

**AMENDED AND RESTATED DEALER AGREEMENT**  
**(Dated As of September 1, 2013,**  
**As Amended and Restated As of April 1, 2018)**

THIS AMENDED AND RESTATED DEALER AGREEMENT (as amended, supplemented, restated or otherwise modified from time to time, this “Agreement”) is entered into as of September 1, 2013, as amended and restated as of April 1, 2018, by and between the San Francisco Municipal Transportation Agency (the “SFMTA”), an agency of the City and County of San Francisco (the “City”) and Morgan Stanley & Co. LLC (“Morgan Stanley” or the “Dealer”).

**RECITALS**

The SFMTA proposes to issue on a revolving basis its Commercial Paper Notes, Series A-1 (Tax-Exempt) (the “Series A-1 Notes”) and its Commercial Paper Notes, Series A-2 (Taxable) (the “Series A-2 Notes” and, together with the Tax-Exempt Notes, the “Notes”) in the aggregate principal amount not to exceed \$100,000,000. The Notes are issued pursuant to Resolution No. 13-071, adopted by the Board of Directors of the SFMTA on June 4, 2013 (the “Note Resolution”), Sections 8A.100, 8A.101 and 8A.102 of the Charter of the City, and Ordinance No. 57-12 adopted by the Board of Supervisors of the City (the “Board”) on April 17, 2012 and signed by Mayor Edwin M. Lee on April 19, 2012, and codified as Chapter 43, Article XIII, Sections 43.13.1 through 43.13.8 of the San Francisco Administrative Code (the “Act”).

The Notes will be issued in accordance with the Amended and Restated Issuing and Paying Agent Agreement, dated as of September 1, 2013, as amended and restated as of April 1, 2018 (as amended, supplemented, restated or otherwise modified from time to time, the “Issuing and Paying Agent Agreement”), between the SFMTA and U.S. Bank National Association, as Issuing and Paying Agent (the “Issuing and Paying Agent”).

All Notes are special limited obligations of the SFMTA payable when due from drawings on an irrevocable letter of credit (as amended, supplemented, restated or otherwise modified from time to time, the “Letter of Credit”) issued by Sumitomo Mitsui Banking Corporation, acting through its New York Branch (the “Bank”), pursuant to the terms of the Letter of Credit and Reimbursement Agreement dated as of April 1, 2018 (as amended, supplemented, restated or otherwise modified from time to time, the “Reimbursement Agreement”), between SFMTA and the Bank, proceeds of the sale of Notes, and Available Transportation System Revenues (as defined herein). The Dealer has agreed to act as a Dealer for the Notes and to perform the duties imposed upon the Dealer by this Agreement. The Dealer has agreed to act as a Dealer for the Notes and to perform the duties imposed upon the Dealer by this Agreement.

**AGREEMENTS**

NOW, THEREFORE, for and in consideration of the covenants herein made, and subject to the conditions herein set forth, the parties hereto agree as follows:

**Section 1. Definitions.** Unless the context clearly indicates a contrary meaning, each capitalized term used and not defined in this Agreement shall have the meaning given to that term in the Issuing and Paying Agent Agreement.

**Section 2. Appointment of Dealer; Acceptance; Allocations; Evaluations.**

(a) Subject to the terms and conditions set forth in this Agreement, the SFMTA hereby appoints Morgan Stanley as a Dealer for the Notes, and Morgan Stanley hereby accepts such appointment and accepts and agrees to perform the duties and obligations imposed upon it as a Dealer under this Agreement, subject to the terms, conditions and limitations set forth in this Agreement.

(b) The Dealer shall act as a non-exclusive Dealer with respect to the Notes and shall be responsible to solicit and arrange sales of the Notes allocated to it, including, without limitation, the initial placement of such Notes and subsequent sales, establishing the rates and maturities of such Notes from time to time. Each dealer acknowledges that the SFMTA may enter into agreements with other dealers in connection with the offering and sale of the Notes. The SFMTA reserves the right to allocate and reallocate Notes among the Dealer and the other dealers with respect to the Notes at any time in its sole discretion for any reason.

(c) The Dealer acknowledges that the SFMTA intends to conduct a regular evaluation of the Dealer. Such evaluation will consider, among other things, an analysis of interest rates on the Notes allocated hereunder and managed by the Dealer in comparison to the interest rates provided by other dealers.

(d) The Dealer acknowledges that the SFMTA has delivered to it executed copies of the Note Resolution, the Issuing and Paying Agent Agreement, the Letter of Credit, the Reimbursement Agreement and a Certificate of Designated Representatives in accordance with Section 6 hereof.

(e) The Dealer hereby agrees that it will comply with all statutes and regulations applicable to it, including without limitation, all applicable securities laws and requirements of the Securities Exchange Commission, the Municipal Securities Rulemaking Board or any regulatory body having jurisdiction over the Dealer, non-compliance with which would adversely affect the Notes or the SFMTA's Note program.

**Section 3. Sale and Purchase of Notes.**

(a) The Dealer acknowledges that the terms and conditions of the Notes are set forth in the Issuing and Paying Agent Agreement and that in particular, the Notes of each Series (i) shall be issued in denominations of \$100,000 and in integral multiples of \$1,000 in excess thereof, (ii) shall bear interest payable at maturity at an annual rate (calculated on the basis of the actual number of days elapsed and a year consisting of 365 or 366 days, as applicable), not to exceed the Maximum Interest Rate of 12% per annum, (iii) shall mature on a Business Day not more than 270 days after their respective dates, but in no event later than the Business Day immediately preceding the Scheduled Termination Date (as defined in the Reimbursement Agreement) (*provided, however*, that, subject to the terms of Section 6.07 of the Reimbursement Agreement, the Dealer shall not market any Note or Notes with a maturity shorter than three (3) days from the date of issuance without the Bank's prior written consent), and (iv) shall be sold at a price equal to 100% of the principal amount thereof.

(b) The Dealer shall use its best efforts, consistent with commercial practice, to solicit and arrange sales of the Notes at such rates and maturities as may prevail from time to time in the market in accordance with Section 4 below up to the Maximum Interest Rate, provided such rates shall not exceed the Maximum Interest Rate. The Dealer agrees to notify SFMTA if for any reason it believes that it will not be able to sell the Notes on the date such Notes are to be issued. The Dealer and the SFMTA agree that any Notes that the Dealer may purchase or for which the Dealer may arrange the sale will be purchased or sold on the terms and conditions and in the manner provided in the Issuing and Paying Agent Agreement and this Agreement. Anything herein to the contrary notwithstanding, to the extent of any conflict between the provisions hereof and the Issuing and Paying Agent Agreement, the provisions of the Issuing and Paying Agent Agreement shall be controlling.

**Section 4. Transactions in Notes.** All transactions in Notes between the Dealer and the SFMTA shall be in accordance with the Note Resolution, the Act, the Issuing and Paying Agent Agreement, this Agreement, the Letter of Credit, the Reimbursement Agreement and with the customs and practices in the commercial paper market regarding settlement and delivery formally adopted in writing from time to time by the New York Clearinghouse, to the extent not inconsistent with the Issuing and Paying Agent Agreement. As early as possible, but not later than 9:30 a.m. (New York City time) on the date on which any Notes are to be issued, the Dealer shall notify the SFMTA of the proposed final maturities, prices and interest rates (which interest rates shall not exceed the Maximum Interest Rate) at which the Dealer will purchase the Notes, and provide the SFMTA with any other information as required for delivery of such Notes. The Dealer shall not be obligated to purchase any Notes unless and until agreement, as described in the following sentence, has been reached in each case on the proposed final maturities, prices and interest rates. Not later than 11:00 a.m. (New York City time) on the date of issuance of the Notes, the SFMTA may approve or disapprove of such final maturities, prices and interest rates (provided that if the SFMTA does not provide notice to the Dealer of disapproval then the SFMTA shall be deemed to have approved such terms) and the Dealer shall either (a) confirm each transaction made with or arranged by it or (b) notify the SFMTA and the Issuing and Paying Agent of the difference, if any, between the amount of maturing Notes and the amount of Notes which the Dealer has arranged to sell or has agreed to purchase. If the SFMTA elects to issue and receive electronic communications relating to the Notes via the System, as defined in the Issuing and Paying Agent Agreement, such confirmation or notification may be given via the System. At the election of the SFMTA, or if at any time the System is inoperable, such confirmation or notification shall be given by telephone (or by other telecommunication or electronic medium acceptable to the SFMTA) and confirmed in writing to the SFMTA and the Issuing and Paying Agent.

**Section 5. Payment for Notes.** The Dealer shall cause funds from settlement of the purchase or sale by the Dealer of Notes to be transferred to the Issuing and Paying Agent by 2:30 p.m. (New York City time) on the Business Day such Notes are issued. All Notes will be sold at a price of not less than 100% of the principal amount thereof, and will be executed in the manner provided for in the Issuing and Paying Agent Agreement.

**Section 6. Designated Representative.** Note transactions with the SFMTA pursuant to Section 4 hereof shall be with the Director of Transportation or the Chief Financial Officer of the SFMTA or such other person as may be designated to act on behalf of the SFMTA in a certificate signed by the Director of Transportation of the SFMTA. The SFMTA will deliver to the

Dealer a Certificate of Authorized Agency Representatives in the form appended to the Issuing and Paying Agent Agreement as Exhibit C. The SFMTA agrees to provide the Dealer with a revised Certificate of Authorized Agency Representatives in substantially said form when and as required by changes in the Authorized Agency Representatives. The Dealer may rely upon such Certificate of Authorized Agency Representatives unless and until otherwise notified in writing by the Director of Transportation of the SFMTA.

**Section 7. Certain Representations of the SFMTA.** The SFMTA represents to the Dealer as follows:

(a) As of the date of each issuance of Notes: (i) the SFMTA has full power and authority to issue the Notes, to enter into, perform and observe the covenants and agreements on its part contained in this Agreement, the Issuing and Paying Agent Agreement and the Letter of Credit (collectively, the “Documents”); (ii) such Documents have been duly authorized, executed and delivered by the SFMTA; and such Documents constitute legally valid and binding obligations of the SFMTA, in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and subject, as to enforceability, to the general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies agreement public entities in the State of California.

(b) As of the date of each issuance of Notes, the Note Resolution is in full force and effect and has not been repealed, modified or amended since its adoption.

(c) As of the date of each issuance of Notes, the Act is in full force and effect and has not been repealed, modified or amended since its adoption.

(d) As of the date of each issuance of Notes, such Notes have been duly authorized and executed by the SFMTA, and when authenticated and delivered by the Issuing and Paying Agent, will be in conformity with, and entitled to the benefits of the Note Resolution and the Issuing and Paying Agent Agreement.

(e) The Offering Memorandum related to the Notes, as supplemented or amended (the “Offering Memorandum”) will not as of its date, and as of the date of issuance of one or more Notes pursuant to an Issuance Request, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided that the SFMTA makes no representation with respect to information therein regarding the Bank, the Letter of Credit, the Dealer or any other dealers, the Issuing and Paying Agent and DTC and its book-entry only system.)

**Section 8. Offering Memorandum and Disclosure.**

(a) The SFMTA shall prepare or cause to be prepared the Offering Memorandum with respect to the Notes.

(b) The SFMTA shall make available to the Dealer [**Confirm**], by posting on its website, the following:

(i) copies of any notices filed by the SFMTA in accordance with Rule 15c2-12(b)(5)(i)(C) promulgated under the Securities Exchange Act of 1934 with respect to any outstanding revenue bonds, notes or other obligations for borrowed money of the SFMTA (the “SFMTA Bonds”) promptly following the filing thereof;

(ii) copies of annual reports filed by the SFMTA in accordance with Rule 15c2-12(b)(5)(i)(A) with respect to SFMTA Bonds promptly following the filing thereof;

(iii) copies of the official statements or other disclosure documents with respect to SFMTA Bonds promptly following the issuance thereof;

(iv) prompt notice and a copy of any amendment to the Issuing and Paying Agent Agreement, or of the substitution, termination or extension of the Letter of Credit;

(v) prompt notice of the occurrence and continuance of an event of default under the Issuing and Paying Agent Agreement or the Reimbursement Agreement and the issuance by the Bank of a No Issuance or a Final Delivery Notice;

(vi) prompt notice of the suspension, reduction or withdrawal of the rating on any SFMTA Bonds or the public announcement of the possibility thereof by the Rating Agencies then rating the SFMTA Bonds; and

(vii) prompt notice of the receipt by the SFMTA of notification from Bond Counsel that the SFMTA may not continue to rely on their opinion regarding the validity or tax-exempt status of the Notes.

(c) The SFMTA will furnish the Dealer such documents and information concerning the business, operations and financial condition of the SFMTA, as the Dealer may from time to time reasonably request.

(d) The Dealer shall provide a copy of the Offering Memorandum, as supplemented, amended and updated from time to time, to each person to whom it sells Notes prior to or with the delivery of any payment confirmation. The Dealer shall not provide prospective or actual purchasers of the Notes with any written offering materials, disclosure documents or other documents or information in connection with the solicitation of purchases and sales of the Notes other than the Offering Memorandum and any supplements, amendments or updates thereto and the Issuing and Paying Agent Agreement and the Letter of Credit, as the same may be amended, supplemented or replaced from time to time.

(e) The SFMTA authorizes the use and distribution of copies of the Offering Memorandum by the Dealer in connection with the sale of the Notes.

**Section 9. Compensation to Dealer.** For the services to be performed by the Dealer under this Agreement, the SFMTA agrees to pay the Dealer a fee equal to four and one-half (4.5) basis points (0.045%) of the average outstanding principal amount of the Notes managed by the Dealer, payable in arrears on the first Business Day of each February, May, August and November.

**Section 10. Termination.** This Agreement may be terminated by the SFMTA at any time with respect to the Dealer and by the Dealer upon not less than 90 days' prior written notice to the SFMTA and the Bank, provided that the Dealer may terminate with 60 days' prior written notice to the SFMTA and the Bank if other dealers reasonably acceptable to the SFMTA are in place with respect to the Notes.

**Section 11. Counterparts.** This Agreement may be executed in several counterparts, each of which shall be regarded as an original but all of which shall constitute one and the same document. This Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a PDF copy attached, and any printed or copied version of any signature page so delivered shall have the same force and effect as an originally signed version of such signature page.

**Section 12. Governing Law; 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.

**Section 13. Notices.** Except as otherwise specifically provided herein, all notices required or provided for under this Agreement shall be in writing and shall be delivered by hand, first class mail (postage prepaid) or overnight express delivery, and shall be effective when received at the following addresses or at such other address as a party may designate in a notice delivered to the other part hereto in accordance herewith:

If to the SFMTA:

San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 7th Floor  
San Francisco, California 94103  
Attention: Chief Financial Officer  
Telephone: (415) 701-4617  
Facsimile: (415) 701-4725

With copies to:

City and County of San Francisco  
Office of Public Finance  
City Hall, Room 336  
San Francisco, California 94102  
Facsimile: (415) 554-4864  
Attention: Nadia Sesay Director of Public Finance

City and County of San Francisco  
Office of the Controller  
City Hall, Room 316  
San Francisco, California 94102  
Facsimile: (415) 554-7466  
Attention: Benjamin Rosenfield Controller

If to Dealer: Morgan Stanley & Co. LLP  
555 California Street, Suite 2200  
Attention: Adam Aranda  
Telephone: (415) 576-2087  
Facsimile: (415) 591-4524

If to the Issuing and Paying Agent: US Bank Corporate Trust Services  
100 Wall Street 16th Floor  
New York, NY 10005  
Attention: Corporate Trust Services  
Telephone: (212)951-8512  
Facsimile: (212)361-6153

**Section 14. Assignment.** This Agreement shall not be assignable by any party hereto without the prior written consent of the other parties. This Agreement shall inure to the benefit of and shall be binding upon the SFMTA and the Dealer and their respective successor and assigns. This Agreement shall not be deemed to give any legal or equitable right, remedy or claim to any other person or entity other than the parties hereto.

**Section 15. Headings.** The section headings hereof have been inserted for convenience of reference only, shall not be part of this Agreement, and shall not be used to construe, define, limit or interpret the meaning of any provision hereof.

**Section 16. Severability.** If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable for any reason, such determination shall not affect the validity or enforceability of the remaining provisions hereof.

**Section 17. Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the matters covered hereby, and supersedes all prior agreements and understandings between the parties. This Agreement shall only be amended, supplemented or modified in a writing signed by all of the parties hereto.

**Section 18. No Personal Liability.** The SFMTA, the City and their respective supervisors, members, officers, employees, representatives, agents and attorneys shall not be held personally liable for the execution or performance of this Agreement, or any breach or default of the provisions hereof.

**Section 19. City Requirements.** The Dealer hereby agrees to the City's requirements, as provided in Exhibit A attached hereto and incorporated hereby by this reference.

**Section 20. Term.** The initial term of this Agreement shall be from the date first written above through February \_\_, 2023. The initial term of this Agreement may be extended by written instrument signed by the parties hereto, provided that such extension is authorized by resolutions of SFMTA and the City relating to the Commercial Paper Notes. SFMTA shall use its best efforts to notify the Dealer of its intent to terminate or extend this Agreement at least sixty (60) days prior to such termination or extension.

**Section 21. No Advisory or Fiduciary Role.** The SFMTA acknowledges and agrees that: (i) this Agreement and the transactions contemplated by this Agreement are arm's length, commercial transactions between the SFMTA and the Dealer in which the Dealer is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the SFMTA; (ii) Dealer has not assumed any advisory or fiduciary responsibility to the SFMTA with respect to this Agreement or the transactions contemplated hereby and the discussions, undertakings and procedures to the transactions contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether Dealer has provided other services or is currently providing other services to the SFMTA on other matters); (iii) the only obligations Dealer has to the SFMTA with respect to this Agreement and the transactions contemplated hereby expressly are set forth in this Dealer Agreement; and (iv) the SFMTA has consulted its own legal, accounting, tax, financial and other advisors, as applicable to the extent it has deemed appropriate.

[Signature Page Follows]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

SAN FRANCISCO MUNICIPAL  
TRANSPORTATION AGENCY

By: \_\_\_\_\_  
Edward D. Reiskin  
Director of Transportation

Approved as to Form:

DENNIS J. HERRERA  
City Attorney of the City and County of  
San Francisco

By: \_\_\_\_\_  
Deputy City Attorney

MORGAN STANLEY & CO. LLC

By: \_\_\_\_\_  
Authorized Representative

## EXHIBIT A

### City Requirements

For purposes of this Exhibit A the term Dealer shall mean Morgan Stanley & Co. LLC.

(a) *Tropical Hardwood and Virgin Redwood Ban.* The City urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

(b) *Nondiscrimination: Penalties.*

(i) *Dealer Shall Not Discriminate.* In the performance of this Agreement, the Dealer agrees not to discriminate against any employee, City and County employee working with the Dealer or subcontractor, applicant for employment with the Dealer 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, or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(ii) *Subcontracts.* The Dealer shall incorporate by reference in all subcontracts made in fulfillment of its obligations hereunder the provisions of Sections 12B.2(a), 12B.2(c)-(k) and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. The Dealer's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(iii) *Non-Discrimination in Benefits.* The Dealer 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 Section 12B.2(b) of the San Francisco Administrative Code.

(iv) *HRC Form.* The Dealer shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

(v) *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. The Dealer shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the San Francisco Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Dealer understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Dealer and/or deducted from any payments due the Dealer; *provided, however*, that such damages shall not be set off against the payment of rental or other contract related to Commercial Paper Notes or other debt obligations of the City.

(c) *Limitations on Contributions.* Through execution of this Agreement, the Dealer 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, including the SFMTA, for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (A) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (B) a candidate for the office held by such individual, or (C) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Dealer acknowledges that the foregoing restriction applies only if the contract or 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. The Dealer further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Dealer's board of directors; the Dealer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Dealer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Dealer. Additionally, the Dealer acknowledges that the Dealer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126 of the City's Campaign and Governmental Conduct Code.

(d) *MacBride Principles - Northern Ireland.* Pursuant to San Francisco Administrative Code Section 12F.5, the City 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 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 the Dealer acknowledges and agrees that he or she has read and understood this section.

(e) *Conflict of Interest.* Through its execution of this Agreement, the Dealer hereby 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.

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

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

(ii) Failure to comply with any requirement contained in the immediately preceding paragraph shall constitute a material breach by the Dealer of the terms of this Agreement. If, within thirty days after the Dealer receives written notice of such a breach, the Dealer fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, the Dealer fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

(iii) Any subcontract entered into by the Dealer shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this Section.

(iv) Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.

(g) *Local Business Enterprise Utilization; Liquidated Damages.*

(i) *The LBE Ordinance.* The Dealer shall comply with all the requirements of the Disadvantaged Business Enterprise 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 the Dealer's obligations or liabilities, or materially diminish the Dealer'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. The Dealer's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of the Dealer'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, the Dealer shall comply fully with all other

applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

(ii) *Compliance and Enforcement.* If the Dealer 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, the Dealer shall be liable for liquidated damages in an amount equal to the Dealer's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against the Dealer authorized in the LBE Ordinance, including declaring the Dealer to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Dealer's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to the San Francisco Administrative Code Section 14B.17.

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

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

(h) *Drug-Free Workplace Policy.* The Dealer 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 SFMTA or City premises. The Dealer agrees that any violation of this prohibition by the Dealer, its employees, agents or assigns will be deemed a material breach of this Agreement.

(i) *Compliance with Americans with Disabilities Act.* The Dealer 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. The Dealer 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. The Dealer 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 the Dealer, its employees, agents or assigns will constitute a material breach of this Agreement.

(j) *Sunshine Ordinance.* In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between the SFMTA or the City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision

requires the disclosure of a private person 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.

(k) *Requiring Minimum Compensation for Covered Employees.*

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

(ii) The MCO requires the Dealer to pay the Dealer'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 the Dealer is obligated to keep informed of the then-current requirements. Any subcontract entered into by the Dealer 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 the Dealer'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 the Dealer.

(iii) The Dealer 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.

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

(v) The City is authorized to inspect the Dealer's job sites and conduct interviews with employees and conduct audits of the Dealer.

(vi) The Dealer'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 Dealer fails to comply with these requirements. The Dealer 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 the Dealer's noncompliance.

The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(vii) The Dealer 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, the Dealer fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, the Dealer 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.

(viii) The Dealer 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.

(ix) The City may conduct random audits of the Dealer. Random audits shall be (A) noticed in advance in writing; (B) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (C) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (D) limited to one audit of the Dealer every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

(l) *Requiring Health Benefits for Covered Employees.* Unless exempt, the Dealer agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (“HCAO”), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at <http://www.sfgov.org/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

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

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

(iii) The Dealer’s failure to comply with the HCAO shall constitute a material breach of this Agreement. The City shall notify the Dealer 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, the Dealer fails to cure such breach or, if such breach cannot

reasonably be cured within such period of 30 days, the Dealer 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 Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

(iv) Any subcontract entered into by the Dealer 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. The Dealer 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. The Dealer 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 the Dealer based on the subcontractor's failure to comply, provided that City has first provided the Dealer with notice and an opportunity to obtain a cure of the violation.

(v) The Dealer shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to the Dealer'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.

(vi) The Dealer 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.

(vii) The Dealer 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.

(viii) The Dealer shall keep itself informed of the current requirements of the HCAO.

(ix) The Dealer 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.

(x) The Dealer 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.

(xi) The Dealer shall allow City to inspect the Dealer's job sites and have access to the Dealer's employees in order to monitor and determine compliance with HCAO.



(xii) The City may conduct random audits of the Dealer to ascertain its compliance with HCAO. The Dealer agrees to cooperate with City when it conducts such audits.

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

(m) *Prohibition on Political Activity with City Funds.* In accordance with San Francisco Administrative Code Chapter 12.G, the Dealer 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. The Dealer 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 the Dealer 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 the Dealer from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider the Dealer's use of profit as a violation of this section.

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

The Dealer shall remove all graffiti from any real property owned or leased by such Dealer in the City and County of San Francisco within forty eight (48) hours of the earlier of such Dealer's (i) discovery or notification of the graffiti or (ii) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require any Dealer to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (A) 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 (B) 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. Section 101 et seq.).

Any failure of the Dealer to comply with this Section of this Agreement shall constitute a material breach of this Agreement.

(o) *Food Service Waste Reduction Requirements.* The Dealer 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, the Dealer agrees that if it breaches this provision, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, the Dealer 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 the 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 the City because of such Dealer's failure to comply with this provision.

(p) *Preservative-treated Wood Containing Arsenic.* The Dealer 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. The Dealer 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 the Dealer 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.

(q) *Nondisclosure of Private Information.* The Dealer agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "*Nondisclosure of Private information Ordinance*"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, the Dealer agrees to all of the following:

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

(1) the disclosure is authorized by this Agreement;

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

(3) the disclosure is required by law or judicial order.

(ii) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(iii) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(iv) Any failure of the Dealer to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar the Dealer, or bring a false claim action against the Dealer.

(r) *Proprietary or Confidential Information of City.* The Dealer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the City and its obligations, (g) with the consent of the City or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Dealer on a nonconfidential basis from a source other than the City. For the purposes of this Section, "Information" means all information received from the City relating to the City or its business, other than any such information that is available to the Dealer on a nonconfidential basis prior to disclosure by the City; *provided* that, in the case of information received from the City after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have

complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(s) *Submitting False Claims; Monetary Penalties.* Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (i) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (ii) 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; (iii) conspires to defraud the City by getting a false claim allowed or paid by the City; (iv) 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 (v) 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.

(s) *Subcontracting.* Except as otherwise provided in this Agreement, the Dealer 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.

(t) *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.

(u) *City a Third Party Beneficiary.* The City is hereby designated as a third party beneficiary for the purpose of enforcing all of the obligations of the Dealer contained in this Exhibit A to this Agreement.