

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

**Agreement between the City and County of San Francisco and  
Cypress Security  
For Armed/Unarmed Security Services**

**Contract No. SFMTA-2015-31**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2015, in the City and County of San Francisco, State of California, by and between: Cypress Security, 478 Tehama St., San Francisco, CA 94103 (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (“SFMTA”).

**Recitals**

- A. The SFMTA wishes to contract for security services for its properties and transit facilities.
- B. A Request for Proposals (“RFP”) was issued on December 10, 2014. The City entered into negotiations with the highest ranked proposer and did not reach an agreement. The City then successfully reached an agreement with the second highest-ranked proposer.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.

Now, THEREFORE, the parties agree as follows:

**1. 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, 2015 to March 31, 2018.

In addition, the City shall have the option to extend the term for up to an additional three (3) years, which the SFMTA may exercise in its sole, absolute discretion.

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

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

**5. Compensation.** Compensation shall be made in monthly payments on or before the 30<sup>th</sup> day of each month for work, as set forth in Section 4 of this Agreement, that the SFMTA's Director of Transportation, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Thirty eight million, three hundred and fourteen thousand, two hundred and eight dollars and seventeen cents (\$38,314,208.17). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of CMD Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA, the Director of CMD and Contractor of the omission. If Contractor's failure to provide CMD Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until CMD Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using CMD Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

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

**7. Payment; Invoice Format.**

a. Contractor shall submit monthly electronic and hard copy invoices and invoices to the SFMTA showing actual hours of Services provided, multiplied by the applicable hourly rate and subtotaled by Site. Contractor shall provide all invoices for a given month no later than the 21st day of the succeeding month. Hard copies of invoices shall be sent by first-class U.S. mail, postage pre-paid, to the following addresses:

Security, Investigations & Enforcement  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8th Floor  
San Francisco, CA 94103

Electronic copies shall be provided by email to the email address(es) to be provided by SFMTA.

b. Invoices shall at a minimum include the following information:

- i. Name of Guard assigned
- ii. Location of Guard's assignment (invoices shall subtotal the hours and charges grouped by Site)
- iii. Hours assigned to work
- iv. Status of Guard (armed, unarmed, Supervisor, etc.)
- v. Supervisor's name attesting to the hours and location worked
- vi. Pay rate/hour
- vii. Hire date

c. Payments to Contractor shall be made by SFMTA no later than 30 days from the date of receipt of a complete and accurate invoice that complies with all requirements of this Agreement.

d. Invoices submitted by Contractor must be in a form approved by SFMTA. All amounts paid by SFMTA to Contractor shall be subject to audit by SFMTA.

**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 the statutory penalties set forth in that section. 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. Deleted by Agreement of the Parties (Disallowance).**

**10. Taxes.**

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

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

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

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

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

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

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

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

**13. Responsibility for Equipment.** City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any

of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

#### **14. Independent Contractor; Payment of Taxes and Other Expenses.**

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

**b. Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorney's fees, arising from this section.

#### **15. Insurance.**

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

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

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

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

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

(5) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(a) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or personal information or other personally identifying information, stored or transmitted in electronic form;

(b) Network security liability arising from the unauthorized access to, use of, or tampering with, computers or computer systems, including hacker attacks; and

(c) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

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

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

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

c. All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in the Section entitled "Notices to the Parties."

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

e. Should any 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.

f. Before commencing any Services, 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. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

g. The Workers' Compensation policy(ies) 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.

h. If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

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

in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

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

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

**19. Liquidated Damages.** By entering into this Agreement, Contractor agrees that its failure to perform certain obligations under this Agreement during the respective time limits imposed will cause the SFMTA to incur cost and inconvenience not contemplated under this Agreement, which cost and inconvenience will constitute damage to the SFMTA, the City and the public, and that the exact amount of such damage will be impractical or extremely difficult to determine.

The SFMTA and Contractor agree that the amounts described as liquidated damages in Appendix A, Section 12 of this Agreement are not penalties, but represent a fair and reasonable estimate of the damages that the SFMTA will incur by reason of Contractor's failure to perform, and are fair compensation to City for its losses. Failure by the SFMTA to impose liquidated damages for specified violations will not be a waiver of the right to enforce this Section, nor will it constitute a waiver of any other right of the SFMTA under this Agreement.

The SFMTA may deduct a sum representing the liquidated damages assessed from any money due to Contractor under this Agreement. Should an assessment take place, the SFMTA will send written notification to the Contractor for its information. Assessments within a given month shall not exceed 50 percent of the monthly fees paid to Contractor. Excess liquidated damages 50% will be carried over to the following month. If two or more Failures are determined for a particular event, Contractor will be charged for the Failure with the highest assessment.

**20. Default; Remedies.**

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

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

8. 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; and 57. Protection of Private Information.



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

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

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

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

## **21. Termination for Convenience.**

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

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

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

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

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

lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

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

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

## **22. Rights and Duties upon Termination or Expiration.**

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

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; and 57. Protection of Private Information.

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

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

**24. Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation

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

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

To City: Christopher Grabarkiewctz  
SFMTA | Security, Investigations & Enforcement  
1 South Van Ness Avenue, 8th Floor, Room 8193  
San Francisco, California 94103  
E-mail: christopher.grabarkiewctz@sfmta.com

To Contractor: Kes Narbutas, CEO  
Cypress Security  
478 Tehama  
San Francisco, Ca 900244  
E-mail: knarbutas@cypress-security.com

Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. Any notice of default must be sent by registered mail.

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

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

**28. Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work

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

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

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

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

**32. Consideration of Criminal History in Hiring and Employment Decisions.**

a. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at [www.sfgov.org/olse/fco](http://www.sfgov.org/olse/fco). A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

b. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, 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.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant's or potential applicant for employment, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32(d), above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

### **33. Local Business Enterprise Utilization; Liquidated Damages.**

a. **The LBE Ordinance.** Contractor shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this

Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

**b. Compliance and Enforcement**

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

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

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

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

**(3) Subcontract Language Requirements.** Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of

contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of CMD and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of CMD or the Controller upon request.

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

### **34. Nondiscrimination; Penalties.**

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

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

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



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

**d. Condition to Contract.** As a condition to this Agreement, Contractor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form CMD-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Contract Monitoring Division.

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

**35. MacBride Principles—Northern Ireland.** Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**36. Reserved. (Tropical Hardwood and Virgin Redwood Ban)**

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

**38. Resource Conservation.** Chapter 5 of the San Francisco Environment Code (“Resource Conservation”) is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

**39. Compliance with Americans with Disabilities Act.** Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

**40. Sunshine Ordinance.** In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

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

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

**43. Requiring Minimum Compensation for Covered Employees.**

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

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

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

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

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

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

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

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

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

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

**44. Security Guard Wages and Benefits.** Contractor and its subcontractors agree to pay security guards and other applicable employees in accordance with the prescribed wages and benefits for workers as provided in Appendix C to this Agreement.

**45. Employee Retention and Prevailing Wages.** Contractor hereby acknowledges that it has read and understands San Francisco Administrative Code Section 21C.7 and agrees that the Agreement shall be subject to, and Contractor shall comply with, all obligations and requirements imposed by that ordinance as provided in Appendix D.

**46. Requiring Health Benefits for Covered Employees.**

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

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

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

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails

diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

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

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

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

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

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

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

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

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

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

**47. First Source Hiring Program.**

**a. Incorporation of Administrative Code Provisions by Reference.**

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

**b. First Source Hiring Agreement.**

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

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

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

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

identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

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

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

(6) Set the term of the requirements.

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

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

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

**c. Hiring Decisions.**

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

**d. Exceptions.**

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

**e. Liquidated Damages.**

Contractor agrees:

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

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

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

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

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

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

B. In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

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

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections



6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

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

**f. Subcontracts.**

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

**48. 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.

**49. 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.

**50 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% (CMD Contract Modification Form).

**51. Administrative Remedy for Agreement Interpretation.**

a. **Negotiation; Alternative Dispute Resolution.** The parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement by negotiation. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. If agreed by both parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. Neither party will be entitled to legal fees or costs for matters resolved under this section.

b. **Government Code Claims.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the Government Code Claim requirements set forth in Administrative Code Chapter 10 and Government Code Section 900, et seq.

**52. 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.

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

**54. 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."

**55. 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.

**56. 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.

**57. Supervision of Minors.** Contractor, and any subcontractors, shall comply with California Penal Code section 11105.3 and request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in Welfare and Institution Code section 15660(a) of any person who applies for employment or volunteer position with Contractor, or any subcontractor, in which he or she would have supervisory or disciplinary power over a minor under his or her care. If Contractor, or any subcontractor, is providing services at a City park, playground, recreational center or beach (separately and collectively, "Recreational Site"), Contractor shall not hire, and shall prevent its subcontractors

from hiring, any person for employment or volunteer position to provide those services if that person has been convicted of any offense that was listed in former Penal Code section 11105.3(h)(1) or 11105.3(h)(3). If Contractor, or any of its subcontractors, hires an employee or volunteer to provide services to minors at any location other than a Recreational Site, and that employee or volunteer has been convicted of an offense specified in Penal Code section 11105.3(c), then Contractor shall comply, and cause its subcontractors to comply with that section and provide written notice to the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer not less than ten (10) days prior to the day the employee or volunteer begins his or her duties or tasks. Contractor shall provide, or cause its subcontractors to provide City with a copy of any such notice at the same time that it provides notice to any parent or guardian. Contractor shall expressly require any of its subcontractors with supervisory or disciplinary power over a minor to comply with this section of the Agreement as a condition of its contract with the subcontractor. Contractor acknowledges and agrees that failure by Contractor or any of its subcontractors to comply with any provision of this section of the Agreement shall constitute an Event of Default. Contractor further acknowledges and agrees that such Event of Default shall be grounds for the City to terminate the Agreement, partially or in its entirety, to recover from Contractor any amounts paid under this Agreement, and to withhold any future payments to Contractor. The remedies provided in this Section shall not limited any other remedy available to the City hereunder, or in equity or law for an Event of Default, and each remedy may be exercised individually or in combination with any other available remedy. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

**58. 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.

**59. 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.

**60. Reserved.**

**61. 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.

**62. Slavery Era Disclosure.**

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director of Administrative Services receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director of Administrative Services finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or \$1,000, whichever is greatest as determined by the Director of Administrative Services. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

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

**64. Change of Contractor.** Should the SFMTA award a contract for the Services provided under this Agreement, Contractor shall cooperate with SFMTA and the new contractor to implement a systematic and orderly transition of Services to the new contractor.

**65. Large Vehicle Driver Safety Training Requirements.** Contractor agrees that, before any of its employees and Subcontractors drive large vehicles within the City of San Francisco, those employees and Subcontractors will successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety will be posted and made available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or Subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and

trailer with an unladen weight of 10,000 lbs or more, or a van designed to carry 10 or more people.

If the SFMTA's training program is not available at the time the Notice to Proceed is issued by the SFMTA, then Contractor, by executing the Agreement, certifies that its employees and Subcontractors who drive large vehicles within the City of San Francisco will successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety within 90 days after being notified by the SFMTA that the SFMTA's training program is available. The SFMTA will notify Contractor that the SFMTA's training program is available via the following methods: (a) by posting and making it available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards) and (b) via City department contract management personnel.

By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to one-thousand dollars (\$1,000) per employee or Subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

#### **66. Displaced Worker Protection Act**

a. Contractor shall comply with all applicable requirements of the Displaced Worker Protection Act (DWPA), San Francisco Police Code Article 33C as both a successor contractor, and, upon termination of this Agreement, as a terminated contractor.

b. In the event that either party gives notice of the termination of this Agreement, within ten (10) days of giving or receiving such notice Contractor shall provide to the successor contractor the name, date of hire, and employment occupation classification of each employee employed at the Sites for which Services will be provided by the successor contractor as of time of contract termination. If Contractor does not have contact information for the successor contractor ten (10) days after the contract termination notice, Contractor shall immediately notify the SFMTA in writing that it requires the successor contractor's contact information in order to comply with this Section 61, and shall provide the information required by this section to the successor contractor immediately upon receipt of the successor contractor's contact information.

Where a subcontractor has been terminated prior to the termination of the contract, the terminated subcontractor shall be deemed a terminated contractor for purposes of the DWPA.

c. As successor contractor, Contractor shall retain, for a 90-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding eight months or longer at the Sites covered by this Agreement.

d. If Contractor determines that fewer employees are required to perform this Agreement than were required by the terminated contractor (and subcontractors, if any), Contractor shall retain employees by seniority within job classifications.

e. During such 90-day period, Contractor (or any subcontractor to which the DWPA applies) shall maintain a preferential hiring list of eligible covered employees not retained by

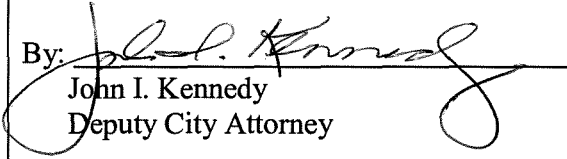
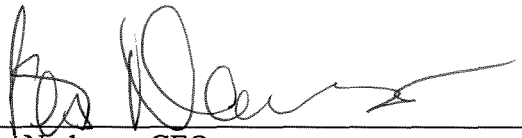
Contractor (or a subcontractor) from which Contractor (or subcontractor) shall hire additional employees.

f. Except as provided in subsection (d) of this section, during such 90-day period, Contractor (or subcontractor, where applicable) shall not discharge without cause an employee retained pursuant to the DWPA. "Cause" for the purpose of this Section 61 shall include, but not be limited to, the employee's conduct while in the employ of the terminated contractor or subcontractor that contributed to any decision to terminate the contract or subcontract for fraud or poor performance, excluding permissible union-related activity.

g. At the end of such 90-day period, Contractor (or subcontractor, where applicable) shall perform a written performance evaluation for each employee retained pursuant to the DWPA. If the employee's performance during such 90-day period is satisfactory, the successor Contractor (or subcontractor) shall offer the employee continued employment under the terms and conditions established by Contractor (or subcontractor) or as required by law.

h. Contractor is required to include this provision in any subcontracts for Services to which the DWPA applies.

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

<b>CITY</b> <b>San Francisco Municipal Transportation Agency</b>	<b>CONTRACTOR</b> <b>Cypress Security</b>
Edward D. Reiskin Director of Transportation	By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
Approved as to Form: Dennis J. Herrera City Attorney	
By:  John I. Kennedy Deputy City Attorney	I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.
AUTHORIZED BY: MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS	
Resolution No: _____	 Kes Narbutas, CEO 478 Tehama Street San Francisco, Ca 90024
Adopted: _____	
Attest: _____ Roberta Boomer, Secretary SFMTA Board of Directors	City Vendor Number: <b>46964</b>
Board of Supervisors Resolution No: _____	
Adopted: _____	
Attest: _____ Clerk of the Board	

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: Required Prevailing Wage Rates
- D: San Francisco Admin. Code

AMENDED IN BOARD

12/9/14

FILE NO. 141121

ORDINANCE NO. 260-14

[Contract Requirements - Municipal Transportation Agency Armed and Unarmed Security Services]

1  
2 **Ordinance authorizing the Municipal Transportation Agency to include, in any contract**  
3 **for security services it executes within the next year after issuing a competitive**  
4 **solicitation, provisions that require: payment of prevailing wages by both the**  
5 **contractor and subcontractors to any individual providing security services under the**  
6 **contract, and transitional employment and retention for the prior contractor's**  
7 **employees as set forth in Administrative Code, Section 21C.7.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.  
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.  
10 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.  
11 **Board amendment additions** are in double-underlined Arial font.  
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.  
13 **Asterisks (\* \* \* \*)** indicate the omission of unchanged Code  
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Findings.

17 1. San Francisco Administrative Code Section 21C.7 requires contractors, for  
18 certain types of contracts, to pay prevailing wages to any employee performing services, and  
19 provide transitional employment and retention for the prior contractor's employees.

20 2. The requirement to pay prevailing wages includes wage rates for overtime and  
21 holiday work and fringe benefits as paid for similar work performed in the City by private  
22 employers.

23 3. The Board of Supervisors has previously determined that the turnover of  
24 experienced workers resulting from a change in City contractors for certain types of services  
25 jeopardizes the quality, efficiency and cost-effectiveness provided under the successor  
contract.



1           4.     The Board of Supervisors has determined that contracts for these types of  
2 services must include requirements that the successor contractor: (1) retain, for a six-month  
3 period, employees who have worked at least fifteen hours per week and have been employed  
4 by the prior contractor or its subcontractors, if applicable, for the preceding twelve months; (2)  
5 retain employees of the prior contractor by seniority within job classifications if fewer  
6 employees are required to perform the new contract; (3) maintain a preferential hiring list of  
7 eligible employees that were not retained by the successor contractor; (4) not discharge any  
8 retained employee without cause; (5) perform a written performance evaluation for each  
9 retained employee after six months; and (6) offer continued employment to retained  
10 employees, if the employee's performance is satisfactory, under the terms and conditions  
11 established by the successor contractor.

12           5.     The Municipal Transportation Agency intends to issue a new solicitation for  
13 security services within the next six months since the existing contract will expire within that  
14 timeframe.

15           6.     Because the possibility of turnover of experienced workers resulting from a  
16 potential change in contractors will jeopardize the quality, efficiency and cost-effectiveness of  
17 security services provided under a successor contract, the Municipal Transportation Agency is  
18 seeking authorization from the Board of Supervisors to include, in any contract for security  
19 services the Municipal Transportation Agency executes within the next year after issuing a  
20 competitive solicitation, provisions that would require: (1) payment of prevailing wages by both  
21 the contractor and subcontractors to any individual providing security services under the  
22 contract, and (2) transitional employment and retention for the prior contractor's employees as  
23 set forth in Section 21C.7 of the San Francisco Administrative Code. Prevailing wages shall  
24 be set at the rates set forth in the table entitled, "Prevailing Wage Rates: Security Guards" on  
25 file with the Clerk of the Board of Supervisors in File No. 141121. ~~For the purposes of this~~

1 ~~ordinance, the term "prevailing wages" shall not be defined under Section 21C.7, but shall be~~  
2 ~~defined as the amount of compensation, including fringe benefits or the matching equivalent~~  
3 ~~thereof, paid by the incumbent contractor to its security guard employees as of the date of the~~  
4 ~~issuance of the competitive solicitation.~~

5 Section 2. The Municipal Transportation Agency is authorized to include, in any  
6 contract for security services it executes within the next year after issuing a competitive  
7 solicitation, provisions that would require: (1) payment of prevailing wages by both the  
8 contractor and subcontractors to any individual providing security services under the contract,  
9 and (2) transitional employment and retention for the prior contractor's employees as set forth  
10 in Section 21C.7 of the San Francisco Administrative Code.

11  
12 APPROVED AS TO FORM:  
13 DENNIS J. HERRERA, City Attorney

14 By:

  
15 ROBIN M. REITZES  
Deputy City Attorney

16 n:\egana\as2014\1500313\00976555.doc

**Prevailing Wage Rates: Security Guards**

	EMPLOYER PAYMENTS					OVERTIME		
Craft (Security Guard)	Basic Hourly Rate	Health and Welfare	Vacation (varies, w/ increases at year 1, 3, 6, & 15)	Holidays (8 / year)	Sick & Funeral Leave	All hours in excess on 40 hours per work week paid at 1.5 X hourly rate	All time worked in excess of 12 consecutive hours in a work day shall be paid at 2 X hourly rate	All time worked in excess of 8 hours per work day in a 15 hour period shall be paid at 1.5 X hourly rate
Base	\$ 14.00	560.00/Month	1 yr. - 5 days. 3 yrs. - 10 days 6 yrs. - 15 days 15 yrs. - 20 days	8 days/year	5 days/year	\$ 21.00	\$ 28.00	\$ 21.00

**Wage Increase**

Contractor shall pay the following wage increases annually to all full time transitional guards that have been with the previous contractor for one year or more and new guards employed by the new contractor after one year of full time service:

1/1/2015 \$0.35

1/1/2016 \$0.30

1/1/2017 thru 1/1/2021 to be determined by SFMTA

**Appendix A**  
**Services to be provided by Contractor**

**SFMTA SECURITY GUARD SERVICES SCOPE OF WORK**

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**DEFINITIONS**

For the purpose of the Special Conditions in this Contract, the following terms shall have the following meanings:

- A. Agreement, Contract.** The contract to be executed by the SFMTA and the successful bidder, which shall include this Invitation for Bid, the Contractor's bid, the Post Orders, Staffing Plan, Facility Patrol Plan, Training Plan and Standard Operating Procedures, and all other attachments and appendices to those documents.
- B. Americans with Disabilities Act, ADA.** The Americans with Disabilities Act of 1990, as amended, including all relevant regulations adopted by the U.S. Department of Justice and the U.S. Department of Transportation.
- C. Firearm Permit.** An identification card issued by the Bureau of Security and Investigative Services that provides proof of weapons certification.
- D. As Needed Guard Services.** Armed and unarmed Guard requests that are not a part of the regular schedule, as set forth in the current monthly Staffing Plan, where SFMTA has provided at least four (4) hours' notice.
- E. CCTV.** Closed circuit television.

- F. Central Control.** The SFMTA's operational dispatch center for all revenue vehicles, located at 131 Lennox St.
- G. Contractor.** Cypress Private Security, LLC.
- H. Days.** Calendar days, unless otherwise specified.
- I. Director of Security, Investigations & Enforcement.** The City employee appointed to the position of Director of Security, Investigations & Enforcement by the Director of Transportation, or his or her designee.
- J. Director.** The Director of Transportation for the San Francisco Municipal Transportation Agency, or his/her designee.
- K. Emergency Guard Service.** Armed or Unarmed Guard Services that are requested by the SFMTA with less than four (4) hours' notice.
- L. Payment Media.** Items issued by the SFMTA (1) to users of public transit to provide evidence of payment for use of services or (2) issued to the public as a means for payment for on street parking.
- M. Graffiti.** 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, shelters, kiosks, 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" does 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.).
- N. Guard.** Trained, equipped and qualified employees of Contractor assigned to security Guard duties as required by this Contract.
- O. Security Guard License.** An identification card that verifies that a person has completed the required classes and clearances to work as a security guard, as issued by the Bureau of Security and Investigative Services (see Business and Professions Code section 7583.12).
- P. Incident Report.** The report required to be filed to document events or conditions on SFMTA Property that represent a security concern, as further defined in Section 10.B. Reports part i
- Q. Mobile Patrol Guards.** Guards assigned to the Mobile Patrol Unit with orders to patrol unstaffed SFMTA Sites such as LRV platforms, kiosks, subway tunnel entrances and bus shelters using a vehicle supplied by Contractor.
- R. Observers.** Personnel hired by the Contractor to assist with the Americans With Disabilities Act Observer's Program.
- S. Records.** All documents created, received or maintained by Contractor in connection with performance under this Agreement, including, but not limited to, books, accounts, invoices, maintenance and service logs, database information, contracts, construction documents, payroll information, maintenance, construction and service logs and other documents, whether or not kept in electronic format.

- T. Relief.** A Guard assigned to cover an authorized break, sick leave or vacation of a Guard who is regularly assigned to the Site.
- U. Security Office.** The SFMTA security office located at 1455 Market Street, 7th Floor, Room 705.
- V. Services.** The Security Guard services to be provided by Contractor in accordance with the requirements and specifications of this Contract.
- W. SFMTA.** The Municipal Transportation Agency of the City and County of San Francisco, acting by and through the Director of Transportation or his or her designee.
- X. SFMTA Properties.** The Sites listed in Section 6, and any other real property in which the SFMTA has a property interest or acquires such interest during the duration of this Contract.
- Y. Site.** A property or facility to which Guards are assigned pursuant to this Contract or which may be established during the term of this Contract. Current Sites are listed in Section 6.
- Z. Standard Operating Procedure (SOP).** Written procedures, policies and guidelines used by the Contractor in day to day operations that will be provided by the SFMTA.
- AA. Supervisor.** An employee of Contractor whose primary job duties include oversight, supervision, scheduling and managing assigned Guards on duty, certifying Guard time records and collecting Guard reports for each shift. Specific duties of Supervisors under this Contract are further defined in Section 8.
- BB. Revenue Collections and Sales.** The Division of SFMTA that handles Fare Media and Fare Collection, located at One South Van Ness Avenue.
- CC. Unavoidable Delay.** A delay in Contractor's performance of its duties under the Contract that Contractor demonstrates within 10 Days of City demand that could not have been avoided by Contractor's exercise of due care, prudence, foresight, or diligence and that arises directly from: an act of God; fire; flood; windstorm; tornado; earthquake; war; riot; insurrection; epidemic; quarantine restrictions; acts of terrorism; inability of Contractor to procure labor to the extent that such inability is not caused by disputes related to collective bargaining; inability of Contractor to procure material; accident; the prevention by the City of Contractor from commencing or prosecuting any of its duties under the Contract; inability of Contractor to obtain applicable permits and licenses from relevant governmental authorities; or failure of public utility service.
- DD. Graffiti Unit.** Guards assigned to the Graffiti Unit with orders to patrol all SFMTA sites such as buildings, subway stations, LRV platforms, bus stops, and vehicle yards for the purpose of documenting graffiti and submitting police reports as necessary.
- EE. Video Surveillance Unit.** Guards assigned to the Video Surveillance Unit with orders to retrieve video storage devices from SFMTA vehicles and process footage in accordance with instructions received from designated SFMTA personnel.

## 1. CONTRACTOR RESPONSIBILITIES-OVERVIEW

Contractor agrees that the Services to be performed, including the locations where and the hours during which Services are to be performed, and the number of Guards to be furnished

by the Contractor, shall be subject to the approval of the SFMTA. Contractor agrees that the schedules set forth in a staffing plan may be changed at any time, without any penalty to the SFMTA, provided the SFMTA gives written notice of the change.

The Contractor will provide and supervise Guards for all shifts as directed by the SFMTA. Contractor will provide Guards for assignment to duties and locations as described in the Scope of Services or other times or locations designated by the SFMTA.

## **2. INITIAL CONTRACT DELIVERABLES**

### **A. List of Assigned Guards.**

Contractor, prior to starting any work, must furnish SFMTA with a complete list of the names of all Guards assigned and their individual assignments. Records of criminal convictions, driving history, military service, education and prior employment must be checked by Contractor prior to the assignment of any Guard.

### **B. Training Plan.**

No later than 10 Days after the Effective Date, Contractor shall provide the SFMTA with a draft Training Plan consisting of the following: (i) the proposed curriculum for each required subject matter listed in Section 8.G below (ii) the dates, times, and location of each block of instruction. SFMTA shall review and return the draft Training Plan to Contractor with any instructions for revisions. Contractor shall deliver the completed Training Plan to the SFMTA for its approval prior to the commencement of training required by this Contract. The final approved Training Plan is incorporated by reference and shall become part of the Agreement as though fully set forth herein.

In addition to the initial training required above, Contractor will provide 24 hours of training each year of the Contract to all Guards used in performance of the Contract. Training shall include but is not limited to components as described in Section

### **C. Proof of Training.**

#### **Individual Guards.**

Prior to assignment of any newly assigned Guard, Contractor shall provide proof of required training for that Guard. Such proof shall include an affidavit of training, on a form to be approved by the SFMTA, signed by the Contractor and the Guard certifying that each type of training required by this Contract has been completed.

#### **All Guards.**

Within 30 Days of the Effective Date of the Agreement, Contractor must provide proof of having completed required training of each and every newly assigned Guard to this Contract.

#### **Training.**

Contractor shall provide proof of attendance for at least 24 hours of annual training with attendance sheets signed off by Guards participating in training, along with the day, time,

duration and training subject matter. Proof of attendance shall be submitted quarterly to the SFMTA. See Section 8.G for further information on training requirements.

#### **Affidavits.**

Falsified affidavits of training shall be grounds for immediate removal and replacement of a Guard. Contractor is responsible for verifying the truth and accuracy of each affidavit. Contractor agrees that failure to verify training affidavits is a material breach of the Agreement.

#### **D. Proposed Uniform Design.**

Contractor shall submit proposed Guard uniform designs changes to SFMTA for approval within 10 Days of the Effective Date.

#### **E. Supervisor Contact List.**

Upon the Effective Date Contractor shall provide a contact list with 24-hour contact information (phone or pager) for all Supervisors.

#### **a. Report Templates.**

Upon the Effective Date, Contractor shall continue to use SFMTA approved templates for all reports that are required by this Contract, Training Affidavits, Incident Reports, Guard Timesheets, a Daily Security Report (DSR), Armed Guard Daily Report, Observer Reports, monthly invoice, and an Excel matrix of Planned/Unplanned Scheduled Events to track date/time of event, location, number of guards, hours of service, etc.) for SFMTA approval. The final approved report templates are incorporated by reference and shall become part of the Agreement as though fully set forth herein.

### **3. CONTRACTOR DUTIES**

#### **A. General Guard Duties.**

The Contractor shall provide and supervise Guards to provide Services for all shifts and Sites for which Guards are required by this Contract or requested by the SFMTA. Except in the Revenue Section, Contractor shall make best efforts to assign Guards consistently to certain Sites so that Guards become more familiar with the procedures and authorized persons associated with that Site. Guards shall be provided to perform the following duties at all Sites in accordance with the Standard Operating Procedures unless otherwise provided in the Contract or as instructed by SFMTA:

- i. Protect the safety of persons on the Site
- ii. Prevent and minimize fire, theft, damage and trespass on SFMTA properties;
- iii. Prohibit entry into secure Sites by anyone other than persons carrying valid SFMTA identification or as otherwise instructed by SFMTA;



- iv. Report any unusual incidents or hazardous conditions;
- v. Maintain a daily log for each shift in accordance with all policies for the Site (*e.g.* sign in and sign out requirements for visitors);
- vi. Complete rounds of assigned facilities as required for each Site to ensure that all access doors are secure;
- vii. Maintain log of all security violations and report occurrences to SFMTA Security as quickly as possible considering the nature of the violation;
- viii. Monitor security desk consoles (*i.e.*, employee access control and alarm computer, CCTV video monitors, DVRs); as well as:
  - 1. Be familiar with and implement emergency fire or fire alarm procedures including familiarity with floor plans with locations of fire alarm pull boxes, fire extinguishers, fire alarm monitoring panel and other life/safety systems;
  - 2. Be familiar with and implement emergency intrusion alarm procedures including the use of computer programs, closed circuit television monitors, voice intercom systems, alarms and alarm enunciator panels and other equipment required for monitoring and control of building access;
  - 3. Guards shall be responsible for all building and systems keys in their possession and shall account for the whereabouts of keys at all times. Keys shall not be loaned to anyone for any reason. If keys are lost or stolen, Guards shall notify Contractor **immediately**, and Contractor shall notify SFMTA immediately upon receiving the Guard's report so that appropriate action can be taken to safeguard the premises. Contractor is responsible for the cost of replacement of lost, stolen or damaged keys;
- ix. Be familiar with and implement procedures and protocols for responding to medical emergencies, bomb threats, riots, fires, earthquakes, hazardous spills, floods and other emergencies;
- x. Be familiar with and implement procedures for receiving and forwarding requests for maintenance;
- xi. Guards shall not use cell phones except as required to perform their duties, and may not use or be in possession of any personal electronic devices or reading materials not related to Guard duties at a Site; and
- xii. Guards shall, at all times, be polite, courteous, respectful, and responsive to any person authorized to be on the Site.

- xiii. Guards shall not be engaged in or conduct any personal business or business outside those described in this Contract at any time while assigned to perform Services except for authorized breaks.
- xiv. Guards shall comply with all FCC rules and regulations when using the SFMTA's radio frequency, radio base station and handheld radio equipment.

**b. Facility Patrols**

Guards shall patrol the grounds of SFMTA Property as required by this Contract and as requested by SFMTA, including subways and rail tracks, to prevent trespassing, vandalism, sabotage, injury and liability in accordance with the Facility Patrol Plan.

**c. Employee Access Controls**

Guards shall monitor the access of employees and members of the public to SFMTA Property as required by this Contract and as requested by SFMTA. During business hours, most facilities allow employees access to all work areas except for secured areas (*e.g.* Revenue offices, the money counting room, various Revenue storage areas), and restricted areas (*e.g.* certain parts or tools storage areas, dispatch offices, and Central Control). Control of employee access to restricted areas during and after work hours is accomplished through a card access / reader system. Guards shall notify Contractor no later than the end of the shift during which any cards in the possession of Guards at the Site are lost or stolen or if any card reader is not working properly and Contractor shall notify SFMTA immediately upon receiving the Guard's report. Contractor is responsible for the cost of replacement of lost, stolen or damaged cards in the possession of Contractor's employees.

**d. Revenue Security**

Guards shall escort and protect SFMTA's Revenue Collections and Sales employees who handle cash and negotiable fare media as requested by SFMTA. SFMTA may elect to use armed or unarmed Guards to escort and protect Revenue staff. Revenue staff collects cash from the operating divisions, subway and some surface platforms on a daily basis. Special events also require Revenue staff to collect fares directly from transit passengers or from various collection points. Contractor must provide sufficient numbers of Guards to ensure uninterrupted protection of Revenue staff during the performance of Revenue operations as requested by SFMTA.

- i. The daily Revenue operations require constant alarm and video monitoring as well as armed Guards to ensure both the safety of Revenue personnel and the integrity of the revenue collection and counting process. Guards assigned to Revenue operations must be observant, aware and alert at all times.
- ii. Contractor must rotate Guard assignments a minimum of once every two months for Revenue related activities, and take such other measures as required to minimize the opportunity for collusion between Guards and SFMTA employees.

iii. Contractor must ensure uninterrupted Guard service for Revenue operations.

iv. Guards assigned to the Tower of the Revenue Center must be thoroughly familiar with:

all of the Site's life safety systems, CCTV video system, alarm and access control systems, operation of revenue parking garage doors and loading areas, SFMTA building security policies;

equipment removal policy and procedures; and

procedures for deliveries of freight, supplies, equipment, mail, packages.

**e. Failure to Perform Guard Duties**

Any acts of vandalism, sabotage or theft of SFMTA vehicles, buildings or equipment that is the direct result of the Contractor, or Contractor's agents or representatives, failing to perform as required by this Contract, shall result in a credit to the City of up to 100% of the cost of repair or replacement of the lost, damaged or stolen asset, plus all applicable SFMTA administrative costs and overhead.

**4. UNIFORMS**

**A. Uniforms to be Supplied and Maintained.**

Contractor must furnish and maintain all uniform items for all Guards provided to perform the Services required by this Contract, including outdoor clothing appropriate for the weather and season, with necessary safety clothing and equipment. All Guards must wear a complete uniform of the type required by this Contract at all times while on duty. When reporting for duty, Guards' shoes must be shined, all uniform items must fit well and be clean and pressed and must generally present a professional image to the public. The Contractor shall be responsible for the cleaning, pressing, and repair costs for all uniforms.

**Uniform Design.**

Uniform design shall be a police/military style uniform subject to the approval of the SFMTA. Any changes to uniform design or color required by the SFMTA shall be made at no additional cost to the SFMTA.

Shoulder patches with Contractor identification will not be larger than 4-1/2 inches by 4-1/2 inches. No other Contractor identification is to be worn or displayed on the uniform. A lettered breast badge and cap ornament displaying the Contractor's name shall also be worn.

**Uniform Items.**

Contractor shall issue all Guards a uniform, which must include, at a minimum, the following items:

- i. Shirts (long and short sleeve);
- ii. Trousers;
- iii. Black Garrison style belt;
- iv. Cap;

- v. Jacket (cold weather use);
- vi. Sweater (optional);
- vii. Rain gear in bright yellow or orange with "Security" printed on back;
- viii. Belt keepers;
- ix. Name plate, gold or silver (over left breast pocket with badge number, first initial and last name) and SFMTA-issued photo I.D. badge;
- x. Keys with key holder
- xi. Contractor's insignia shoulder patch (each shirt and jacket); and
- xii. Black shoes or boots, leather.

## 5. EQUIPMENT

- A. Flashlight and batteries;
- B. Flashlight holder, black, ring or snap style;
- C. Radio holder, black;
- D. Handcuffs and case or pouch (if required);
- E. Expandable baton (if required by SFMTA);
- F. Expandable baton holder, black (if required);
- G. Whistle (thunder type) with chain attachment;
- H. Semi-automatic pistol for armed Guards only or other firearm if requested by the SFMTA
- I. Approved chemical agent (subject to prior approval of use of chemical agents by the Director of Security, Investigations & Enforcement);
- J. Body armor to the extent determined necessary by Contractor;
- K. Vehicles for Field Supervisor, Mobile Patrol, Video Surveillance Unit and Graffiti Unit;
- L. Cellular telephones for all Supervisors;
- M. All other equipment determined by Contractor to be necessary to the successful performance of the Services.
- N. 4 (four) vehicles (truck/car). (Usage, maintenance, and mileage not reimbursable by SFMTA)

## 6. SITES

### A. Requested Locations.

Contractor shall provide armed and/or unarmed Guards at any location within the City and County of San Francisco within twenty-four (24) hours of SFMTA request.

### B. Regular Locations.

Contractor shall provide regular Guard and/or Mobile Patrol Services as required, permanently or temporarily, at the following Sites in accordance with the schedule set forth in Exhibit A. The SFMTA reserves the right during the term of the Agreement to add Sites or to eliminate any Site.

*i. Curtis E. Green Metro Center* – This Metro Center, located at 425 Geneva Avenue is a rail operations and maintenance complex that houses major maintenance and storage facilities for light rail vehicles and historic streetcars, dispatch offices, storage of maintenance equipment and supplies, and administrative offices for the maintenance division.

*ii. Geneva Metro Center* – The smaller portion of Green Center is located at 2301 San Jose Avenue and is primarily the maintenance center and storage area for the system's historic fleet.

*iii. John M. Woods Motor Coach Center* – The John M. Woods Center, located at 22nd and Indiana Streets, is the largest maintenance and storage facility for the system's standard motor coaches and includes administrative offices for operations dispatch and maintenance, parts storage, heavy repair, light repair, machine shops, body and paint functions, and a carpentry shop.

*iv. Potrero Trolley Coach Division* – Potrero Division, located at Hampshire and Mariposa Streets, is the system's largest trolley coach division. This facility includes storage and maintenance facilities for standard and articulated trolleys and offices for SFMTA's street supervisors.

*v. Kirkland Motor Coach Division* – Kirkland Division is located at North Point and Stockton Streets and is the operations, maintenance and storage facility for about 200 standard motor coaches

*vi. Welton M. Flynn Motor Coach Division* – Flynn Division, located at 1940 Harrison Street, is the operations, maintenance and storage facility for the motor coach fleet.

*vii. Presidio Trolley Coach Division* – The Presidio Division, located at Geary Blvd. and Presidio Avenue, houses system safety and training divisions classrooms and offices in addition to the maintenance and storage of trolley coaches.

*viii. Cable Car Division* – The Cable Car Division, located at Washington and Mason Streets, houses the cable power and machinery for operating the City's historic cable cars, the maintenance and storage facility for cable cars, and the Cable Car Museum.

*ix. SFMTA Headquarters* – located at 1 South Van Ness Avenue is owned by the City and leased by SFMTA. SFMTA currently occupies the third, sixth, seventh, and half of the eighth floors as well as the basement level at 11 Van Ness Avenue. SFMTA Headquarters is occupied by the Executive Offices; Taxi and Accessible Services;

Human Resources; Capital Programs and Construction; Finance and Information Technology; Safety; Security, Investigations and Enforcement; Sustainable Streets; and Transit Services.

*x. SFMTA Customer Service Center* – located at 11 South Van Ness and included in the lease for 1 South Van Ness. The hours of operation are 8 am-5 pm Monday–Friday. The Customer Service Center houses parking citation payments, parking and fare evasion citation hearings and fare media sales. Contractor shall provide the following for the Customer Service Center:

1. One unarmed Guard shall be posted at the front desk.
2. One armed Guard shall patrol the interior perimeter on a regular basis and escort daily deposits to the Revenue Center.
3. The Guards shall be responsible for opening the Customer Service Center at 8 am and closing the facility to the public at 5 pm.

*xi. Burke Avenue Warehouse* – A SFMTA Materials Management warehouse at 1570 Burke Ave. is used for storage of bus parts before distribution to individual storerooms at the divisions.

*xii. 700 Pennsylvania Facilities* – located at the corner of Pennsylvania & 22<sup>nd</sup> St., currently houses facilities and track maintenance staff, including the crafts, special machine shop and custodial crew along with the signal crew and fleet engineering.

*xiii. Islais Creek Motor Coach Division* Islais Creek is located at 1399 Marin Street and provides storage and minor maintenance for 50 to 175 standard motor coaches.

*xiv. 1301 Marin Facility* Houses the video shop and miscellaneous storage.

*xv. MUNI Metro East* MME is located at 25<sup>th</sup> St. & Illinois St. and houses approximately 40 light rail vehicles, dispatch facilities and extensive maintenance facilities.

*xvi. Subways* – SFMTA has responsibility for the upkeep of four subway stations that are owned by the Bay Area Rapid Transit (BART) District: Embarcadero Station, Montgomery Station, Powell Station, and Civic Center Station. SFMTA also owns and operates five additional stations in its Metro System: Van Ness Station, Church Station, Castro Station, Forest Hill Station and West Portal Station.

*Trackways* – SFMTA’s Metro System encompasses over 70 miles of trackways throughout the City, primarily along the J, K, L, M, N and T light rail lines. The remaining trackways access tracks linking the Metro Center other tracks. 6.2 miles

of this system is in the Metro Subway running from Embarcadero Station to the West Portal Station at the end of the Twin Peaks Tunnel.

**C. Future Sites**

**3. *Additional sites as requested by the SFMTA.***

**7. PERSONNEL**

**A. Contractor Responsible For Personnel.**

Contractor shall provide adequate numbers of trained and qualified personnel to fully staff all posts for all locations for which Guard Services are required to be provided by this Contract to the satisfaction of the SFMTA. All Guards must be employees of the Contractor; however, Contractor may provide guards through a subcontractor only after written approval from the SFMTA. Hiring, training, payment of wages and benefits, uniforms, equipment, supervision, transportation costs, direction and discharge of Guards shall be the responsibility of the Contractor. The payment of federal, state, and local taxes and all wages shall be the responsibility of the Contractor. Contractor is responsible for complying with all required federal, state and local employment laws and regulations. SFMTA may request Contractor to remove any Guard from its premises at any time it desires and for any reason. The Contractor shall provide Relief for Guards who are on authorized breaks or leaves. All new employee names must be provided to the Employee Services Section of SFMTA's Human Resources Division prior to the employee's start date.

**a. Removal without Cause.**

SFMTA may request Contractor to remove any Guard from performing Services under this Contract at any time it desires and for any reason. Contractor shall remove and replace personnel within 24 hours when requested by the SFMTA.

**b. Removal with Cause.**

Contractor shall remove and replace a Guard within 30 minutes of SFMTA request for any cause or condition that renders the Guard incapable of performing their duties, which shall include but is not limited to: sleeping on duty, theft, alcohol or illegal drug use. Contractor shall remove and replace personnel within 24 hours for other violations or performance failures set forth in the Agreement when requested by the SFMTA.

**c. Drug and Alcohol Screening**

Federal Transit Administration (FTA) regulations require that all armed personnel undergo random substance (drug and alcohol) abuse screening as a condition of employment or contracting with SFMTA, as follows:

In implementation of the Omnibus Transportation Employee Testing Act of 1991 (49 U.S.C. App. 1618a), the Federal Transit Administration (FTA), in February 1994, issued regulations requiring its grant recipients to institute drug and alcohol testing programs. These regulations, as amended, are found in Title 49 of the Code of Federal Regulations, Part 655. Additionally, Part 40 contains procedures for collecting and analyzing drug and alcohol specimens.

Generally speaking, FTA requires testing of all transit system employees, including part-time employees, certain volunteers and contractors who perform "safety-sensitive functions." A safety-sensitive function includes maintaining a revenue service vehicle or equipment used in revenue service. Maintenance includes both preventive maintenance and overhaul of such vehicles or equipment.

Accordingly, any contractor receiving the award of this contract will have to either: (1) implement its own drug and alcohol testing program in compliance with FTA regulations; (2) use the services of a third party administrator to fulfill these requirements; or (3) to the extent that the contractor is performing work at SFMTA, the contractor may participate in Muni's program. As a condition of receiving an award of this contract, Contractor shall notify the SFMTA in writing which of the three options it elects.

The drug and alcohol testing requirements include, but are not limited to:

- Testing for alcohol, by means of a breathalyzer test
- Testing for five drugs (cocaine, marijuana, amphetamines, PCP, and opiates), by means of a urine specimen
- Six types of testing: pre-employment, random, post-accident, reasonable suspicion, return-to-duty, and follow-up
- Adoption of a policy statement explaining the various testing requirements, including procedures and the consequences for those employees who test positive. The policy must be distributed to all of the contractor's safety-sensitive employees.
- Training of all safety-sensitive employees. Each safety-sensitive employee will need a minimum of one hour of training on the effects and consequences of prohibited drug use and on the signs and symptoms indicating prohibited drug use. Supervisors who may make reasonable suspicion determinations need an additional two hours of training on the indicators of probable drug use and alcohol misuse.
- Referral of employees who test positive to a Substance Abuse Professional
- Record-keeping and reporting. The regulations include requirements for retention of records and annual reporting of drug and alcohol testing information by SFMTA to FTA.
- Obtaining information from previous employers on all applicants who apply for safety-sensitive positions

One hundred percent (100%) of all armed Guards assigned to SFMTA shall be screened on an annual basis. Contractor must provide written proof of testing of each armed Guard prior to that Guard providing any Services under this Contract.



**Options 1 and 2:** (If the contractor implements its own program or contracts with a third party administrator)

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Part 655 and 49 CFR Part 40, produce any documentation necessary to establish its compliance with Parts 40 and 655, and permit any authorized representative of the U.S. Department of Transportation or its operating administrations, the California Public Utilities Commission (in its capacity as state oversight agency), or the City and County of San Francisco to inspect the facilities and records associated with the implementation of the drug and alcohol testing program and review the testing process. The Contractor agrees further to certify annually its compliance with Part 655 by December 1st of the calendar year and to submit the Management Information System (MIS) reports before March 1st (for the prior calendar year) to the Manager of Muni's Employee Services Section. To certify compliance, the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

The Contractor further agrees to submit within thirty (30) days of the Effective Date: (1) verification that its safety-sensitive employees are included as part of a safety-sensitive random testing pool; (2) a copy of Contractor's policy statement developed to implement its drug and alcohol testing program; and (3) the name of its third party administrator, if applicable. Failure to submit such documents within the prescribed time period, or failure to submit any other documentation relevant to the testing requirements as required by SFMTA, shall be cause for withholding payments to Contractor until the requirements of this section are met.

**Option 3:** (If the contractor's employees perform work at SFMTA and the contractor chooses to participate in SFMTA's program.)

Contractor agrees that its safety-sensitive employees will participate in the SFMTA's federally mandated drug and alcohol testing program. This participation shall include the following services: training, testing and collection, laboratory, medical review officer and substance abuse professional. Fees for these services shall be billed to Contractor at the rates identified on Exhibit B hereto. Payment shall be due within 30 days of the date of invoice. Contractor agrees that if it does not timely pay SFMTA for such services, SFMTA may withhold the unpaid amount of the invoice from its payments to Contractor.

Contractor shall be responsible for preparation and adoption of a policy statement in compliance with the requirements of Part 655 of the Code of Federal Regulations and for complying with any other federal requirements, including, but not limited to, obtaining required previous employment information regarding applicants for safety-sensitive positions (in compliance with 49 CFR § 40.25). Contractor shall also be responsible for the costs of any rehabilitation or employee assistance benefits for its employees.

### **Qualified Employees.**

Employees hired by the Contractor as Guards shall possess the following skills and abilities:

- i. Guards shall have the ability to speak, read, write, understand and properly use documents written in English.

ii. Contractor shall communicate all written materials provided by SFMTA to Guards, including rules, procedures, regulations, guidelines and instructions, and shall ensure that Guards adhere to the standards set forth in such materials.

iii. Each and every Guard provided under this Contract shall have the minimum qualifications required for the position for which he/she is provided as set forth herein, to include a license from the Department of Consumer Affairs, Bureau of Collections and Investigative Services, Private Investigation Act, Section 7512.13 (commonly known as a "Guard Card"). The SFMTA or may require proof of such qualifications at any time from either the Guard or the Contractor.

iv. Guards must be at least 21 years of age. This requirement may be waived for veterans of military service with the written approval of the SFMTA.

v. Any Guard assigned to armed duty shall meet all qualifications and have all required licenses and certifications to carry firearms.

vi. The following persons are not qualified to work as Guards:

(a) Persons with felony or serious misdemeanor convictions(s) during the last five years;

(b) Persons presently on probation or parole;

(c) Guards removed for cause at any time during this Agreement;

(d) Guards who do not possess the required certifications or training specified in this Agreement.

vii. Should any employee be found unqualified for the position to which he/she is assigned, Contractor shall remove such employee immediately and provide a replacement within four hours at no additional cost to the SFMTA.

viii. The SFMTA shall not pay for any Service provided by Contractor's employees who do not meet the qualifications set forth herein. In the event that the SFMTA discovers, at any time, that it has already paid the Contractor for Services provided by an unqualified employee of the Contractor, the Contractor shall refund any such payment to the SFMTA within ten business days of notification by the SFMTA. The SFMTA may, at its option, deduct an equal amount from any payment due or to become due to the Contractor under this Agreement or any other agreement.

### **Training Requirement**

xiii. State Requirements: Contractor shall require all Guards to have a current Security Guard License ("Guard Card") in their possession. Contractor shall provide to the SFMTA a photocopy

of current Security Guard License for all Guards assigned to SFMTA facilities ten days prior to the Effective Date. Photocopies of valid Guard Cards for new employees shall be provided 24 hours prior to their start date at SFMTA Sites. Photocopies of Guard Card renewals or proof of payment for the renewals shall be provided to the SFMTA quarterly. In addition to the Guard Card, all Armed Guards must have in their possession a Firearm Permit as issued by the Bureau of Security and Investigative Services.

- xiv. SFMTA Requirements: Within five Days of the Effective Date of the Agreement, Contractor and SFMTA will meet to develop written training plans and implement a training program. Contractor and SFMTA will have five days to complete the training plan and three weeks to complete all training

Prior to assignment at any SFMTA Site, all Guards assigned to any location or function that will bring them into regular contact with rail operations shall complete the SFMTA “**On Track and Track Site Safety**” Course (4 hours). Training will include but is not limited to SFMTA specific curriculum to address safety issues related to work at a transit rail facility and CALOSHA safety training.

Additional training requirements for more specialized positions (the type of training depends on assigned duties) are as follows:

*a. Field Supervisor 32 hours*

Training will include learning the location and routes to all SFMTA facilities, all identified security vulnerabilities and alarm response procedures and the safe vehicle and proper radio usage procedures to assist in monitoring deployment of unarmed staff. As this is a supervisory position the field supervisor will also learn how to train new unarmed Guards assigned to conduct a foot patrol of the Site, to document their activities, and to issue radio and other needed equipment as needed.

*b. Security Operations Center Supervisor-Unarmed (1455 Market St., 7<sup>th</sup> Floor, Room 705) 40 hours*

Training will include proper radio usage procedures and documentation of calls to assist in monitoring deployment of unarmed personnel and abide by FCC rules, inventory & key control. Training will also include CCTV & alarm monitoring procedures, alarm response duties and emergency contact procedures, and incident report writing. As this is a supervisory position, those assigned to this position will also be trained on how to staff open posts and weekly scheduling of unarmed Guards.

*c. Tower Guard-Unarmed (Revenue Center-1 SVN basement) 16 hours*

Training will include proper radio usage procedures, inventory control, CCTV and alarm monitoring procedures, alarm response duties and emergency contact procedures,

approved procedures to control access to revenue loading dock and secured areas to authorized personnel. These Guards will also be instructed on proper radio usage.

*d. Armed Revenue Supervisor (Revenue Center-1 SVN basement)40 hours*

Training for this position will include all training in procedures provided to armed revenue Guards. The armed supervisor will also be trained in revenue loading dock procedures and how to monitor the daily Loomis pickup. As this is a supervisory position those assigned to this position will also be trained on how to schedule/rotate armed Guards through different collections as required by the contract and how to fill open posts.

*e. Armed Revenue Guards (Revenue Center-1 SVN basement) 3 day*

Training will include orientation to all subway platforms, sites and facilities to which armed Guards escort revenue staff during revenue operations. During this training Guards will be instructed on each area's vulnerabilities as well as proper placement and responsibilities while on escort duty and when returning to base. These Guards will also be instructed on proper radio usage.

*f. Graffiti Patrol-Unarmed 24 hours*

Training will include learning the routes to all SFMTA bus yards, facilities, portals, stations and platforms where graffiti is likely to occur, pictorial and written documentation of procedures for Graffiti attacks, as well as safe vehicle usage. These Guards will also be instructed on proper radio usage.

*g. Facility Guard-Unarmed 8 to 24 hours as needed*

Training shall include identification of the facility vulnerabilities and the assigned patrol area, instruction on other duties including proper radio usage; verifying employee IDs, and keeping unauthorized people out of restricted areas.

*h. ADA Observer-Unarmed 4 hours*

Training will include an orientation on all ADA compliance issues that operators are required to follow while driving a transit vehicle, documentation of non-compliance, filling out ride reports and time sheets.

*i. Video Data Assistant- 40 to 80 hours as needed*

Video Data Assistants are responsible for retrieving video data storage units from buses and light rail vehicles, viewing footage, and preparing copies for the SFMTA Security, Transit, and Safety groups and the San Francisco Police Department.

iii. Ongoing Training Requirements

The Contractor must ensure that training as described in Section ii. above is conducted annually or when a Contractor hires any new Supervisor, armed Guard or a group of ten unarmed Guards within a given quarter. The SFMTA reserves the right to test Guards' knowledge of the training curriculum required by this Contract.

The Contractor shall ensure that all Guards have completed an Anti-Discrimination and Harassment Course (4 hours) within one (1) year of assignment to this Contract.

iv. Training Waivers

Contractor may request the training requirement to be waived for a particular Guard if Contractor submits adequate documentation to demonstrate that the Guard's skills already exceed the training requirements and the SFMTA approves the waiver request. No waivers for safety and CALOSHA training are allowed under this Agreement.

**8. TYPES OF SERVICES.**

Contractor shall provide the following Guards and Services in accordance with Appendix B:

**A. Armed Personnel.**

*i. Armed Revenue Escort Security Officer Guards*

Contractor shall provide Armed Revenue Escort Security Guards who are assigned to Revenue escort duties. These Guards must be armed and fully equipped (with Semi-automatic pistol, handcuffs, baton, approved chemical agent, holsters) to escort Revenue staff.

*ii. Armed Revenue Guard Supervisor.*

Contractor shall provide an Armed Revenue Guard Supervisor, who shall supervise all armed Guards assigned to the Revenue Section to ensure that the Guards follow all established procedures. This includes but is not limited to checking in armed Guards, issuing equipment, collecting reports, scheduling of armed Revenue Guards and Relief, and additional duties as requested.

**B. Unarmed Personnel.**

Contractor shall provide the following unarmed personnel:

*i. Revenue Tower Officers*

Guards posted at the Tower will be stationed in an elevated control room at SFMTA headquarters at 1 South Van Ness in the basement area connected to the Revenue Vault section to secure the Vault and adjacent areas. Guards at this post must be proficient in PC based software, CCTV and employee access control and alarm systems and monitor and control all entry into the garage area and Vault sections.

*ii. Senior Console Supervisor*

One Senior Supervisor (Monday through Friday) shall be responsible for monitoring the deployment of Guards and supervising all consoles, and unarmed Guard operations, managing communications, and reporting directly to the Contractor's Account Manager. The Senior Console Supervisor shall be responsible for scheduling all Guards and Relief, as well as monitoring all access and CCTV systems, making CD copies of CCTV recordings and backing up of access control system databases as instructed SFMTA. SFMTA requires a minimum of one (1) unarmed Console Supervisor to be assigned to Security Control Consoles per 8-hour shift.

*iii. Security Control Console Monitors*

Contractor shall provide Guards to monitor Security Control Consoles, at 2-3 Sites, 24 hours per day, 7 days per week. Security Control Consoles contain: the radio base station, CCTV monitors, digital video recorder (DVR) and the employee access control system.

*iv. Field Supervisor*

Contractor shall provide one unarmed Field Supervisor, whose primary responsibility shall be to patrol SFMTA's various facilities and Sites and respond to all dispatch requests by the Security Control Console Supervisor for any alarms. When requested, or when there is an incident that requires such response, the Field Supervisor shall meet San Francisco Police Department (SFPD) and/or SFMTA staff at the location with keys or access cards as required in order to allow them access into the building. The Field Supervisor must remain in contact with the Security Control Console Supervisor while on patrol using a hand held radio to be provided by SFMTA.

*v. Graffiti Unit Guards.*

Contractor shall provide uniformed Mobile Patrol Guards to prevent Graffiti from occurring and to gather evidence to prosecute vandals. The locations that must be patrolled by the Graffiti Unit include but are not limited to T-line platforms, the perimeters of all Sites, and any Site that is a bus, trolley or light rail vehicle storage yard. Graffiti Unit Guards may not be used as Relief.

The Graffiti Unit must patrol the affected SFMTA Property following the report of a Graffiti attack on any bus, trolleys or light rail vehicle while parked on SFMTA Property. After arriving on site, Graffiti Unit Guards shall inventory vehicles with Graffiti, interview SFMTA employee(s) who reported or saw the incident, get a track sheet indicating where the coaches marred by Graffiti are located in the yard, and take digital photographs of the individual Graffiti "tags." The Guard will advise the Senior Console Supervisor to contact SFMTA Central Control with a request for SFPD to respond to the Site to issue a police report. The Guard shall remain on-site to assist SFPD. The Incident Report will include an SFPD case number along with photographs and a track sheet.

**C. Supervisor Duties**

xv. Each Supervisor of an upcoming shift shall, prior to shift change, determine the readiness of Guards preparing to be posted and ensure adequate number of properly uniformed and equipped Guards are available for the shift.

xvi. Each Supervisor shall communicate any changes in post assignments or procedures, any special instructions, announcements, or any other pertinent information that may affect security operations.

- xvii. On-duty Supervisors shall be available at all times during their shift to receive and implement orders or special instructions from the SFMTA concerning matters which affect the operation and security of assigned areas.
- xviii. Supervisors shall instruct Guards as to their daily duties at the beginning of each shift. Guard duties shall not interfere with the operations of the SFMTA.
- xix. Other than Graffiti Unit Supervisor, no on-duty Supervisor may perform the duties of a Guard on patrol or Relief except in emergencies. During emergencies, the Supervisor may staff a post for a period not to exceed two hours in any consecutive eight hour period, unless this requirement is waived by the SFMTA. A report shall be submitted to SFMTA by the Supervisor no later than the next business day after the emergency.

**D. Contract Security Administrative Support**

Contractor shall provide all necessary administrative support to manage Contractor's employees; to prepare reports, compile statistics and provide information as requested by the SFMTA. Contractor shall provide one administrative employee, to be stationed between the hours of 8 a.m. and 5 p.m., at a location to be determined by the SFMTA.

**E. As-Needed and Emergency Guard Service**

In addition to requested scheduled Services, Contractor shall provide As-Needed Guard Service whenever requested by SFMTA, so long as SFMTA gives at least four hours' notice of a request for additional Services. Guards requested under As-Needed Guard Service shall be compensated in accordance with applicable Federal, State, and local law. SFMTA anticipates the As-Needed Guard Service requirements to be approximately 1,500 hours annually.

Contractor may be asked to provide armed or unarmed Guards for Emergency Guard Service. Contractor shall provide an Emergency Guard within 30 minutes of SFMTA request. Contractor may charge an emergency rate for the first four hours of services only. After the first four hours, the rate of pay will revert to regular rates.

**F. Account Manager**

Contractor shall provide an Account Manager to coordinate Contract Services. The Account Manager shall be responsible for managing the SFMTA account and responding to all SFMTA requests for additional Services or any other SFMTA concerns regarding staffing or

security issues. The Account Manager shall report directly to SFMTA's Director of Security, Investigations & Enforcement.

The Account Manager must be available to participate in security audits and evaluations of SFMTA facilities, practices and procedures. This requirement is a material term of the Contract.

### **G. Observer Program**

Contractor shall provide unarmed plain-clothes Guards as needed and as approved by the SFMTA to act as field observers. The Observer Program was established by court decree to ensure SFMTA's adherence to ADA requirements. The Observer will be assigned to specific SFMTA operators where complaints about non-compliance with ADA requirements have been reported. Observers shall complete a daily written report in a form to be provided by the SFMTA, documenting their observations while riding each vehicle. Although the primary purpose of Observers is to document ADA compliance by SFMTA operators, such Observer report may also include observation of other transit service-related issues, such as fare evasion, customer service problems, or vandalism. The estimated amount of Observer hours that will be required during the term of the Contract is 5,000 hours annually. No single individual employed as part of the Observer Program may work as an Observer more than 20 hours per week. The Observer shall, at a minimum, document the following observations:

- i. Whether the operator calls out stops and transfer points.
- ii. Whether the operator is courteous and accommodating to patrons with disabilities.
- iii. Whether the wheelchair ramp or the coach is lowered when needed.
- iv. Whether wheelchair patrons are properly secured in the designated wheelchair area when the coach is in motion.
- v. That the designated seats are kept open for patron(s) who are elderly or who have disabilities.
- vi. Whether the bus is operated safely with a minimum amount of jerking motions.
- vii. Whether all service animals are allowed on the vehicle.
- viii. Whether the operator checks to make sure that riders are carrying appropriate fare media or paying the required cash fare.

Whether the fare boxes on the vehicle are functioning properly.

## **9. TIMES OF SERVICE**

### **A. Time Records**

- i. Time records shall be signed by Guards at the beginning and end of each shift and include a standard description of assignments for each day broken down in actual increments [i.e. - Metro TVM collection - 4 hours, Fare Media delivery - 2 hours, break



– 1 hour, etc.]. No other Guard, Supervisor or individual is authorized to sign time records.

- ii. All original time records and payroll records for an employee's time for which the SFMTA is charged shall be maintained within 100 miles of San Francisco and shall be retrievable within 24 hours of SFMTA request.
- iii. Contractor shall maintain electronic records of actual daily Guard assignments and functions in a standard and reportable manner
- iv. Contractor shall make all time records and payroll records available for inspection, copying or audit for the entire term of the Agreement and for at least three years after the term of the Agreement. This section shall survive termination or expiration of the Agreement.
- v. Time records shall be signed at the end of each shift by the shift Supervisor certifying the accuracy of the time record for that Guard.
- vi. Time records for all Guards shall be maintained at 1 South Van Ness Avenue until the end of each calendar year.

The Contractor must provide the assignment of duties and location one week prior to commencement for approval by the Director of Security, Investigations & Enforcement. Contractor must also describe how arrangements will be made for rotating coverage during breaks for Guard stations at revenue locations, and must show assignment rotation a minimum of once a month for Revenue related activities.

**B. Hours of Service**

**i. Shift Schedule.**

The Contractor shall provide Guards to fill all shifts listed in Exhibit A. SFMTA reserves the right to change the times or locations of the shifts listed in Exhibit A. Contractor agrees that the Services to be performed by it herein, including the locations and areas where Services are to be performed, the hours for which such Services are to be maintained, and the number of trained, equipped and qualified Guards to be furnished by the Contractor hereunder shall be subject to the approval of the SFMTA. Contractor agrees that the scheduled work hours and days of Services may be changed at any time, without any penalty to the SFMTA, provided the SFMTA gives ten business days' notice of any changes to Exhibit A, except in emergencies.

**ii. Limitation on Overtime.**

No Guard shall work more than 12 hours on one or more Sites, for other clients of Contractor or for or any other job in any 24 hour period unless the work periods are separated by an eight hour non-duty period. This limitation shall not apply where Contractor

demonstrates in writing within one business day after the event, any condition that prevented Contractor's compliance with this requirement. All requests for an exception to this requirement must receive prior written approval from the SFMTA. The Contractor shall obtain a written confirmation of the waiver of this requirement from the SFMTA for each occurrence.

### **C. Holidays**

Contractor shall provide Services on the following official City holidays:

- i. New Year's Day
- ii. Martin Luther King's Birthday
- iii. President's Day
- iv. Memorial Day
- v. Independence Day
- vi. Labor Day
- vii. Columbus Day
- viii. Veterans Day
- ix. Thanksgiving Day
- x. Day after Thanksgiving
- xi. Christmas
- xii. Any additional official City holidays during the term of the agreement.

### **D. Special Events**

The Contractor shall provide additional Services for miscellaneous special events that require armed or unarmed Guard coverage. SFMTA will provide at least five business days' notice of the number of Guards needed for a Special Event. These events include but are not limited to:

- i. Bay to Breakers (armed)
- ii. Halloween (armed and unarmed)
- iii. New Year's Eve (armed and unarmed)
- iv. Gay Freedom Day Weekend (armed and unarmed)
- v. Cable Car Bell Ringing (unarmed)
- vi. San Francisco Giants Baseball games (armed)

## **10. REPORTS AND MEETINGS**

### **A. Meetings**

Contractor's Account Manager shall attend monthly status meetings with SFMTA staff to discuss issues related to the Agreement including, but not limited to, performance, invoice payments, Agreement status, personnel issues, etc. At least one (1) week

prior to the monthly status meeting, the Account Manager shall provide a monthly status report that summarizes the status of performance of the Agreement with respect to the subject matters listed above and any others that either party requests be included on the agenda for the monthly status meeting.

## **B. Reports**

### **General Report Requirements.**

Whenever a written report is required under the Agreement, any such report must be written in legible English. All reports must be submitted in a Microsoft Word or compatible format in the approved template as set forth in Section 3. Any changes to report content or formats requested by SFMTA shall be made at no cost to the SFMTA. All written reports are to be submitted by the beginning of the next business day to:

**Director of Security, Investigations & Enforcement  
1 South Van Ness Ave. Eighth Floor, Room 8193-8228  
San Francisco, CA 94103**

### **i. Incident Reports.**

Incident Reports shall be prepared no later than the end of the shift during which an incident occurs by each and every Guard who witnessed or responded to the incident. Included in the incident report is a description of the reported incident and status such as “no incident,” “all clear” or “further investigation and follow-up required.” The Incident Report shall be submitted to the SFMTA Director of Security, Investigations & Enforcement, or a designated representative in the approved template as set forth in Section 3. Incident Reports must be submitted by Guards whenever there is an event or condition on or adjacent to SFMTA Property involving injury to persons or property, criminal activity, security breaches, departures from required procedures, suspicious activity, unauthorized persons on SFMTA property or any significant confrontations or altercations among or between SFMTA employees, contractors (including Contractor's employees) or members of the public. Original Incident Reports must be submitted to SFMTA each business day for the prior business day's incidents in electronic format as well as by fax. An Incident Report must be filed in any of the following circumstances:

- (a) Guard is required to intervene between any two or more persons, including other Guards, members of the public or SFMTA staff;
- (b) A Guard witnesses any crime or suspected crime, including assault;
- (c) A Guard witnesses any incident in which there is a potential personal injury, whether or not medical attention is requested or required, or in which loss or damage to public or private property occurs;
- (d) A Guard is required to give direction or an order to any person on a Site and they protest or express their unwillingness to comply;

- (e) A Guard discovers any unlocked doors or any activated alarms, false or otherwise;
- (f) A Guard discovers any evidence of an area being used and/or occupied by vagrants or loiterers.
- (g) A Guard observes suspicious or unusual activities, intrusion alarm information, or Graffiti attacks.

**vii. Annual Summary Reports**

Each year, 90 days before each anniversary date of this Contract, Contractor must furnish a report of the total services ordered under this Contract during the preceding twelve months. The report must be in a format acceptable to SFMTA and must list by department or location the following: (1) all services ordered under this contract; and (2) total quantity and dollar value of each service ordered, including services for which there were no orders. Contractor must also furnish a separate similar report for the total of all services ordered by SFMTA which are not part of this Contract.

**viii. Other Required Reports.**

(a) All malfunctions, vandalism and loss of said equipment stored in the Security Operations Center must be reported within four hours of the occurrence. The Security Operations Center contains SFMTA equipment for which Contractor shall be responsible.

(b) When a Guard observes suspicious or unusual activities, intrusion alarms, or a Graffiti attack, a report must be telephoned in to SFMTA Central Control within 5 minutes of the occurrence.

(c) Upon the Effective Date, Contractor shall submit a monthly staffing plan that includes the number of Guards that are delegated to each assignment listed in Exhibit A for the upcoming month. The first staffing plan shall include the first two months of the Contract, and each staffing plan shall be submitted 30 days in advance of the month covered by the staffing plan. Supervisors must report any variances from established staffing plans and schedules that occur within a given shift by location and hour, within one business day of the variance. The staffing plan must include arrangements for rotating coverage during breaks for Guards stationed at Revenue Sales locations, and must show assignment rotation a minimum of once a month for Revenue related Activities.

(d) Daily Security Report (DSR): a log of a Guard's activity during an assigned shift. Items to be filled out include but are not limited to time of patrols and breaks/lunch which is kept on file at the SFMTA Security Office..

(e) Armed Guard Daily Report: A log of activity of Armed Guards during a given shift. Log includes arrival and departure time, the name of the SFMTA revenue worker to whom they have been assigned. Log is turned Revenue at the end of each shift.

(f) Excel Matrix of Planned/Unplanned Scheduled Events to track the date and time of an event, its location, the number of Guards assigned, hours of service, etc.

## **11. MATERIALS TO BE PROVIDED BY SFMTA**

- A. SFMTA required Standard Operating Procedures;
- B. Site's life safety systems, CCTV, computer system, alarm systems, operation of revenue parking garage doors and loading areas, SFMTA building security policies, and key and access card control;
- C. Emergency fire or fire alarm procedures including floor plans with locations of fire alarm pull boxes, fire extinguishers, fire alarm monitoring panel and other life/safety systems;
- D. Emergency intrusion alarm procedures including computer programs, closed circuit television monitors, voice intercom systems, alarms and alarm enunciator panels and other equipment required for monitoring and control of building access;
- E. Procedures and protocols for responding to medical emergencies, bomb threats, riots, fires, earthquakes, hazardous spills, floods and other emergencies;
- F. Procedures for deliveries of freight, supplies, equipment, mail, packages, to the New Revenue Center;
- G. Equipment removal policy and procedures of the Revenue Center;
- H. Procedures for receiving and forwarding requests for maintenance;
- I. Procedures and protocols for issuing, canceling, using, replacing, and confiscating access control devices including keys and access cards;
- J. SFMTA Security shall provide the Contractor with a list of contact names and departments, with land line, cell phone and pager numbers. These names are to be used when Contractor needs to notify various individuals or departments about incidents, or to request information and assistance.

## **12. LIQUIDATED DAMAGES**

As set forth in Section 19 of the Agreement, the SFMTA may, acting reasonably, exercise its authority to collect liquidated damages from Contractor up to the maximum amounts provided herein for each instance of Contractor's failure to comply with the requirements set forth in this Appendix A of the Agreement.

The SFMTA may assess liquidated damages each time Contractor fails to meet the performance standards enumerated in this section (an Incident).

- A. Failure to submit Post Orders within 15 days of the Effective Date as set forth in Section 3.A shall result in a credit to the City of \$100 per 24-hour period of delay.

**B.** Failure to provide a draft Training Plan no less than 10 Days prior to commencement of training as set forth in Section 3.C shall result in a credit to the City of \$100 per 24-hour period of delay.

**C.** Failure to provide Proof of Training as set forth in Section 3.D shall result in a credit to the City of \$100 per employee.

**D.** Submitting false affidavits for training verification as set forth in Section 3.D.iv. shall result in a credit to the City of \$1,000 per individual incident.

**E.** Failure to submit a Facilities Patrol Plan on the Effective Date as set forth in Section 3.E shall result in a credit to the City of \$100 per 24-hour period of delay.

**F.** Failure to submit proposed Guard uniform designs to SFMTA for approval within 10 Days of the Effective Date as set forth in Section 3.F shall result in a credit to the City of \$ 50 per 24-hours period of delay.

**G.** Failure to submit Supervisor Contact List on the Effective Date as set forth in Section 3.G shall result in a credit to the City of \$50 per 24-hour period of delay.

**H.** Failure to provide the all Report Templates to be used by the Contractor on the Effective Date as set forth in Section 3.I shall result in a credit to the City of \$50 per 24-hour period of delay.

**I.** Failure to provide Services at all times during Revenue operations as set forth in Section 4.D shall result in a credit to the City of \$100 per individual incident.

**J.** Failure to Perform Guard Duties-Section 4.E. Any acts of vandalism, sabotage or theft of SFMTA vehicles, buildings or equipment that is the direct result of the Contractor, or Contractor's agents or representatives, failing to perform as required by the Agreement in Post Orders shall result in a credit to the City of up to 100% of the cost of repair or replacement of the lost, damaged or stolen asset, plus all applicable SFMTA administrative costs and overhead.

**K.** Failure to ensure that Guards report to duty with all uniform elements required by Section 5 shall result in a credit to the City of \$250 per individual incident

**L.** Failure to ensure that each Guard reports for duty with all required equipment required by Section 6 shall result in a credit to the City of \$250 per individual incident.

**M.** Failure to provide Guards to SFMTA Sites listed in Section 7, in accordance with Exhibit A shall result in a credit to the City of \$1,000 per day per shift not covered by a Guard.

**N.** Failure to remove and replace Guards as set forth in Section 8.C and within deadlines in the Agreement shall result in a credit to the City of \$50 per 30 minute delay.

**O.** Failure to reassign Guards within one day of SFMTA request at no cost to the SFMTA, as set forth in Section 8.D shall result in a credit to the City of \$150 per individual incident.

**P.** Failure to provide all new employee names and documentation of drug testing to the SFMTA for each armed Guard as set forth in Section 8.E shall result in a credit to the City of **\$1,000.00** per individual incident.

**Q.** Failure to submit an Emergency Report within the deadline set forth in Section 9.C.v shall result in a credit to the City of \$50 per day of delay.

**R.** Failure to provide any required personnel and hours of coverage for the Account Manager as set forth in Section 9.F shall result in a credit to the City of \$500 per day per staff person not provided.

**S.** Failure to provide any required personnel and hours of coverage for the Observer Program as set forth in Section 9.G shall result in a credit to the City of \$500 per day per staff person not provided.

**T.** Failure to provide the adequate level of personnel and hours of coverage for Special Events as described in Section 10.D shall result in a credit to the City of \$500 per day per staff.

**U.** Failure to provide any report as set forth in Section 11.B shall result in a credit to the City of \$250 per individual incident.

Contractor's proposal, dated January 7, 2015 is incorporated by reference as though fully set forth. In the event of any conflict, the documents making up the Agreement between the parties shall govern in the following order of precedence: 1) this Agreement and its appendices; 2) the Request for Proposals dated December 10, 2014; and 3) Contractor's Proposal, dated January 7, 2014.

## **2. Reports**

Contractor shall submit written reports as requested by the SFMTA. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

## **3. SFMTA Liaison**

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be Christopher Grabarkiewetz, Director, SFMTA Security, Investigations, and Enforcement.

**Appendix B  
Calculation of Charges**

The positions and hours in the table below are for planning purposes only and should be used as a baseline for types of positions needed and an estimated number of hours needed per year.

The Contractor will use the Bill Rate in the tables below through 1/1/2016. Thereafter, annual adjustments to each of the bill rates shall be the higher of (i) 2.5% or (ii) the cumulative cost of any increase in wages and benefits which result from a collective bargaining agreement which apply to the services provided under this agreement, any San Francisco minimum wage increase or any mandatory MCAO health care contribution, inclusive of payroll taxes.

<b>Position - Armed</b>	<b>S/O/Shift</b>	<b>Shift/Day</b>	<b>Hrs./Shift</b>	<b>Days/Week</b>	<b>Hrs./Week</b>	<b>Hrs./Annual</b>	<b>Bill Rate</b>	<b>Annual Cost</b>
Bay & Taylor	1	1	8	7	56	2912	\$ 35.69	\$ 103,929.28
Cubic Collection	1	1	8	6	48	2496	\$ 35.69	\$ 89,082.24
Break Relief	1	2	8	2	0	0	\$ 35.69	\$ -
Pass Sales Hyde/Beach	1	2	8	7	112	5824	\$ 35.69	\$ 207,858.56
Pass Sales Powell/Market	1	2	8	7	112	5824	\$ 35.69	\$ 207,858.56
Pass Sales Presidio	1	1	8	7	56	2912	\$ 35.69	\$ 103,929.28
Subway Escort	1	2	8	7	112	5824	\$ 35.69	\$ 207,858.56
Armed Supervisor	1	1	8	5	40	2080	\$ 35.69	\$ 74,235.20
Customer Service	1	1	8	5	40	2080	\$ 35.69	\$ 74,235.20
Ballpark Detail	2	N/A	5	N/A	N/A	880	\$ 35.69	\$ 31,407.20
					<b>TOTAL</b>	<b>30832</b>		<b>\$ 1,100,394.08</b>



Position - Unarmed	S/O/Shift	Shift/Day	Hrs./Shift	Days/Week	Hrs./Week	Hrs./Annual	Bill Rate	Annual Cost
MME Security Console	1	3	8	7	168	8736	\$ 32.81	\$ 286,628.16
MME North Gate	1	3	8	7	168	8736	\$ 30.26	\$ 264,351.36
MME South Gate Week	1	2	8	5	80	4160	\$ 30.26	\$ 125,881.60
MME South Gate Weekend	1	3	8	2	48	2496	\$ 30.26	\$ 75,528.96
MME Patrol	1	3	8	7	168	8736	\$ 29.50	\$ 257,712.00
Islais Creek	1	3	8	7	168	8736	\$ 29.50	\$ 257,712.00
1399 Marin	1	3	8	7	168	8736	\$ 29.50	\$ 257,712.00
Potrero Lower Week	1	1	8	5	40	2080	\$ 29.50	\$ 61,360.00
Potrero Lower Weekend	1	3	8	2	48	2496	\$ 29.50	\$ 73,632.00
Potrero Upper Week	1	1	8	5	40	2080	\$ 29.50	\$ 61,360.00
Potrero Upper Weekend	1	1	8	2	16	832	\$ 29.50	\$ 24,544.00
Woods Weekend	1	2	8	5	80	4160	\$ 29.50	\$ 122,720.00
Woods Weekend	1	3	8	2	48	2496	\$ 29.50	\$ 73,632.00
Geneva Back Gate Week	1	1	8	5	40	2080	\$ 29.50	\$ 61,360.00
Geneva Back Gate Weekend	1	3	8	2	48	2496	\$ 29.50	\$ 73,632.00
Green Front Gate Week	1	1	8	5	40	2080	\$ 29.50	\$ 61,360.00
Green Front Gate Weekend	1	3	8	2	48	2496	\$ 29.50	\$ 73,632.00
Green Back Gate Week	1	1	8	5	40	2080	\$ 29.50	\$ 61,360.00
Green Back Gate Weekend	1	3	8	2	48	2496	\$ 29.50	\$ 73,632.00
Kirkland Primary Gate Week	1	2	8	5	80	4160	\$ 29.50	\$ 122,720.00
Kirkland Primary Gate Weekend	1	3	8	2	48	2496	\$ 29.50	\$ 73,632.00
Kirkland Back Gate Week	1	1	8	5	40	2080	\$ 29.50	\$ 61,360.00
Kirkland Back Gate Weekend	1	1	8	2	16	832	\$ 29.50	\$ 24,544.00
Presidio Front Gate Week	1	2	8	5	80	4160	\$ 29.50	\$ 122,720.00
Presidio Front Gate Weekend	1	2	8	2	32	1664	\$ 29.50	\$ 49,088.00
Revenue Tower	1	3	8	7	168	8736	\$ 32.81	\$ 286,628.16
Flynn Week	1	1	8	5	40	2080	\$ 30.26	\$ 62,940.80
Flynn Weekend	1	3	8	2	48	2496	\$ 30.26	\$ 75,528.96

Customer Service	1	1	8.25	5	41.25	2145	\$ 30.26	\$ 64,907.70
Security Operations Center	1	3	8	7	168	8736	\$ 32.81	\$ 286,628.16
Video Surveillance	1	3	8	7	168	8736	\$ 32.81	\$ 286,628.16
Field Supervisor	1	3	8	7	168	8736	\$ 32.81	\$ 286,628.16
Graffiti Patrol	1	1	8	7	56	2912	\$ 32.81	\$ 95,542.72
6th & King	1	3	8	7	168	8736	\$ 30.26	\$ 264,351.36
Badging Clerk	1	1	8	5	40	2080	\$ 32.81	\$ 68,244.80
ADA Observers	1	N/A	N/A	N/A	90	4680	\$ 30.26	\$ 141,616.80
Mobile Patrol	1	1	8	7	0	0	\$ 32.81	\$ -
Subway Patrol Week	1	4	8	7	112	5824	\$ 30.26	\$ 176,234.24
					<b>TOTAL</b>	<b>159497</b>		\$ 4,897,694.10
<b>TOTAL ANNUAL</b>			<b>190,329</b>					<b>\$ 5,998,088.18</b>