX E

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY

SBE REQUIREMENTS

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

I. POLICY

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

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

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

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

A. Applicability

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

B. Objectives

The objectives of this program are to:

1. Remove barriers to SBE participation in the bidding, award and administration of SFMTA contracts;
2. Assist SBEs to develop and compete successfully outside of the Program;

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

C. Administration of Program

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

D. Prohibited Discrimination

SFMTA shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by the Regulations on the basis of race, color, sex or national origin. The City and County of San Francisco also prohibits discrimination on the basis of (the fact or perception of a person's) race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status).

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

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

II. DEFINITIONS

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

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

III. SBE PARTICIPATION AND SUBCONTRACTING REQUIREMENTS

A. SBE Participation Goal

There is a goal of 20% SBE participation of the total Administrative Expenses for this contract. This SBE goal will apply to the following types of contracts or scope of work in the contract, or as otherwise permitted by the Contract Compliance Office: Construction – Building, Heavy; Construction-Dredging and Surface Cleanup; Construction (specialty trades); General Freight Trucking; Hazardous Waste Collection, Trucking; Remediation; Testing Labs; Computer Programming and Design; Architecture & Engineering services (to include professional and technical services); Surveying and Mapping; Drafting (Design Services); Landscape Architecture; Building Inspection; Machinery and Equipment Rental (Construction); Merchant Wholesalers, Durable Goods; Public Relations; and Telecommunications.

B. Determining the Amount of SBE Participation

The SFMTA strongly encourages the prime contractor to make every good faith effort to include SBEs to perform meaningful work in all aspects of the projects. To accomplish this goal, the following guidance is provided:

1. SBE Participation

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

2. Function

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

3. Determining the amount of SBE Participation

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

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

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

a. SBE Prime Contractor

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

b. SBE Subcontractor

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

c. SBE Joint Venture Partner

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

d. SBE Regular Dealer

Count 60% of the costs of materials and supplies obtained from an SBE regular dealer that owns, operates or maintains a store or warehouse in which the materials and supplies are regularly bought, kept in stock and sold or leased to the public in the usual course of business (except regular dealers of bulk items such as

petroleum, cement and gravel who own and operate distribution equipment in lieu of maintaining a place of business). This applies whether an SBE is a prime contractor or subcontractor.

e. Other SBEs

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

C. Submission of Certification for SBEs

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

San Francisco Municipal Transportation Agency
Contract Compliance Office
One South Van Ness Avenue 6th floor
San Francisco, California 94103
(415) 701-4362

D. Prompt Payment to Subcontractors

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

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

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

IV. MONITORING AND COMPLIANCE

A. SBE Records; Reporting Requirements

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

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

B. Noncompliance; Administrative Remedies

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

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

**APPENDIX F
INCENTIVE/DISINCENTIVE PLAN**

	Activities	Incentives that may be Paid/ Disincentives that may be Assessed
1.	SF Paratransit Goals/Performance Measures a. Complaints: less than two per 1000 trips, for each Mode b. On Time Reliability: at or above 93% for each Mode c. Accidents/Injuries: less than 1 FTA-Defined Reportable Incident per 100,000 trips for each Mode d. Telephone Call Wait Time: over 90% of all calls to the Broker's Office during business hours answered by a live person within 45 seconds	Incentive: \$10,000 if all five Goals/Performance Measures are met on an annual basis
2	Consumer Satisfaction – 90% overall customer satisfaction, as measured by an annual independent customer satisfaction survey.	Incentives: <ul style="list-style-type: none"> • For Broker-related aspects of the survey, if Customer Satisfaction is between 85% and 90%, \$5,000 will be paid on an annual basis. • For Broker-related aspects of the survey, if Customer Satisfaction is between 90.1% and 95%, \$10,000 will be paid on an annual basis. • If Customer Satisfaction is between 95.1% and 100%, \$15,000 will be paid on an annual basis.
3	Travel Training – Shift paratransit trips to Muni fixed route service through travel training paratransit Customers. Reduce paratransit trips per paratransit Customer by an average of 10 trips per month for six months	Incentives: <ul style="list-style-type: none"> • \$250 per individual paratransit Customer shifted to fixed route service, determined on a bi-annual basis
4	Telephone Call Wait Time – over 80% of all calls to the Broker's Office during business hours shall be answered by a live person within 45 seconds.	Disincentive: <ul style="list-style-type: none"> • \$30 per verified complaint for all calls answered below the 80% threshold, determined on a monthly basis
5	Language Capacity (language capability in Spanish, Chinese (Cantonese) and Russian by front line staff) – if an employee who is fluent in one of the specified languages leaves the Broker's employment, the Broker must replace the employee with an equally fluent individual within three weeks time.	Disincentive: <ul style="list-style-type: none"> • For failure to replace such an employee, \$250 per business day for each day beyond the three-week period
6	Outreach – Broker shall conduct at least 20 information sessions/workshops annually.	Disincentive: <ul style="list-style-type: none"> • \$250 for each session/workshop conducted by Broker under 20 sessions a year.
7	ADA eligibility Process	Disincentive: <ul style="list-style-type: none"> • \$250 per complaint against the Broker (verified to be legitimate) that is determined by the SFMTA to constitute a violation of the approved ADA eligibility process. • Unless assessed above, \$250 per occurrence for applications that are not processed within 21 days (regardless of whether a complaint has been filed)
8	Customer Service	Disincentive: <ul style="list-style-type: none"> • \$100 for each complaint against the Broker (verified to be legitimate) over a total of five

	Activities	Incentives that may be Paid/ Disincentives that may be Assessed
		verified complaints a month
9	Processing of Complaints	Disincentive: <ul style="list-style-type: none"> • \$100 per occurrence for any complaint that is not responded to within 14 days.