

File No. 200310

Petitions and Communications received from March 9, 2020, through March 16, 2020, for reference by the President to Committee considering related matters, or to be ordered filed by the Clerk on March 24, 2020.

Personal information that is provided in communications to the Board of Supervisors is subject to disclosure under the California Public Records Act and the San Francisco Sunshine Ordinance. Personal information will not be redacted.

From the Office of the Mayor, pursuant to Charter, Section 3.100(18), making the following reappointment to the Health Commission: Copy: Each Supervisor. (1)

Cecilia Chung - term ending January 15, 2024

From the Office of the Mayor, submitting supplements to the Mayoral Proclamation Declaring the Existence of a Local Emergency, dated February 25, 2020. Copy: Each Supervisor. (2)

From the Office of the Mayor, pursuant to the Mayor's Third Supplement to the Mayoral Proclamation Declaring the Existence of a Local Emergency, dated February 25, 2020, authorizing the Port Commission to hold an emergency meeting on Thursday, March 19, 2020 at 10:00 a.m. Copy: Each Supervisor. (3)

From Nancy Wuerfel, regarding proposed legislation on Public Works Core Functions and Internal Administrative Policies. File No. 200134. Copy: Each Supervisor. (4)

From the Health Officer of the Department of Public Health, issuing a Declaration of Local Emergency and Health Orders regarding the COVID-19 virus. Copy: Each Supervisor. (5).

From Valerie Lofrano, F. Lofrant & Son, Inc, regarding proposed tree planting at 3355 17th Street. Copy: Each Supervisor. (6)

From the Department of Human Resources, pursuant to Ordinance No. 188-19, submitting the 2020 Annual Workforce Report. Copy: Each Supervisor. (7)

From Thomas Busse, regarding a ballooning contract with a third-party "scheduling coordination" service contract at the Public Utilities Commission. File No. 200111. Copy: Each Supervisor. (8)

From the San Francisco African American Chamber of Commerce, regarding the San Francisco Chamber of Commerce Business Community's call for Coronavirus Economic Recovery Package. Copy: Each Supervisor. (9)

From Anonymous, regarding remote participation to all government meetings. Copy: Each Supervisor. (10)

From the Office of the Controller, Budget and Analysis Division, pursuant to Ordinance No. 294-19, submitting City Departments' proposed budgets. Copy: Each Supervisor. (11)

From the Youth Commission, submitting their Mid-Annual Budget Priorities for Fiscal Years 2020-2021 and 2021-2022. Copy: Each Supervisor. (12)

From the California Regional Water Quality Control Board, regarding a notice of opportunity to comment - Petaluma River Bacteria TMDL. Copy: Each Supervisor. (13)

From Causa Justa: Just Cause, regarding eviction moratorium in San Francisco during the COVID-19 outbreak. Copy: Each Supervisor. (14)

From concerned citizens, regarding the proposed Resolution to grant pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy. File No. 200247. Copy: Each Supervisor. (15)

From Verizon Wireless, submitting notice according to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California for two projects. 2 letters. Copy: Each Supervisor. (16)

From Sue Vaughan, regarding Lyft bicycle station on 23rd Avenue at Clement Street. Copy: Each Supervisor. (17)

From the San Francisco Chamber of Commerce, Planning Code - Conditional Use Review and Approval Process - Priority Processing and Reduced Application Fee for Certain Uses of Commercial Space. File No. 200214. Copy: Each Supervisor. (18)

From Eihway Su, regarding supportive housing for those who are economically disadvantaged. Copy: Each Supervisor. (19)

From Robin Krop, regarding transverse seating on the new MTA light rail vehicles. Copy: Each Supervisor. (20)

From concerned citizens, regarding the COVID-19. 5 letters. Copy: Each Supervisor. (21)

From: [Mchugh, Eileen \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#); [BOS-Administrative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Young, Victor \(BOS\)](#); [Karunaratne, Kanishka \(MYR\)](#); [Peacock, Rebecca \(MYR\)](#); [PEARSON, ANNE \(CAT\)](#)
Subject: TIME SENSITIVE: Mayoral Reappointment - Health Commission
Date: Friday, March 13, 2020 7:28:00 PM
Attachments: [Clerk's Memo 3.13.20.pdf](#)
[Mayoral Reappointment - Cecilia Chung.pdf](#)

Hello,

The Office of the Mayor submitted the attached complete reappointment package pursuant to Charter, Section 3.100(18). Please see the memo from the Clerk of the Board for further instructions and information.

Thank you,

Eileen McHugh
Executive Assistant
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102-4689
Phone: (415) 554-7703 | Fax: (415) 554-5163
eileen.e.mchugh@sfgov.org | www.sfbos.org

BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

Date: March 13, 2020
To: Members, Board of Supervisors
From: *Ace* Angela Calvillo, Clerk of the Board
Subject: Mayoral Reappointment

On March 13, 2020, the Mayor submitted the following reappointment package pursuant to Charter, Section 3.100(18). Appointments in this category are effective immediately unless rejected by a two-thirds vote of the Board of Supervisors.

Cecilia Chung - Health Commission - term ending January 15, 2024

Pursuant to Board Rule 2.18.3, a Supervisor may request a hearing on a Mayoral appointment by notifying the Clerk in writing.

Upon receipt of such notice, the Clerk shall refer the appointment to the Rules Committee so that the Board may consider the appointment and act within 30 days of the appointment as provided in Charter, Section 3.100(18).

If you would like to hold a hearing on this reappointment, please notify me in writing by **12:00 p.m. on Wednesday, March 18, 2020.**

c: Hillary Ronen - Rules Committee Chair
Alisa Somera - Legislative Deputy
Victor Young - Rules Clerk
Anne Pearson - Deputy City Attorney
Kanishka Cheng - Mayor's Director of Commission Affairs

OFFICE OF THE MAYOR
SAN FRANCISCO



LONDON N. BREED
MAYOR

Notice of Reappointment

March 13, 2020

San Francisco Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2020 MAR 13 PM 4:19
BY VJ

Honorable Board of Supervisors:

Pursuant to Charter Section 3.100(18), of the City and County of San Francisco, I make the following reappointment:

Cecilia Chung to the Health Commission for a four year term ending January 15, 2024.

I am confident that Ms. Chung will continue to serve our community well. Attached are her qualifications to serve, which demonstrate how her appointment represents the communities of interest, neighborhoods and diverse populations of the City and County of San Francisco.

Should you have any question about this appointment, please contact my Director of Commission Affairs, Kanishka Cheng, at 415.554.6696

Sincerely,

A handwritten signature in blue ink that reads "London Breed".

London N. Breed
Mayor, City and County of San Francisco

From: [Mchugh, Eileen \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#); [BOS-Administrative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [PEARSON, ANNE \(CAT\)](#); [Kittler, Sophia \(MYR\)](#)
Subject: Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency
Date: Wednesday, March 11, 2020 3:24:00 PM
Attachments: [Declaration of Emergency Supplement 3.11.20.pdf](#)

Hello,

The Office of the Mayor submitted the attached Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency, dated March 11, 2020.

Thank you,

Eileen McHugh
Executive Assistant
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102-4689
Phone: (415) 554-7703 | Fax: (415) 554-5163
eileen.e.mchugh@sfgov.org | www.sfbos.org



LONDON N. BREED
MAYOR
BOARD OF SUPERVISORS
SAN FRANCISCO

2020 MAR 11 PM 1:53

BY AK

**SUPPLEMENT TO MAYORAL PROCLAMATION DECLARING THE
EXISTENCE OF A LOCAL EMERGENCY DATED FEBRUARY 25, 2020**

WHEREAS, California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14) and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property or welfare of the City and County or its citizens; and

WHEREAS, On February 25, 2020, the Mayor issued a Proclamation (the "Proclamation") declaring a local emergency to exist in connection with the imminent spread within the City of a novel (new) coronavirus ("COVID-19"); and

WHEREAS, On March 3, 2020, the Board of Supervisors concurred in the Proclamation and in the actions taken by the Mayor to meet the emergency; and

WHEREAS, On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist within the State due to the threat posed by COVID-19; and

WHEREAS, On March 6, 2020, the Local Health Officer declared a local health emergency under Section 101080 of the California Health and Safety Code, and the Board of Supervisor concurred in that declaration on March 10, 2020; and

WHEREAS, On March 6, 2020, the City issued public health guidance to encourage social distancing to disrupt the spread of COVID-19 and protect community health; and

WHEREAS, On March 7, 2020, the Local Health Officer ordered certain City facilities not to hold non-essential group events of more than 50 people for the two weeks from the date of the order and prohibited visitors from Laguna Honda Hospital; and

WHEREAS, On March 7, 2020, the Department of Human Resources issued guidance to minimize COVID-19 exposure risk for City employees who provide essential services to the local community, in particular during the current local emergency; and

WHEREAS, On March 11, 2020, the Public Health Officer issued an order prohibiting most public gatherings of 1,000 people or more for a period of two weeks; and



WHEREAS, There are currently 14 confirmed cases of COVID-19 within the City, more than 168 confirmed cases in California, and four COVID-19-related deaths in California; and

WHEREAS, Containing the spread of COVID-19 may require City non-profit service providers to close or may otherwise impact their ability to continue to provide services, and it is necessary that the City ensure the continuing financial stability of these providers so they are able to provide vital services to the City and the public in the future; and

WHEREAS, Disruptions caused by COVID-19 may impact the ability of City boards and commissions to meet, and members of such bodies who are particularly at risk of serious illness if they contract COVID-19 may be unable to attend meetings in person, and

WHEREAS, It is in the public interest to support City employees through this public health emergency by ensuring they have sufficient paid time off balances to remain out of the workplace if they or their family members are sick, quarantined, or otherwise impacted by the COVID-19 virus or actions taken in response to public health guidance or orders related to COVID-19, so they can return to work as soon as possible and function at full capacity in the service of the City and its residents, and

WHEREAS, The COVID-19 outbreak has already caused a significant negative impact on businesses in the City: conferences have been cancelled, hotel vacancy is unusually high, many of the City's largest employers have requested their employees work from home, all of which reduce economic activity in the City; the San Francisco Chamber of Commerce reports estimates of a 50%-70% reduction in gross receipts from some small businesses in the first weeks of the COVID-19 outbreak; given the economic burden on businesses in the City resulting from COVID-19, it is in the public interest to provide relief to businesses by delaying payment of City license fees and certain taxes; and

WHEREAS, The Mayor does hereby proclaim that the conditions of extreme peril exist and continue to warrant and necessitate the existence of a local emergency,



NOW, THEREFORE,

I, London N. Breed, Mayor of the City and County of San Francisco, proclaim that there continues to exist an emergency within the City and County threatening the lives, property or welfare of the City and County and its citizens;

In addition to the measures outlined in the Proclamation, it is further ordered that:

- (1) The Controller shall develop and issue a policy to allow the City to continue to provide funding under existing agreements to non-profit organizations that are unable to provide services for the City due to disruptions related to COVID-19 during the local emergency; the Controller shall determine the conditions that such funding will be available under written guidelines made available to the public; provisions of service agreements and of local law are suspended to the extent they would impede such continued payments authorized under the policy promulgated by the Controller; and
- (2) Deadlines set by local law requiring City policy bodies, including the Board of Supervisors and City boards and commissions, to take action within a certain time period are suspended during the emergency and for 14 days following the termination of the local emergency, if such policy bodies are unable to meet and comply with such deadlines due to the emergency; and
- (3) Sections 2.104 and 4.104 of the Charter requiring members of City policy bodies to attend meetings in person are suspended during the emergency; and
- (4) Sections A8.364, A8.440, and A8.441 of the Charter, Sections 16.9-29A and 16.9-29B of the Administrative Code, and Civil Service Commission Rules 120, 220, 320, and 420 regarding the accrual and use of sick leave with pay and vacation are waived to the extent determined to be necessary by the Department of Human Resources to implement a program allowing the City to advance sick leave with pay and vacation to employees if they are (a) members of vulnerable populations as defined in the March 6, 2020, public health guidance; (b) in self-isolation or quarantine on the advice of a medical provider or public official; (c) suffering from an acute respiratory illness or flu-like symptoms; (d) needed to provide care for a qualifying family member described by (a)-(c); or (e) otherwise directly impacted by the COVID-19 virus or actions taken in response to public health guidance or orders related to COVID-19, as determined by the Human Resources Director. The Department of Human Resources may issue guidance and implement this program; and



(5) The due date for license fees otherwise due on March 31, 2020, under Section 76.1 of Article 2 of the Business and Tax Regulations Code, is extended to June 30, 2020, and the deadline for the Tax Collector to issue notice of such due date is extended from February 28, 2020, to May 31, 2020; and

(6) The quarterly estimated tax payments and filings of Gross Receipts Taxes, Payroll Expense Taxes, Early Care and Education Commercial Rents Taxes, and Homelessness Gross Receipts Taxes that would otherwise be due on April 30, 2020, under Section 6.9-3(a)(3) of Article 6 of the Business and Tax Regulations Code, are waived for taxpayers or combined groups that had combined San Francisco gross receipts in calendar year 2019 of \$10,000,000 or less. These quarterly estimated tax liabilities must instead be paid along with that taxpayer or combined group's annual tax payments for tax year 2020, which will generally be due by March 1, 2021; and

(7) All City departments shall comply with orders issued by the City Administrator regarding the purchase of commodities and services required to address the emergency.

DATED: March 11, 2020

A handwritten signature in blue ink, reading "London N. Breed".

London N. Breed
Mayor of San Francisco

From: [Mchugh, Eileen \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#); [BOS-Administrative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Ng, Wilson \(BOS\)](#)
Subject: Second Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency
Date: Friday, March 13, 2020 5:12:37 PM
Attachments: [Second Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency.pdf](#)

Hello,

The Office of the Mayor submitted the attached Second Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency, dated March 13, 2020.

Thank you,

Eileen McHugh
Executive Assistant
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102-4689
Phone: (415) 554-7703 | Fax: (415) 554-5163
eileen.e.mchugh@sfgov.org | www.sfbos.org



LONDON N. BREED
RE MAYOR
BOARD OF SUPERVISORS
SAN FRANCISCO

2020 MAR 13 PM 4:47

BY eu

**SECOND SUPPLEMENT TO MAYORAL PROCLAMATION DECLARING THE
EXISTENCE OF A LOCAL EMERGENCY DATED FEBRUARY 25, 2020**

WHEREAS, California Government Code Sections 8550 et seq., San Francisco Charter Section 3.100(14) and Chapter 7 of the San Francisco Administrative Code empower the Mayor to proclaim the existence of a local emergency, subject to concurrence by the Board of Supervisors as provided in the Charter, in the case of an emergency threatening the lives, property or welfare of the City and County or its citizens; and

WHEREAS, On February 25, 2020, the Mayor issued a Proclamation (the "Proclamation") declaring a local emergency to exist in connection with the imminent spread within the City of a novel (new) coronavirus ("COVID-19"); and

WHEREAS, On March 3, 2020, the Board of Supervisors concurred in the Proclamation and in the actions taken by the Mayor to meet the emergency; and

WHEREAS, On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency to exist within the State due to the threat posed by COVID-19; and

WHEREAS, On March 6, 2020, the Local Health Officer declared a local health emergency under Section 101080 of the California Health and Safety Code, and the Board of Supervisors concurred in that declaration on March 10, 2020; and

WHEREAS, On March 6, 2020, the City issued public health guidance to encourage social distancing to disrupt the spread of COVID-19 and protect community health; and

WHEREAS, On March 7, 2020, the Local Health Officer ordered certain City facilities not to hold non-essential group events of more than 50 people for the two weeks from the date of the order and prohibited visitors from Laguna Honda Hospital; and

WHEREAS, On March 7, 2020, the Department of Human Resources issued guidance to minimize COVID-19 exposure risk for City employees who provide essential services to the local community, in particular during the current local emergency; and

WHEREAS, On March 11, 2020, the Local Health Officer issued an order prohibiting most public gatherings of 1,000 people or more for a period of two weeks; and



WHEREAS, On March 11, 2020, the Mayor issued a supplement to the Proclamation, ordering additional measures to respond to the emergency; and

WHEREAS, On March 13, 2020, the Local Health Officer issued an order prohibiting most mass gatherings in any space with a maximum occupant load of 100 people or more; and

WHEREAS, There are currently 21 confirmed cases of COVID-19 within the City, more than 250 confirmed cases in California, and five COVID-19-related deaths in California; and

WHEREAS, COVID-19 is causing and is expected to continue to cause serious negative impacts on the local economy and financial impacts to residents, including the substantial loss of income due to loss of compensable work hours or wages, layoffs, and business closures; and

WHEREAS, Workers who experience a loss of income as a result of illness, layoffs, reduced hours, or the need to care for a sick or otherwise dependent family member are more likely to be unable to stay current on rent payments; and

WHEREAS, There is a severe shortage of affordable rental housing in the City, people who are evicted are at risk of homelessness, and homeless individuals are less equipped to mitigate risks related to COVID-19; and

WHEREAS, Displacing renters who are unable to pay rent due to these types of financial impacts will worsen the present crisis by making it difficult for them to follow the health guidance of social distancing and isolation, which will put tenants and many others at great risk; and

WHEREAS, It is in the public interest to take steps to ensure that people remain housed during this public health emergency; and

WHEREAS, Loss of income as a result of the global COVID-19 pandemic may inhibit San Francisco residents and businesses from fulfilling their financial obligations including public utility payments such as water and sewer charges; and



WHEREAS, Ensuring that all people in San Francisco continue to have access to running water during this public health crisis to enable people to regularly wash their hands and maintain access to clean drinking water will help to prevent the spread of COVID-19 and prevent or alleviate illness or death due to the virus; and

WHEREAS, Ensuring that all customers in San Francisco that receive power services from the San Francisco Public Utilities Commission continue to have access to electricity so they are able to receive important COVID-19 information, keep critical medical equipment functioning, and utilize power as needed will help to prevent the spread of COVID-19 and prevent or alleviate illness or death due to the virus; and

WHEREAS, Private donors have expressed an interest in donating funds to the City to support the COVID-19 response efforts, and the City intends to use those funds in an expeditious manner to provide grants to small business and for other purposes related to the emergency response; and

WHEREAS, Many City employees have been reassigned from their normal duties or deployed as Disaster Service Workers to assist in the emergency response effort; other City employees must prioritize and for many employees devote all their work time to work related to the emergency response; City departments have been directed to support telecommuting to the extent possible and telecommuting employees may not have access to City records; these changes to the typical functioning of the City workforce and workplace have burdened the City's ability to respond to requests for public records; temporarily suspending the immediate disclosure request provision of the Sunshine Ordinance will allow the City to devote limited staff resources to emergency services and providing services to the public; the regular response deadlines contained in the California Public Records Act will apply; and

WHEREAS, The Mayor does hereby proclaim that the conditions of extreme peril exist and continue to warrant and necessitate the existence of a local emergency,

NOW, THEREFORE,

I, London N. Breed, Mayor of the City and County of San Francisco, proclaim that there continues to exist an emergency within the City and County threatening the lives, property or welfare of the City and County and its citizens;



In addition to the measures outlined in the Proclamation and in the March 11, 2020 Supplement to the Proclamation, it is further ordered that:

(1) A temporary moratorium on eviction for non-payment of rent by residential tenants directly impacted by the COVID-19 crisis is imposed as follows:

(a) Notwithstanding Section 37.9(a)(1) of the Administrative Code, if a residential tenant has not timely made a rent payment that was due on or after March 13, 2020, the landlord may not recover possession of the unit under Section 37.9(a)(1) if the tenant has provided notice to the landlord within 30 days after the date that rent was due that the tenant is unable to pay rent due to financial impacts related to COVID-19.

(b) For purposes of this Order, "financial impacts" means a substantial loss of household income due to business closure, loss of compensable hours of work or wages, layoffs, or extraordinary out-of-pocket medical expenses. A financial impact is "related to COVID-19" if it was caused by the COVID-19 pandemic, the Mayor's Proclamation, the Local Health Officer's Declaration of Local Health Emergency, or public health orders or recommended guidance related to COVID-19 from local, state, or federal authorities.

(c) Within one week of providing notice under subsection (a), the tenant shall provide the landlord documentation or other objectively verifiable information that due to financial impacts related to COVID-19, the tenant is unable to pay rent. If the tenant does not provide evidence of financial impacts related to COVID-19, the landlord may attempt to proceed under Section 37.9(a)(1).

(d) This Order shall last for a period of 30 days, until the Proclamation of Local Emergency is terminated, or upon further Order from the Mayor, whichever occurs sooner. The Mayor may extend this Order by an additional period of 30 days if conditions at that time warrant extension. The Mayor shall provide notice of the extension through an Executive Order posted on the Mayor's website and delivered to the Clerk of the Board of Supervisors.

(e) Upon expiration or termination of this Order, a tenant who provided the notice required under subsection (a) shall have up to six months to pay the rent owed to the landlord, before the landlord may recover possession due to those missed rent payments



under Section 37.9(a)(1). The tenant shall pay the rent in one month if able to do so; however, if the tenant remains unable to pay the rent due to the financial impacts related to COVID-19, the tenant may provide the landlord another notice and additional documentation pursuant to subsections (a) and (c) and thereby extend the payment date by an additional one month. The tenant may provide additional notices and documentation each month to further extend the deadline, but under no circumstances shall the landlord be required to extend the deadline beyond six months after the expiration or termination of this Order. At the end of the applicable extension period, if the tenant still has not paid all outstanding rent, Section 37.9(a)(1) shall apply.

(f) The Director of the Mayor's Office of Housing and Community Development or the Director's designee, in consultation with the San Francisco Rent Board as appropriate, is delegated authority to develop and publish guidelines consistent with this Order, including developing forms and recommendations of the types of documentation that may show financial impacts related to COVID-19; and

(2) The San Francisco Public Utilities Commission ("SFPUC") shall suspend for 60 days: (a) the discontinuation or shut off of water service for residents and businesses in the City for non-payment of water and sewer bills, (b) the imposition of late payment penalties or fees for delinquent water and/or sewer bills, (c) the discontinuation or shut off of power service for SFPUC Hetch Hetchy Power Customers in San Francisco for non-payment of power bills, (d) the imposition of late payment penalties or fees for delinquent Hetch Hetchy Power Customer accounts, and (e) the return of delinquent CleanPowerSF Customers to PG&E generation service for failure to pay CleanPowerSF charges; and

(3) Sections 150.4, 150.5, and 150.6 of the Public Works Code regarding the initiation of lien proceedings for delinquent water and sewer bills are suspended for the duration of the local emergency; and

(4) The Controller is authorized to accept and expend funds in any amount contributed by individuals or entities for the purposes of assisting the City's efforts to respond to the COVID-19 emergency. Notwithstanding any authorization in the Administrative Code or other City laws to accept and expend funds, all donations, grants, gifts and bequests of money to the City for the purpose of responding to the emergency shall be accepted by the Controller, and expenditures of such funds shall be subject to the Controller's direction. Funds accepted by the Controller may be expended by the City to provide



shelter, food, financial assistance including but not limited to loans, grants, or rent, mortgage and utility payments, and other assistance to individuals and families in the City who are impacted by the emergency; to replace, repair, and rebuild public buildings, infrastructure, and other assets for use in the City's efforts to respond to the emergency; to issue and administer grants and/or interest-free loans to small businesses in the City to compensate for economic harms resulting from COVID-19; and for other City efforts to address the impacts of COVID-19. The Controller may coordinate with or delegate responsibility to any other department or agency to develop criteria for and administer the expenditure of funds. Provisions of existing agreements and of local law are suspended to the extent they would impede the disbursement of funds to outside entities for the purposes described above; and

(5) Sections 67.25(a) and 67.25(b) of the Administrative Code are suspended for the duration of the local emergency.

DATED: March 13, 2020

A handwritten signature in black ink, reading "London Breed", written over a horizontal line.

London N. Breed
Mayor of San Francisco

OFFICE OF THE MAYOR
SAN FRANCISCO



LONDON N. BREED
MAYOR

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2020 MAR 18 PM 12:44

BY

Ak

2020-11-11
COB, Poles
Rep City & County
Deputies

March 18th, 2020

President Norman Yee
San Francisco Board of Supervisors
1 Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Dear President Yee,

Pursuant to the Mayor's Third Supplement to the Mayoral Proclamation Declaring the Existence of a Local Emergency, dated February 25th 2020, and supplemented on March 17th, 2020, as the Mayor's Designee, I am authorizing the Port Commission to hold an emergency meeting on Thursday, March 19th at 10:00am. At this meeting, the Commission will consider the issue of amending the Embarcadero SAFE Navigation MOU to accelerate operations in response to the Coronavirus Pandemic, an action necessary to ensure the public health and safety of San Francisco residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Andres Power".

Andres Power
Policy Director

cc: Members of the Board of Supervisors
Clerk of the Board

From: Board of Supervisors, (BOS)
To: [BOS-Supervisors: Carroll, John \(BOS\)](#)
Subject: FW: Support for File 200134, GA&O Committee Meeting March 4
Date: Thursday, March 12, 2020 4:54:00 PM

From: Nancy Wuerfel <nancenum1@aol.com>
Sent: Tuesday, March 3, 2020 8:39 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>
Subject: Support for File 200134, GA&O Committee Meeting March 4

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors:

File No. 200134 is for a Hearing on Public Works' Core Functions and Internal Administrative Policies. I enthusiastically support putting all the Public Works functions on the record, and I am especially interested in the *overview of the Department's administrative decision-making policies and process*.

I am asking you through your Hearing(s) to document the written PW's policies and processes that govern the following PW actions and to ask that PW cite the authority by which these actions are taken.

Below are four examples of Public Works involved in making decisions about capital projects using General Obligation (ESER) bonds, without any transparency or authority, through their participation in the self-proclaimed Management Oversight Committee (MOC), or making decisions about the use of capital funds made unilaterally by Public Works staff. The MOC consists of Harlan Kelly, Mohammed Nuru, Chief Hayes White, and Steve Ritchie.

Example 1 cites that the MOC alone will determine the 2020 ESER bond projects. Also, project selection and prioritization are to be identified by "transparent and responsible oversight procedures." You will see at the end of Example 3 that there is nothing transparent or responsible about the MOC meetings, as "they are not bound by the rules of other committees and commissions, including public noticing."

Example 2 cites a SF Public Utility Commission meeting that discusses the Water Enterprise projects of the SFPUC, and using ESER bond money for the Auxiliary Water Supply System authorized by the MOC. It is not clear which department - SFPUC or DPW - is actually in charge of the ESER money.

Example 3 cites an agenda item at a 2018 Capital Planning Committee to discuss projects in the 2014 ESER bond and to discuss how the remaining unspent \$282,209 bond money would be used. CPC staff did not know, DPW did not respond, and the SFPUC wrote to me announcing the existence of the Management Oversight Committee (MOC) who would make the decision about how the \$282,209 would be spent. Some details of this behind-closed-door committee with unlimited powers are included at the end of the example.

Example 4 cites the Public Works confiscation of \$489,500 from liquidated damages owed to the Fire Department. "DPW claims **they can decide to use this money** and also they are allowed to use it to pay for DPW services and salaries." Public Works manages all the ESER bond funds intended for projects in multiple public safety departments, but there does not seem to be any rules or regulations about how PW does this job. Also, what is the mechanism for PW to get reimbursed for "services rendered" by managing the ESER bonds?

I look forward to learning about Public Works' administrative decision-making policies and process through your public hearing.

Sincerely,

Nancy Wuerfel

EXAMPLE 1: 2020 Earthquake Safety and Emergency Response Bond REPORT

PG 14- ESER 2020 projects

"**The Management Oversight Committee**, which includes the fire chief, Public Works director, general manager of the San Francisco Public Utilities Commission and the assistant general manager of the Water Enterprise of the San Francisco Public Utilities Commission, **will determine the list of ESER 2020 projects.**"

PG 33 - ACCOUNTABILITY

"The 2020 San Francisco Earthquake Safety and Emergency Response Bond will abide by established standards for accountability, fiscal responsibility and transparency. In addition to California state bond requirements, the City will carry out a comprehensive public oversight and accountability process. **The City has not yet identified specific projects; transparent and responsible oversight procedures will be used for project selection and prioritization.**"

EXAMPLE 2: SFPUC Meeting, December 11, 2018, Agenda item 18, "Water Enterprise Capital Improvement Program 2018" (WECIP)

PG 15-- LOCAL PROJECTS, LOCAL WATER CONVEYANCE/DISTRIBUTION SYSTEM

The Auxiliary Water Supply System capital program "is funded by ESER 2010 and 2014 funds in the amounts of approximately \$102.4 million and \$54.5 million respectively."

"Individual project authorization and overall program direction is provided by the **Management Oversight Committee** (SF Public Works Department Head, SF Fire Department Chief, SFPUC General Manager, and SFPUC Water Enterprise Assistant General Manager) (MOC)."

EXAMPLE 3: Capital Planning Committee Meeting. March 19, 2018

Agenda item 7 - DPW to provide update on 2014 Earthquake Safety & Emergency Response (ESER) bond and discuss planned expenditures for next issuance.

I wrote an email on 3/16/18 to Nishad Joshi, Analyst, Office of Resilience and Capital Planning, to request a list of the ESER projects to be funded by the sale of the 2014 bonds, and to ask what the remaining \$282,209 bond allocation for EFWS will be used for. He did send a project list but stated he did not have "that level of detail [about the remaining money] but I can follow up with DPW." I did not receive an answer from Nishad.

Next John Scarpulla, SFPUC Policy & Government Affairs, wrote to me on 3/28/18 offering to help with my questions, so I again asked "what the PUC would use the \$282,000 money for?" and to tell me the projects and amounts to be allocated to each that will total \$282,209 of remaining ESER funds.

His reply came on 4/4/18 saying that the funds "had not actually arrived at the SFPUC" and into a SFPUC account. He stated "A decision about how to spend the \$282k has not yet been made. All decisions made regarding how to spend money on AWSS projects are made by the **Management Oversight Committee (MOC)**, which consists of: Harlan Kelly, Mohammed Nuru, Chief Hayes White, Steve Ritchie. We (Suzanne or I) can get back to you once a decision has been made on how this money is going to be spent. It will likely not be until the next MOC meeting."

I thanked John for his reply and asked "1) when the next MOC meeting will be, 2) where it is held, 3) who is the chair, and 4) how frequently it meets. Not sure how to see all this on the CPC website, so I ask your help to send me this info. Also, can you send me the agenda, and if available, the minutes, from the last MOC meeting. I would like to get uptospeed on this committee."

John replied to me on 4/4/18 **"The Management Committee is an ad hoc committee, called on an as-needed basis by one of the members. There is no set location. Regular agendas and minutes are not a part of the process of this ad hoc committee. It will disband once it is agreed upon by all members that it has completed the work it set out to do. Additionally, they are not bound by the**

rules of other committees and commissions, including public noticing. There is not a meeting currently scheduled, but I believe one will likely be called in the coming weeks."

To this day, I have not heard from anyone at the SFPUC, the CPC, or DPW about the decision of the MOC on what the \$285,000 ESER money will be used for.

EXAMPLE 4: Fire Commission Meeting Minutes, October 23, 2019

PG 7 - Vice President Covington asked why liquidated damages of \$489,500 awarded to a Fire Department project were not returned to the Fire Dept for their use?

Chief Velo said DPW claims they can decide to use this money and also they are allowed to use it to pay for DPW services and salaries.

PG 8 - Vice President Covington said "I would like to dig deeper into this with you because this has come to us before, and I suspect that accumulatively, **we may be losing millions of dollars. And we need the money.** "

Chief Velo: We do.

PG 9 - Fire Commissioner Veronese stated he thinks the Fire Department is "leaving millions and millions of dollars on the table" by not doing a better job of advocating for ourselves. He added that DPW managed "somehow to get a half a million dollars out of the Fire Department's hands" - going to DPW for a job "that's a Fire Department job."

From: [Mchugh, Eileen \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#); [BOS-Administrative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Ng, Wilson \(BOS\)](#)
Subject: FW: Order of the Health Officer No. C19-05b
Date: Friday, March 13, 2020 4:35:00 PM
Attachments: [2020.03.13 FINAL - DPH Recommendations re Social Distancing Rev 100 \(2\).pdf](#)
[2020.03.13 Revision 1 FINAL \(signed\) Order Prohibiting Large Gatherings \(Order C19-05b\) \(1\).pdf](#)

Hello Supervisors,

Please see attached Health Officer Order No. C19-05b.

Thank you,

Eileen

From: Patil, Sneha (DPH) <sneha.patil@sfdph.org>
Sent: Friday, March 13, 2020 3:52 PM
To: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Aragon, Tomas (DPH) <tomas.aragon@sfdph.org>
Subject: Order of the Health Officer No. C19-05b

Hi Angela,

Please see attached Health Officer Order No. C19-05b and associated attachment.

Thank you,
Sneha

Sneha Patil, MPH

Director, Office of Policy and Planning

San Francisco Department of Public Health

sneha.patil@sfdph.org | 415-554-2795



ORDER OF THE HEALTH OFFICER No. C19-05b (revised)

DATE ORDER ISSUED: March 13, 2020

(Original Order was dated March 11, 2020)

Please read this Order carefully. Violation of or failure to comply with this Order constitutes a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code §§ 120295, *et seq.*)

Summary: The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety. Because of the risk of the rapid spread of the virus, and the need to protect all members of the community, especially including the most vulnerable and health care providers, this Order prohibits all indoor public and private gatherings and outdoor gatherings within an enclosed space that has a maximum occupant load of 100 people or more anywhere in San Francisco beginning at 5 p.m. on March 13, 2020 and continuing for seven weeks through April 30, 2020, subject to the limited exceptions and under the terms and conditions more particularly set forth below. For all other gatherings, and for the entire duration of this Order, the Health Officer strongly recommends following the social distancing protocols attached to this Order, including: (i) canceling, rescheduling, or not attending non-essential events; (ii) avoiding social gatherings under 100 people where social distancing of six feet is not possible; (iii) for people with medical conditions, regardless of age, that put them at higher risk of serious complications should they get COVID-19, avoiding gatherings of more than 10 people when possible; and (iv) for employers in San Francisco that do not provide essential public services, taking all steps necessary for employees to work remotely from home to the extent possible. These recommendations are based on the California Department of Public Health and United States Centers for Disease Control and Prevention guidelines issued March 11, 2020. The Health Officer may revise this Order as the situation evolves, and facilities must stay updated by checking the City Administrator’s website ([sfgsa.org](https://www.sfgsa.org)) regularly.

**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE
SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE CITY AND
COUNTY OF SAN FRANCISCO (“HEALTH OFFICER”) ORDERS:**

- 1. This Order revokes and replaces Order Number C19-05, originally issued March 11, 2020. That order is no longer in effect as of the effective date and time of this Order.**
- 2. Effective as of 5:00 p.m. on Friday, March 13, 2020, and continuing until 11:59 p.m. on Thursday, April 30, 2020, public or private Mass Gatherings (as defined in Section 13 below) are prohibited anywhere in the City and County of San Francisco (the “City”) for the reasons listed below.**



ORDER OF THE HEALTH OFFICER No. C19-05b

3. As an additional protection for the health of all members of the public, the Health Officer strongly recommends that all people within the City follow the social distancing practices issued by the San Francisco Department of Public Health on March 6, 2020 and updated on March 13, 2020 (the “Social Distancing Recommendations”), a copy of which is attached to this Order and incorporated by this reference, as well as the guidance regarding gatherings issued by the California Department of Public Health (“CDPH”) on March 11, 2020 (available online at https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Gathering_Guidance_03.11.20.pdf) and the “Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission” issued by the United States Centers for Disease Control and Prevention (“CDC”) on or around March 11, 2020 (available online at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>), including as these items are updated in the future.
4. Every person in the City is responsible to help slow the spread of COVID-19. The best way to do that is to avoid gatherings of any size where sufficient social distancing is not possible. Accordingly, in addition to the strict prohibition on Mass Gatherings, the Health Officer strongly recommends that gatherings under 100 people not occur for the duration of this Order if social distancing of six feet per person is not possible. For sake of clarity, while not a requirement subject to fine or imprisonment under this Order, the Health Officer strongly recommends that large entertainment or social gatherings below 100 people be postponed or canceled.
5. The CDPH and CDC guidance cited in Section 3 above also includes recommendations for employers, and the Health Officer strongly recommends that employers comply with those guidelines. For sake of clarity, while not a requirement subject to fine or imprisonment under this Order, the Health Officer strongly recommends that employers that do not provide essential public services take all steps necessary for employees to work remotely from home to the extent possible.
6. Both CDPH and CDC guidelines now recommend that gatherings of people at higher-risk for severe illness from COVID-19 should be limited to no more than 10 people. This Order does not prohibit gatherings of more than 10 people for high-risk people because individual organizations and service providers that work with these groups are best able to determine when gatherings may need to occur. But the Health Officer, again without creating a requirement subject to fine or imprisonment under this Order, strongly encourages individuals and organizations/facilities not to permit or attend gatherings of more than 10 people that include high-risk individuals unless such gatherings are deemed necessary. As of the date of this Order, the categories of underlying medical conditions that put people at higher risk of serious COVID-19 illness per CDC guidance includes the following, regardless of age, and this Order automatically adopts any revisions



ORDER OF THE HEALTH OFFICER No. C19-05b

made by the CDC in the future:

- Blood disorders (e.g., sickle cell disease or on blood thinners).
 - Chronic kidney disease as defined by the person's doctor. This includes a patient who has been told to avoid or reduce the dose of medications because of kidney disease, or is under treatment for kidney disease, including receiving dialysis.
 - Chronic liver disease as defined by the person's doctor (e.g., cirrhosis, chronic hepatitis). This includes when the person has been told to avoid or reduce the dose of medications because of liver disease or is under treatment for liver disease.
 - Compromised immune system (immunosuppression) (e.g., seeing a doctor for cancer and treatment such as chemotherapy or radiation, received an organ or bone marrow transplant, taking high doses of corticosteroids or other immunosuppressant medications, or has HIV or AIDS).
 - Current pregnancy or recent pregnancy in the last two weeks.
 - Endocrine disorders (e.g., diabetes mellitus).
 - Metabolic disorders (such as inherited metabolic disorders and mitochondrial disorders).
 - Heart disease (such as congenital heart disease, congestive heart failure and coronary artery disease).
 - Lung disease including asthma or chronic obstructive pulmonary disease (chronic bronchitis or emphysema) or other chronic conditions associated with impaired lung function or that require home oxygen.
 - Neurological and neurologic and neurodevelopment conditions, including disorders of the brain, spinal cord, peripheral nerve, and muscle such as cerebral palsy, epilepsy (seizure disorders), stroke, intellectual disability, moderate to severe developmental delay, muscular dystrophy, or spinal cord injury.
7. This Order is issued based on evidence of increasing occurrence of COVID-19 within the City and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the population of the City places them at risk for serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the City. Making the problem worse, some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because even people without symptoms can transmit the disease, and because evidence shows the disease is easily spread, large gatherings can result in preventable transmission of the virus. The scientific evidence shows that at this stage of the emergency, it is essential to slow virus



ORDER OF THE HEALTH OFFICER No. C19-05b

transmission as much as possible to protect the most vulnerable and to prevent the health care system from being overwhelmed. One proven way to slow the transmission is to limit mass gatherings in the early stages of the emergency. By reducing the spread of the COVID-19 virus, this Order helps preserve critical and limited healthcare capacity in the City.

8. This Order also is issued in light of the existence of 21 cases of COVID-19 in the City, as well as at least 117 reported cases and at least one death in the Bay Area, as of 10:00 a.m. on March 13, 2020, including a significant and increasing number of assumed cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.
9. This Order is issued to prevent circumstances often present in Mass Gatherings that are likely to exacerbate the spread of COVID-19. Those circumstances include, without limitation: (a) the increased likelihood that Mass Gatherings will attract people from a broad geographic area; (b) the prolonged time period during which large numbers of people are in close proximity; (c) the difficulty in tracing exposure when large numbers of people attend a single event; (d) the inability to ensure that attendees follow adequate hygienic and social distancing practices like those described in the attached Social Distancing Recommendations; and (e) the possibility that a person with the virus may be in attendance.
10. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 25, 2020 Proclamation by the Mayor Declaring the Existence of a Local Emergency issued by Mayor London Breed, as supplemented on March 11, 2020, the March 6, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, and the CDPH guidance referred to in Section 3 above, as each of them have been and may be supplemented.
11. This Order is also issued in accordance with, and incorporates by reference the March 12, 2020 Executive Order (Executive Order N-25-20) issued by Governor Gavin Newsom. Executive Order N-25- 20 expressly orders that “[a]ll residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.”
12. The Health Officer will continue to assess the quickly evolving situation and may, at any time or from time to time, modify or extend this Order, or issue additional orders, related to COVID-19.



ORDER OF THE HEALTH OFFICER No. C19-05b

13. Covered Mass Gatherings:

- a. For purposes of this Order, a “Mass Gathering” is any event, convening, or collection of people, subject to the exceptions and clarifications below, in any space with a maximum occupant load of 100 people or more. These spaces include, by way of example and without limitation, an auditorium, theater, stadium (indoor or outdoor), arena or event center, meeting hall, conference center, large cafeteria, or any other confined indoor or confined outdoor space as further described in subparagraph b.
- b. For the sake of clarity, a Mass Gathering includes events in confined outdoor spaces where 100 or more people are together at the same time. For purposes of this Order, a confined outdoor space is an outdoor space that (i) is enclosed by a fence, physical barrier, or other structure and (ii) where people are present and they are within arm’s length of one another for extended periods.
- c. This Order does not prohibit gatherings of people within an office building or other structure that has multiple, separate enclosed spaces so long as no room or space having a maximum occupant load of 100 people or more is being used for gatherings. For any gathering covered by this subparagraph c, the Health Officer strongly encourages compliance with the attached Social Distancing Recommendations, including providing hand sanitizer and tissues and increasing cleaning of commonly-touched surfaces. But Theaters, as provided in subparagraph g below, have special rules.
- d. A Mass Gathering also does not include gatherings that occur in the following venues unless otherwise prohibited by this Order: (i) San Francisco International Airport, which is not located within the City; (ii) public or private schools; (iii) museums (so long as visitors are generally are not within arm’s length of one another for extended periods); (iv) spaces where 100 or more people may be in transit or waiting for transit such as bus, ferry, or subway stations or terminals; (v) office space, hotels, or residential buildings (subject to subparagraph c above); (vi) grocery stores, shopping malls, or other retail establishments where large numbers of people are present but it is unusual for them to be within arm’s length of one another for extended periods; (vii) hospitals and medical facilities; and (viii) places of worship; and (ix) facilities that provide food and other necessities of life for economically disadvantaged individuals and shelter facilities (which will be addressed separately by the Health Officer and the Department of Public Health). In all such settings listed in this subparagraph d, the Health Officer recommends following the attached Social Distancing Recommendations, and harm reduction measures such as hand sanitizer and tissues should be provided when possible. Except for spaces covered by clauses (iv), (viii), and



ORDER OF THE HEALTH OFFICER No. C19-05b

(ix) above, any specific large gathering space that is part of any building included in this subparagraph d is subject to the prohibition on Mass Gatherings if the space has a maximum occupant load of 100 or more people. For any place of worship included in clause (viii) above, any gathering for a religious service that occurs in a room that has a maximum occupant load of 100 or more people is limited to a total attendance of 100 people. A Mass Gathering also includes events held in a cruise ship while that ship is docked at any City port.

- e. For purposes of clarity, a Mass Gathering includes any gathering or collection of people in a restaurant, cafe, bar, night club, or other social gathering space within any building where the space or venue has a maximum occupant load of 100 or more people. For clarity, restaurants or other establishments that have a maximum occupant load of 100 or more people may still sell or provide food on a pick-up or takeout basis so long as patrons are not eating on-premises.
- f. Solely for restaurants and cafes that have a maximum occupant load between 100 and 500 people, each such facility that wishes to operate during the effect of this Order may do so by operating at 50 percent of their maximum occupant load up to a maximum of 100 patrons, for the duration of this Order. For example, if a room had a maximum occupant load of 150, under this Order it would be permitted to have a gathering of up to 75 people, and if a room had a maximum occupant load of 350, under this Order it would be permitted to have a gathering of up to 100 people.
- g. Theaters (as defined below) pose a special risk of allowing COVID-19 transmission because large numbers of people are in close quarters, sit together in one space for long periods of time, and have frequent turn-over. This results in many avenues for transmission of the COVID-19 virus during each seating and between seatings. For purposes of this Order, a “Theater” is any enclosed space that has seats, whether fixed or movable, and a stage or screen, such as a movie theater or a theater for live performances (each a “Theater”). For each Theater, the Theater may not be used for any gathering if the room has a maximum occupant load of 100 or more people. For any other Theater to operate, the owner, manager, or operator of the Theater must (i) clean all hard surfaces in the Theater, such as chair armrests, door handles, and accessible seat surfaces with a disinfectant between each performance or seating, (ii) provide hand sanitizer at entrances, (iii) have hand washing facilities available in restrooms or other locations on site, and (iv) comply with a written social distance plan that each Theater develops that ensures at least six feet is maintained between people (such as skipping rows or putting empty seats between every attendee). For the sake of clarity, each Theater, whether it is a single room or within a



ORDER OF THE HEALTH OFFICER No. C19-05b

multiplex that contains multiple Theaters, must comply with this subparagraph g.

- h. This Order applies to public meetings of policy bodies for the purposes of conducting the government's business, such as meetings of the Board of Supervisors, committees of the Board of Supervisors, City commissions and other policy bodies. Meetings of City policy bodies are subject to compliance with the Mayor's Emergency Declarations and Governor's Emergency Declarations described in Sections 10 and 11 above. But for meetings of policy bodies in government owned buildings, such as City Hall, up to 100 people may be in a room at any one time even if the maximum capacity of that room allows for more than 100 people. This subparagraph h supersedes the Health Officer's order dated March 7, 2020 to the extent it allowed City policy bodies to continue to meet as normal. The Health Officer strongly recommends that the City and other government agencies that meet in the City cancel all policy body meetings during the effect of this Order if those meetings are not necessary to make decisions essential to the continuity of governmental operations and services and the promotion of the health, safety, and welfare of the public. For City policy body meetings in rooms, the people responsible for the meeting shall ensure that: (i) the building has hand washing capabilities, (ii) hand sanitizer and tissues are available during the meeting, (iii) high-touch surface areas like door handles, countertops, tables, and handrails in the meeting area are frequently cleaned, and (iv) attendees comply with a social distance plan that ensures at least six feet is maintained between people.**
- i. For purposes of this Order, rooms with a maximum occupant load of 100 or more people in facilities owned or operated by (i) the California State Government, (ii) any state or federal courts, or (iii) the United States Government, may be used for official purposes, but not for social or entertainment purposes. When used for official purposes, the Health Officer strongly recommends compliance with the Social Distancing Recommendations.**

14. This Order shall be effective until 11:59 p.m. on April 30, 2020, or until it is earlier rescinded, superseded, or amended by the Health Officer or by the State Public Health Officer, in writing.

15. Pursuant to Sections 26602 and 41601 of the California Government Code and Section 101029 of the California Health and Safety Code, the Health Officer requests that the Sheriff and the Chief of Police in the City ensure compliance with and enforce this Order.



**City and County of
San Francisco**

**Department of Public Health
Order of the Health Officer**

ORDER OF THE HEALTH OFFICER No. C19-05b

16. The City must promptly provide copies of this Order as follows: (1) by posting on the City Administrator's website (sfgsa.org) and the Department of Public Health website (sfdph.org); (2) by posting at City Hall, located at 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102; and (3) by providing to any member of the public requesting a copy. In addition, the owner, manager, or operator of any facility that is likely to be impacted by this Order is strongly encouraged to post a copy of this Order onsite and to provide a copy to any member of the public asking for a copy. Because serving copies of this Order on every entity may not be feasible, the owner, manager, or operator of any facility that is subject to this Order or that becomes aware of or receives a copy of the Order in any manner is ordered to check the City Administrator's website (sfgsa.org) on a regular basis in order to look for updates to this Order and is required to comply with any updates until this Order is terminated.
17. If any subsection, sentence, clause, phrase, or word of this Order or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Order.

IT IS SO ORDERED:

A handwritten signature in blue ink that reads "Tomás Aragón".

Tomás J. Aragón, MD, DrPH,
Health Officer of the
City and County of San Francisco

Date: March 13, 2020



PUBLIC HEALTH SOCIAL DISTANCING RECOMMENDATIONS
AS OF MARCH 13, 2020 (revised)

NOTE that any order of the San Francisco Health Officer controls over these recommendations.

1) Vulnerable Populations: Limit Outings

- Vulnerable populations include people who are:
 - 60 years old and older.
 - People with certain health conditions such as heart disease, lung disease, diabetes, kidney disease and weakened immune systems.
 - People who are pregnant or were pregnant in the last two weeks.
- For vulnerable populations, don't go to gatherings (of 10 people or more) unless it is essential. If you can telecommute, you should. Avoid people who are sick.

2) Workplace and Businesses: Minimize Exposure

- Suspend nonessential employee travel.
- Minimize the number of employees working within arm's length of one another, including minimizing or canceling large in-person meetings and conferences.
- Urge employees to stay home when they are sick and maximize flexibility in sick leave benefits.
- Do not require a doctor's note for employees who are sick.
- Consider use of telecommuting options and implement whenever possible.
- Some people need to be at work to provide essential services of great benefit to the community. They and their employers should take steps in their workplace to minimize risk.

3) Gatherings: Cancel Events

- Cancel large gatherings of 100 people or more, such as concerts, sporting events, conventions or large community events.
- Smaller gatherings held in venues that do not allow social distancing of six feet per person should be postponed or canceled. This includes gatherings in crowded auditoriums, rooms or other venues.
- Do not attend any events or gatherings if sick.
- For events that aren't cancelled, we recommend:
 - Having hand washing capabilities, hand sanitizers and tissues available.
 - Frequently cleaning high touch surface areas like counter tops and hand rails.
 - Finding ways to create physical space to minimize close contact as much as possible.

4) Schools: Safety First

- If there is a confirmed case of COVID-19 at a school, DPH will work with the school to determine the best measures including potential school closure.
- Do not go to school if sick.
- If you have a child with chronic health conditions, consult your doctor about school attendance.
- Equip all schools and classrooms with hand sanitizers and tissues.
- Recommend rescheduling or cancelling medium to large events that are not essential.
- Explore remote teaching and online options to continue learning.
- Schools should develop a plan for citywide school closures, and families should prepare for



City and County of San Francisco Department of Public Health

PUBLIC HEALTH SOCIAL DISTANCING RECOMMENDATIONS AS OF MARCH 13, 2020 (revised)

potential closures.

5) Transit: Cleaning and Protection

- Increase cleaning of vehicles and high touch surface areas.
- Provide hand washing/hand sanitizers and tissues in stations and on vehicles.

6) Health Care Settings: Avoid as possible, protect the vulnerable

- Long term care facilities must have a COVID-19 plan in accordance with DPH guidelines.
- Long term care facilities must screen all staff and visitors for illness and turn away those with symptoms.
- Some facilities, including skilled nursing facilities, have been ordered not to permit visitors during this emergency subject to certain exceptions.
- The general public should avoid going to medical settings such as hospitals, nursing homes and long-term care facilities, even if you are not ill.
- If you are ill, call your health care provider ahead of time, and you may be able to be served by phone.
- Do not visit emergency rooms unless it is essential.

7) Everyone: Be responsible and do your part

The best way for all San Franciscans to reduce their risk of getting sick, as with seasonal colds or the flu, still applies to prevent COVID-19:

- Wash hands with soap and water for at least 20 seconds.
- Cover your cough or sneeze.
- Stay home if you are sick.
- Avoid touching your face.
- Try alternatives to shaking hands, like an elbow bump or wave.
- If you have recently returned from a country, state or region with ongoing COVID-19 infections, monitor your health and follow the instructions of public health officials.
- There is no recommendation to wear masks at this time to prevent yourself from getting sick.

You can also prepare for the possible disruption caused by an outbreak. Preparedness actions include:

- Prepare to work from home if that is possible for your job, and your employer.
- Make sure you have a supply of all essential medications for your family.
- Prepare a child care plan if you or a care giver are sick.
- Make arrangements about how your family will manage a school closure.
- Plan for how you can care for a sick family member without getting sick yourself.
- Take care of each other and check in by phone with friends, family and neighbors that are vulnerable to serious illness or death if they get COVID-19.
- Keep common spaces clean to help maintain a healthy environment for you and others. Frequently touched surfaces should be cleaned regularly with disinfecting sprays, wipes or common household cleaning products.

Keep up to date at www.sfdph.org, by calling 311, and by signing up for the City's new alert service for official updates: text COVID19SF to 888-777. Also see the "Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission" issued by the United States Centers for Disease Control and Prevention ("CDC") on or around March 11, 2020 (available online at www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf).

ATTACHMENT TO HEALTH OFFICER ORDER NO. C19-05b



PUBLIC HEALTH SOCIAL DISTANCING RECOMMENDATIONS
AS OF MARCH 13, 2020 (revised)

NOTE that any order of the San Francisco Health Officer controls over these recommendations.

1) Vulnerable Populations: Limit Outings

- Vulnerable populations include people who are:
 - 60 years old and older.
 - People with certain health conditions such as heart disease, lung disease, diabetes, kidney disease and weakened immune systems.
 - People who are pregnant or were pregnant in the last two weeks.
- For vulnerable populations, don't go to gatherings (of 10 people or more) unless it is essential. If you can telecommute, you should. Avoid people who are sick.

2) Workplace and Businesses: Minimize Exposure

- Suspend nonessential employee travel.
- Minimize the number of employees working within arm's length of one another, including minimizing or canceling large in-person meetings and conferences.
- Urge employees to stay home when they are sick and maximize flexibility in sick leave benefits.
- Do not require a doctor's note for employees who are sick.
- Consider use of telecommuting options and implement whenever possible.
- Some people need to be at work to provide essential services of great benefit to the community. They and their employers should take steps in their workplace to minimize risk.

3) Gatherings: Cancel Events

- Cancel large gatherings of 100 people or more, such as concerts, sporting events, conventions or large community events.
- Smaller gatherings held in venues that do not allow social distancing of six feet per person should be postponed or canceled. This includes gatherings in crowded auditoriums, rooms or other venues.
- Do not attend any events or gatherings if sick.
- For events that aren't cancelled, we recommend:
 - Having hand washing capabilities, hand sanitizers and tissues available.
 - Frequently cleaning high touch surface areas like counter tops and hand rails.
 - Finding ways to create physical space to minimize close contact as much as possible.

4) Schools: Safety First

- If there is a confirmed case of COVID-19 at a school, DPH will work with the school to determine the best measures including potential school closure.
- Do not go to school if sick.
- If you have a child with chronic health conditions, consult your doctor about school attendance.
- Equip all schools and classrooms with hand sanitizers and tissues.
- Recommend rescheduling or cancelling medium to large events that are not essential.
- Explore remote teaching and online options to continue learning.
- Schools should develop a plan for citywide school closures, and families should prepare for



City and County of San Francisco Department of Public Health

PUBLIC HEALTH SOCIAL DISTANCING RECOMMENDATIONS AS OF MARCH 13, 2020 (revised)

potential closures.

5) Transit: Cleaning and Protection

- Increase cleaning of vehicles and high touch surface areas.
- Provide hand washing/hand sanitizers and tissues in stations and on vehicles.

6) Health Care Settings: Avoid as possible, protect the vulnerable

- Long term care facilities must have a COVID-19 plan in accordance with DPH guidelines.
- Long term care facilities must screen all staff and visitors for illness and turn away those with symptoms.
- Some facilities, including skilled nursing facilities, have been ordered not to permit visitors during this emergency subject to certain exceptions.
- The general public should avoid going to medical settings such as hospitals, nursing homes and long-term care facilities, even if you are not ill.
- If you are ill, call your health care provider ahead of time, and you may be able to be served by phone.
- Do not visit emergency rooms unless it is essential.

7) Everyone: Be responsible and do your part

The best way for all San Franciscans to reduce their risk of getting sick, as with seasonal colds or the flu, still applies to prevent COVID-19:

- Wash hands with soap and water for at least 20 seconds.
- Cover your cough or sneeze.
- Stay home if you are sick.
- Avoid touching your face.
- Try alternatives to shaking hands, like an elbow bump or wave.
- If you have recently returned from a country, state or region with ongoing COVID-19 infections, monitor your health and follow the instructions of public health officials.
- There is no recommendation to wear masks at this time to prevent yourself from getting sick.

You can also prepare for the possible disruption caused by an outbreak. Preparedness actions include:

- Prepare to work from home if that is possible for your job, and your employer.
- Make sure you have a supply of all essential medications for your family.
- Prepare a child care plan if you or a care giver are sick.
- Make arrangements about how your family will manage a school closure.
- Plan for how you can care for a sick family member without getting sick yourself.
- Take care of each other and check in by phone with friends, family and neighbors that are vulnerable to serious illness or death if they get COVID-19.
- Keep common spaces clean to help maintain a healthy environment for you and others. Frequently touched surfaces should be cleaned regularly with disinfecting sprays, wipes or common household cleaning products.

Keep up to date at www.sfdph.org, by calling 311, and by signing up for the City's new alert service for official updates: text COVID19SF to 888-777. Also see the "Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission" issued by the United States Centers for Disease Control and Prevention ("CDC") on or around March 11, 2020 (available online at www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf).

From: [Mchugh, Eileen \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#); [BOS-Administrative Aides](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#); [Laxamana, Junko \(BOS\)](#); [Ng, Wilson \(BOS\)](#); [PEARSON, ANNE \(CAT\)](#)
Subject: Health Officer Order C19-06
Date: Friday, March 13, 2020 11:15:14 PM
Attachments: [2020.03.13 FINAL \(signed\) Order C19-06 Excluding Visitors to Hospitals.pdf](#)

Hello,

Please see attached Health Officer Order C19-06.

Thank you,

Eileen McHugh
Executive Assistant to the Clerk of the Board
San Francisco Board of Supervisors
415-554-7703



**ORDER OF THE HEALTH OFFICER No. C19-06
(LIMITATIONS ON HOSPITAL VISITORS)**

DATE ORDER ISSUED: March 13, 2020

Please read this Order carefully. Violation of or failure to comply with this Order constitutes a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code §§ 120295, *et seq.*)

Summary: The virus that causes Coronavirus 2019 Disease (“COVID-19”) is easily transmitted, especially in group settings, and it is essential that the spread of the virus be slowed to protect the ability of public and private health care providers to handle the influx of new patients and safeguard public health and safety. Many patients of hospitals are being treated for health conditions that make them particularly vulnerable to suffering the most serious complications of COVID-19 infection, including death. Also, medical personnel and other essential staff of hospitals will likely experience increased stress associated with providing excellent care during this public health emergency. It is critical to protect both populations from avoidable exposure to pathogens. Visitors to hospitals may carry the COVID-19 virus but may not display symptoms or may have mild symptoms. Such visitors can unwittingly pass the virus on to patients and staff. Because of the risk of the rapid spread of the virus, and the need to protect all members of the community, especially including patients and health care providers, this Order restricts Visitors and Non-Essential personnel from all Hospitals within the City and County of San Francisco (the “City”).

This Order is in effect from 8 a.m. on March 14, 2020. It must be implemented as quickly as possible and will continue for seven weeks through April 30, 2020, subject to the limited exceptions and under the terms and conditions more particularly set forth below. This Order is based on the California Department of Public Health and United States Centers for Disease Control and Prevention guidelines issued March 11, 2020. The Health Officer may revise this Order as the situation evolves, and covered facilities must stay updated by checking the Department of Public Health website (sfdph.org) regularly.

**UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE
SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE CITY AND
COUNTY OF SAN FRANCISCO (THE “HEALTH OFFICER”) ORDERS:**

- 1. Effective as of 8:00 a.m. on Saturday March 14, 2020 and continuing until 11:59 p.m. on April 30, 2020, the staff of each Hospital, as that term is defined in Section 20 below, shall, as quickly as can be implemented, exclude from entry or access to its Premises any Visitors and Non-Essential Personnel including, but not limited to, visitors of patients at the Hospital. Such Visitors and Non-Essential Personnel, including, but not limited to, family members of patients and authorized decision-**



ORDER OF THE HEALTH OFFICER No. C19-06

makers, are ordered not to visit any Hospital except as expressly permitted by this Order under limited exceptions as described in Section 11 below.

2. To the maximum extent possible, each Hospital must discourage Non-Essential Patient Movement, as defined in Section 14 below, onto, off of, and within the Hospital's Premises, as that term is defined in Section 14 below, where feasible. Whenever a Hospital patient leaves the Hospital's Premises, the patient is ordered to comply with the social distancing practices issued by the San Francisco Department of Public Health on March 6, 2020 and updated on March 13, 2020 (the "Social Distancing Recommendations"), a copy of which is attached to this Order and incorporated by this reference, as well as the guidance regarding gatherings issued by the California Department of Public Health ("CDPH") on March 11, 2020 (available online at https://www.cdph.ca.gov/Programs/CID/DCDC/CDPH%20Document%20Library/Gathering_Guidance_03.11.20.pdf) and the "Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission" issued by the United States Centers for Disease Control and Prevention ("CDC") on or around March 11, 2020 (available online at <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>), including as these items are updated in the future.
3. This Order is issued based on evidence of increasing occurrence of COVID-19 within the City and throughout the Bay Area, scientific evidence and best practices regarding the most effective approaches to slow the transmission of communicable diseases generally and COVID-19 specifically, and evidence that the age, condition, and health of a significant portion of the patient population of Hospitals places them at risk of serious health complications, including death, from COVID-19. Due to the outbreak of the COVID-19 virus in the general public, which is now a pandemic according to the World Health Organization, there is a public health emergency throughout the City. The rate of patients accessing healthcare for COVID-19 related treatment is expected to increase in the coming days and weeks, further increasing burdens and demands on regional medical personnel and exposing those personnel to additional risk of infection. It is therefore critical to minimize avoidable exposure to COVID-19 whenever possible. This order is being issued because some individuals who contract the COVID-19 virus have no symptoms or only mild symptoms, which means they may not be aware they are carrying the virus into a Hospital. Finally, by reducing the spread of the COVID-19 virus within Hospitals, this Order helps preserve critical and limited healthcare capacity in the City and the people who provide care.
4. This Order also is issued in light of the existence of 21 cases of COVID-19 in the City, as well as at least 117 reported cases and at least one death in the Bay Area, as of 10:00 a.m. on March 13, 2020, including a significant and increasing number of assumed cases of community transmission and likely further significant increases in transmission. Widespread testing for COVID-19 is not yet available but is expected



ORDER OF THE HEALTH OFFICER No. C19-06

to increase in the coming days. This Order is necessary to slow the rate of spread and the Health Officer will re-evaluate it as further data becomes available.

5. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by Governor Gavin Newsom, the February 25, 2020 Proclamation by the Mayor Declaring the Existence of a Local Emergency issued by Mayor London Breed (as supplemented on March 11, 2020 and March 13, 2020), the March 6, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, and the CDPH guidance referred to in Section 2 above, as each of them have been and may be supplemented.
6. This Order is also issued in accordance with, and incorporates by reference the March 12, 2020 Executive Order (Executive Order N-25-20) issued by Governor Gavin Newsom. Executive Order N-25-20 expressly orders that “[a]ll residents are to heed any orders and guidance of state and local public health officials, including but not limited to the imposition of social distancing measures, to control the spread of COVID-19.”
7. Each Hospital must, within 48 hours of receipt of this Order, develop and implement a written plan (“COVID-19 Plan”). This Order does not require a Hospital to create any new documentation if it already has written policies or other written guidance that address the requirements for the COVID-19 Plan. The plan must comply with applicable guidance from the United States Centers for Disease Control and Prevention (“CDC”) (available online at www.cdc.gov) and the California Department of Public Health (“CDPH”) (available online at www.cdph.ca.gov) regarding the screening of patients, staff, and visitors for signs of COVID-19 or other illness. The COVID-19 Plan must also address other applicable COVID-19-related guidance, including steps to reduce the risk of COVID-19 transmission by authorized visitors (such as through hand washing, masking, maintaining at least six feet distance from other people, and limiting the duration of visits, as appropriate). Nothing in this Order prohibits a Hospital from taking steps more protective against transmission of COVID-19 than guidance provided by the CDC or CDPH in its plan. Each Hospital must update its COVID-19 Plan when new COVID-19 recommendations or requirements are issued by the CDC or CDPH or as otherwise required by law. See the COVID-19 Guidance (discussed in Section 10 below) for more information about the COVID-19 Plan.
8. Each Hospital’s COVID-19 Plan must also include a requirement that any employee or other staff member who is sick or does not pass the required screening must be immediately sent home and not return to work until feeling better or authorized to return by a physician. If a Hospital is unable to immediately send home any such employee or staff member, then the Hospital must (1) prevent that staff member from engaging in any patient care or contact (except in an emergency when the



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Hospital is doing whatever it can to protect patients) and (2) immediately notify its respective licensing entity and seek guidance from that entity. This Order is based in part on the Social Distancing Recommendations, which state that the “general public should avoid going to medical settings such as hospitals, nursing homes and long-term care facilities, even if [they] are not ill.”

9. If a Hospital learns that any patient or staff member who is, or within the two weeks prior was, working at the Hospital tests positive for COVID-19, then the Hospital must immediately (within 1 hour) notify the Department of Public Health and meet any other applicable notification requirements.
10. Attached as part of this Order is written guidance to Hospitals (“COVID-19 Guidance”) issued by the Health Officer. The Health Officer or designee may revise the COVID-19 Guidance in writing from time to time. Each Hospital should periodically check the DPH website (sfdph.org) to confirm it is following the most recent COVID-19 Guidance. Each Hospital must follow the COVID-19 Guidance when applying this Order.
11. This Order restricts physical contact between Hospital patients, Visitors and Non-Essential Personnel. When Visitors and Non-Essential Personnel seek to visit or contact a patient, there are two ways a Hospital may facilitate contact. First, each Hospital must make reasonable efforts to facilitate such contact by other means (such as telephone or videoconference) that do not expose the patient to in-person contact. Second, each Hospital may authorize Necessary Visitation (as defined in the following paragraph) on a case-by-case basis using the following protocol.

“Necessary Visitation” means a visit or contact that is based on urgent health, legal, or other issues that cannot wait until after the duration of this Order. If the needs and context of a particular request for Necessary Visitation justifies a temporary exception to this Order, then the Hospital Administrator may arrange for Necessary Visitation of a Hospital patient. For purposes of this Order, the Hospital Administrator may act through a designee. The decision about whether the needs and context justify a temporary exception is left to the determination of the Hospital Administrator, who must make the decision based on this Order and the COVID-19 Guidance. Necessary Visitation also includes support persons for minors (those under 18 years old) or for persons with developmental disabilities who require assistance. Also, any Necessary Visitation permitted under this Section must be done subject to requirements of the COVID-19 Guidance and as otherwise deemed appropriate by the Hospital. For example, Necessary Visitation must include appropriate steps to protect patients from exposure to the COVID-19 virus, which might include hand washing, masking, maintaining at least six feet distance from other people, and a short duration of visit as appropriate. Visitors permitted under this paragraph are ordered to comply with all conditions of visitation imposed by



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the Hospital at the time of entry or access to the Premises.

12. If any Visitor or Non-Essential Person refuses to comply with this Order, then the Hospital may contact the San Francisco Police Department to request assistance in enforcing this Order. The Hospital shall take whatever steps are possible within the bounds of the law to protect patients and staff from any such visitor or person who refuses to comply with this Order. For example, a Hospital should contact facility security and ask the unauthorized visitor or person to comply with conditions of visitation imposed by the Hospital. Even if a Visitor or Non-Essential Person otherwise complies with the facility's visitation protocols as outlined in this paragraph, that individual is still in violation of this Order if the individual's presence is not a Necessary Visitation under Section 7 above.

13. This Order does not restrict first responder access to the Hospital's Premises during an emergency. Further, this Order does not restrict local, state or federal officers, investigators, or medical or law enforcement personnel from carrying out their lawful duties on the Hospital's Premises. Persons other than first responders permitted access under this paragraph must comply with all conditions of visitation imposed by the Hospital at the time of entry or access to the Hospital's Premises when feasible.

14. Definitions.

a) "Visitors and Non-Essential Personnel" are employees, contractors, volunteers, or members of the public who do not perform treatment, maintenance, support, or administrative tasks deemed essential to the healthcare mission of the Hospital. Refer to the COVID-19 Guidance for more information. This term includes family members and loved ones of patients and those who have legal authority to make healthcare or other legal decisions for a patient. The Ombudsperson is an authorized visitor and is not included in this term, but the Ombudsperson must still follow all conditions of visitation imposed by the Hospital and should also try to avoid non-essential visits. Nothing in this Order prohibits a patient from seeking care at any Hospital or at any clinic or other location providing health care or other services on the Hospital's Premises.

b) "Non-Essential Patient Movement" means travel off, onto or within the Hospital's Premises by a patient other than for specific treatment or pressing legal purposes as described more fully in the COVID-19 Guidance.

c) "Premises" includes, without limitation, the buildings, grounds, facilities, driveways, parking areas, and public spaces within the legal boundaries of each Hospital within the City.



ORDER OF THE HEALTH OFFICER No. C19-06

- 15. This Order shall be effective until 11:59 p.m. on April 30, 2020, or until it is earlier rescinded, superseded, or amended by the Health Officer or by the State Public Health Officer, in writing. It is possible this Order will be extended for the protection of Hospital patients based on conditions at that time.**
- 16. While this Order is in effect, the Hospital must provide copies of the Order in all of the following ways: (1) post this Order on the Hospital website (if any); (2) post this Order at all entrances to the Hospital; (3) provide this Order to each Hospital patient; (4) provide this Order to any authorized decision maker for each Hospital patient if not the patient, including any conservator; (5) provide this Order to the Hospital Ombudsperson (if any); and (6) offer it to anyone who visits the Hospital or who contacts the Hospital seeking to visit.**
- 17. Each Hospital must within 12 hours of receipt of this Order notify its respective licensing entity (whether the California Department of Public Health or otherwise) of the existence of this Order regarding the Hospital.**
- 18. The Health Officer will continue to assess the quickly evolving situation and may, at any time or from time to time, modify or extend this Order, or issue additional orders, related to COVID-19.**
- 19. If any subsection, sentence, clause, phrase, or word of this Order or any application of it to any person, structure, gathering, or circumstance is held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, then such decision will not affect the validity of the remaining portions or applications of this Order.**
- 20. This Order applies to each facility listed below (each a Hospital):**

General Acute Care Hospitals:

Facility Name	Street Address	ZIP
1. California Pacific Medical Center - Davies Campus	601 Duboce Ave	94117
2. California Pacific Medical Center - Mission Bernal Campus	3555 Cesar Chavez	94110
3. California Pacific Medical Center - Van Ness Campus	1101 Van Ness Ave	94109
4. Chinese Hospital	845 Jackson St	94133
5. Kaiser Foundation Hospital - San Francisco	2425 Geary Blvd	94115
6. Laguna Honda Hospital & Rehabilitation Center	375 Laguna Honda Blvd	94116
7. Priscilla Chan And Mark Zuckerberg San Francisco General Hospital	1001 Potrero Ave	94110
8. Saint Francis Memorial Hospital	900 Hyde St	94109



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9. St. Mary's Medical Center	450 Stanyan St	94117
10. UCSF Medical Center	505 Parnassus Ave	94143
11. UCSF Medical Center At Mission Bay	1975 4th Street	94158
12. UCSF Medical Center At Mount Zion	1600 Divisadero St	94115

Acute Psychiatric Hospitals:

Facility Name	Street Address	ZIP
1. California Pacific Medical Center D/P APH	2323 Sacramento St	94115
2. California Pacific Medical Center Davies Campus Hospital D/P APH	601 Duboce Ave	94117
3. Jewish Home & Rehab Center	302 Silver Ave	94112
4. Llangley Porter Psychiatric Institute	401 Parnassus Ave	94143
5. Saint Francis Memorial Hospital D/P APH	900 Hyde St	94109
6. Zuckerberg San Francisco General Hospital D/P APH	1001 Potrero Ave	94110
7. St. Mary's Medical Center D/P APH	450 Stanyan St	94117

A HOSPITAL PATIENT OR THE PATIENT'S AUTHORIZED LAWFUL REPRESENTATIVE MAY CONTACT A REPRESENTATIVE OF THE HOSPITAL TO SEEK CLARIFICATION OF ANY PART OF THIS ORDER BY CONTACTING PATIENT SERVICES OF THE FACILITY.

IF A PATIENT OR THE PATIENT'S AUTHORIZED LAWFUL REPRESENTATIVE OBJECTS TO THE APPROPRIATENESS OF THE LIMITATION ON ACCESS CONTAINED IN THIS ORDER, THEN THE PATIENT OR LAWFUL AUTHORIZED REPRESENTATIVE MAY RAISE CONCERNS WITH THE HOSPITAL. THE HOSPITAL SHOULD RESPOND TO THE CONCERN WITHIN 2 BUSINESS DAYS IF POSSIBLE. IF A RESPONSE IS NOT RECEIVED WITHIN 2 BUSINESS DAYS OF RECEIPT OF THE OBJECTION, THEN THE OBJECTION WILL BE CONSIDERED NOT GRANTED.

IT IS SO ORDERED:

Tomás J. Aragón, MD, DrPH,
Health Officer of the
City and County of San Francisco

Date: March 13, 2020



**WRITTEN GUIDANCE REGARDING COMPLIANCE WITH
ORDER OF THE HEALTH OFFICER No. C19-06**

DATE ORDER ISSUED: March 13, 2020

This information (the “COVID-19 Guidance”) is meant to help each Hospital implement the Order to which it is attached. This document uses the terms defined in the Order.

1. For purposes of the Order, the term “Administrator” means the administrator of a Hospital or the administrator’s designee.
2. The Order does not prohibit a Hospital from being more restrictive in its operations and practices than is outlined in the Order. The Order also does not require permitting visitation when not otherwise required by applicable laws or regulations.
3. Guidance regarding Sections 7 and 8 (COVID-19 Plan): The Order requires the Hospital to create a COVID-19 Plan that addresses issues including: 1) screening of patients, staff, and visitors for signs of COVID-19 or other illness; 2) conditions of visitation imposed by the Hospital at the time of entry or access to the Premises for authorized visitors that reduce the risk of infection, such as thorough hand washing, appropriate use of Personal Protective Equipment (PPE), maintaining at least six feet distance from other people, and limiting the duration of visits, as appropriate; 3) sending sick employees home immediately; 4) notifying DPH and other regulators of any positive COVID-19 result for a patient or staff member, including as required by law; and 5) other CDC or CDPH requirements. Note that the Order does not require a Hospital to create any new documentation if it already has policies or other guidance that address the requirements for the COVID-19 Plan.

The COVID-19 Plan should also address how the facility can reduce the risk of unnecessary exposure as outlined in the San Francisco Department of Public Health Social Distancing Protocols, a copy of which is attached to the Order. For example, the facility should avoid large in-person gatherings of patients or staff when feasible.

Additionally, there may be areas that warrant limitations that are not normally in place. A Hospital may have a cafeteria or other concession that is normally available to patients, essential employees, other employees (such as others who share the building but are not associated with the healthcare mission of the facility), and visitors. While this Order is in effect, the Hospital should consider whether a restriction on such use makes sense. One option might be to limit cafeteria visits to patients and essential staff and temporarily block other employees from that area.

If the facility had plans to have vendors come onsite for meetings or to show sample products, those meetings should be conducted via remote communication, occur at another site that does not include a vulnerable population, or be postponed until after this emergency situation if possible.

4. Guidance regarding Section 10 (efforts to facilitate contact that is not in-person): The Order requires the Hospital to make reasonable efforts to facilitate contact between an Unauthorized Visitor or Non-Essential Personnel and a patient. Such efforts include using technology to



**WRITTEN GUIDANCE REGARDING COMPLIANCE WITH
ORDER OF THE HEALTH OFFICER No. C19-06**

facilitate a remote connection with the patient when possible and would include telephone calls, telephone conferences involving multiple people, and video conferences using appropriate technology. Efforts are not reasonable if they interfere with the Hospital's healthcare mission or if they are not available or are cost prohibitive. The Hospital is encouraged to be creative in trying to facilitate contact that is not in-person so long as it complies with its other legal and regulatory obligations.

5. Guidance regarding Section 10 (Necessary Visitation): The term Necessary Visitation refers to a visit or contact that is based on urgent health, legal, or other issues that cannot wait until later. Nothing in the Order limits the standard healthcare that the Hospital provides to a patient. When medical care is appropriate or required, it is by definition permitted under the Order. Necessary Visitation refers to other types of visits or contact that are time-sensitive or critical. Necessary Visitation also includes support persons for minors (those under 18 years old) or for persons with developmental disabilities who require assistance, and the intent of the Order is for a Hospital to permit visitation by these listed support persons except in situations when doing so would conflict with the Hospital's mission.

For example, a patient may be in the end stages of life. In that instance, family or loved ones should be permitted to be with the patient unless doing so would interfere with the Hospital's mission in light of the current emergency. Another example would be a patient who is updating their will or other legal papers and an in-person meeting with the lawyer or family members or a notary is required, again unless doing so would interfere with the Hospital's mission. But, a meeting with a lawyer to discuss future changes or other, non-urgent issues should generally be postponed or conducted via telephone or other means.

Anyone who is legally authorized to make decisions for the patient, whether by operation of a durable power of attorney or public or private conservatorship, must be given special consideration, especially if they need to meet in person with the patient to fulfill their role. This distinction is in place because decisions regarding care when there is a surrogate decision maker should not be delayed when in-person contact is needed, whereas visits by other family or loved ones are important but may not be time-sensitive. But such authorized decision-makers should be encouraged to use alternative methods of contacting the patient when possible in order to avoid exposing the patient and others.

Also, Necessary Visitation should not be granted for routine visits by decision makers, family, or loved ones, even if the patient very much looks forward to the visit or the visitor has a strong desire for the visit. Such routine visits put all patients at risk at this time. But if a family member or loved one plays an essential role in providing care to a patient, without which the patient will suffer medical or clinical harm, Necessary Visitation may be appropriate.

There may be other unique situations that justify a Necessary Visitation based on the context. And as the situation evolves, the Hospital may need to restrict Necessary Visitation. This



**WRITTEN GUIDANCE REGARDING COMPLIANCE WITH
ORDER OF THE HEALTH OFFICER No. C19-06**

Order is intended to give the Administrator flexibility in making that determination so long as the decision is in line with the Order and this COVID-19 Guidance. The Administrator should not authorize Necessary Visitation for all or a majority of patients as that would likely reflect a violation of the intent of the Order to protect all patients from the risks of non-essential exposure to COVID-19.

All visits allowed as Necessary Visitation must occur subject to all conditions of visitation imposed by the Hospital at the time of entry or access to the Premises.

6. Guidance regarding Section 14 (Unauthorized Visitors and Non-Essential Personnel): The Order defines Unauthorized Visitors and Non-Essential Personnel as employees, contractors, volunteers, or members of the public who do not perform treatment, maintenance, support, or administrative tasks deemed essential to the healthcare mission of the Hospital. This term includes non-patient spouses or partners, family, loved ones, friends, clergy, and colleagues of the patient. This term also includes anyone who is legally authorized to make decisions for the patient, whether by operation of a durable power of attorney or public or private conservatorship (but see guidance above about decision-maker visits).

This term also includes employees of the Hospital or its vendors (and their employees) who are not needed in the short term for the facility to perform its healthcare mission. For example, a vendor that makes deliveries of large bottled water refill jugs is likely not essential. However, the facility should work to see if there are ways to permit delivery, such as on a loading dock, which would eliminate the need in the short term for someone to make visits all across the facility. This Order grants the Administrator authority to make judgment calls about how best to ensure the facility is able to operate during this emergency situation.

The term Unauthorized Visitors and Non-Essential Personnel does not include patients who are seeking care or other services from clinics or other service facilities located on the Hospital Premises. But a Hospital is not required by this Order to keep open any specific facilities, clinics, or services.

7. Guidance regarding Section 10 (Non-Essential Patient Movement): The Order defines Non-Essential Patient Movement as travel off or onto Hospital Premises by a patient other than for specific treatment or pressing legal purposes. This is contrasted with situations when a patient leaves the facility for health-related purposes or as required by law, such as for a meeting or service mandated by a court. The goal of the Order is to encourage patients to limit Non-Essential Patient Movement.

* * *

Dated: March 13, 2020



PUBLIC HEALTH RECOMMENDATIONS AS OF MARCH 11, 2020 (revised)

1) Vulnerable Populations: Limit Outings

- Vulnerable populations include people who are:
 - 60 years old and older.
 - People with certain health conditions such as heart disease, lung disease, diabetes, kidney disease and weakened immune systems.
 - People who are pregnant or were pregnant in the last two weeks.
- For vulnerable populations, don't go to gatherings (of 10 people or more) unless it is essential. If you can telecommute, you should. Avoid people who are sick.

2) Workplace and Businesses: Minimize Exposure

- Suspend nonessential employee travel.
- Minimize the number of employees working within arm's length of one another, including minimizing or canceling large in-person meetings and conferences.
- Urge employees to stay home when they are sick and maximize flexibility in sick leave benefits.
- Do not require a doctor's note for employees who are sick.
- Consider use of telecommuting options.
- Some people need to be at work to provide essential services of great benefit to the community. They can take steps in their workplace to minimize risk.

3) Large Gatherings: Cancel Non-essential Events

- Recommend cancelling or postponing large gatherings, such as concerts, sporting events, conventions or large community events.
- Do not attend any events or gatherings if sick.
- For events that aren't cancelled, we recommend:
 - Having hand washing capabilities, hand sanitizers and tissues available.
 - Frequently cleaning high touch surface areas like counter tops and hand rails.
 - Finding ways to create physical space to minimize close contact as much as possible.

4) Schools: Safety First

- If there is a confirmed case of COVID-19 at a school, DPH will work with the school and the district to determine the best measures including potential school closure.
- Do not go to school if sick.
- If you have a child with chronic health conditions, consult your doctor about school attendance.
- Equip all schools and classrooms with hand sanitizers and tissues.
- Recommend rescheduling or cancelling medium to large events that are not essential.
- Explore remote teaching and online options to continue learning.
- Schools should develop a plan for citywide school closures, and families should prepare for potential closures.



City and County of San Francisco Department of Public Health

PUBLIC HEALTH RECOMMENDATIONS AS OF MARCH 11, 2020 (revised)

5) Transit: Cleaning and Protection

- Increase cleaning of vehicles and high touch surface areas.
- Provide hand washing/hand sanitizers and tissues in stations and on vehicles.

6) Health Care Settings: Avoid as possible, protect the vulnerable

- Long term care facilities must have a COVID-19 plan in accordance with DPH guidelines.
- Long term care facilities must screen all staff and visitors for illness and turn away those with symptoms.
- The general public should avoid going to medical settings such as hospitals, nursing homes and long-term care facilities, even if you are not ill.
- If you are ill, call your health care provider ahead of time, and you may be able to be served by phone.
- Do not visit emergency rooms unless it is essential.
- Visitors should not go to long-term care facilities unless absolutely essential.

7) Everyone: Do your part

The best way for all San Franciscans to reduce their risk of getting sick, as with seasonal colds or the flu, still applies to prevent COVID-19:

- Wash hands with soap and water for at least 20 seconds.
- Cover your cough or sneeze.
- Stay home if you are sick.
- Avoid touching your face.
- Try alternatives to shaking hands, like an elbow bump or wave.
- If you have recently returned from a country, state or region with ongoing COVID-19 infections, monitor your health and follow the instructions of public health officials.
- There is no recommendation to wear masks at this time to prevent yourself from getting sick.

You can also prepare for the possible disruption caused by an outbreak. Preparedness actions include:

- Prepare to work from home if that is possible for your job, and your employer.
- Make sure you have a supply of all essential medications for your family.
- Prepare a child care plan if you or a care giver are sick.
- Make arrangements about how your family will manage a school closure.
- Plan for how you can care for a sick family member without getting sick yourself.
- Take care of each other and check in by phone with friends, family and neighbors that are vulnerable to serious illness or death if they get COVID-19.
- Keep common spaces clean to help maintain a healthy environment for you and others. Frequently touched surfaces should be cleaned regularly with disinfecting sprays, wipes or common household cleaning products.

Keep up to date at www.sfdph.org, by calling 311, and by signing up for the City's new alert service for official updates: text COVID19SF to 888-777. Also see the "Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission" issued by the United States Centers for Disease Control and Prevention ("CDC") on or around March 11, 2020 (available online at www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf).

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Subject: FW: Proposed tree planting at 3355 17th Street
Date: Tuesday, March 10, 2020 1:17:00 PM
Attachments: [RE tree planting at 3355 17th .msg](#)
[FW Proposed Tree Planting in front of 3355 17th Street.msg](#)
[RE FW Proposed Tree Planting in front of 3355 17th Street.msg](#)
Importance: High

From: Valerie Lofrano <valerie@lofrano.com>
Sent: Tuesday, March 10, 2020 12:10 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Proposed tree planting at 3355 17th Street
Importance: High

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the Board of Supervisors:

To accompany my previous email sent just minutes ago so that you may have a clear picture of my concerns regarding the City's wish to plant a tree directly at the front door to our office which is continuously used by Company personnel, customers and all who service us/visit us. That tree would be nothing but an inconvenience for our operation.

In 2011 we received the SF Small Business Commission's award. We are still the same great business with four locations in the City and are third generation San Franciscans.

Valerie Lofrano, Director of Human Resources
F. Lofrano & Son, Inc.

3355 17th Street

San Francisco, CA 94110

Ph. 415 865-8409, Fax 415 520-0509

www.lofrano.com



From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Subject: FW: Tree Planting at 3355 17th Street
Date: Tuesday, March 10, 2020 1:16:00 PM
Importance: High

From: Valerie Lofrano <valerie@lofrano.com>
Sent: Tuesday, March 10, 2020 11:40 AM
To: Degrafinried, Alaric (DPW) <alaric.degrafinried@sfdpw.org>; Keller, Stephen (DPW) <Stephen.Keller@sfdpw.org>; info@fuf.net; Ronen, Hillary <hillary.ronen@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Tree Planting at 3355 17th Street
Importance: High

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello—

As I have heard back from Kieva but no one else regarding the proposed planting of a tree right in front of our front door to our business, I am reaching out once more. This time I am including more photos of all of the utilities located right in the area originally marked by Friends of the Urban Forest and now by PG&E and a third party who checked on AT&T lines just a few minutes ago. To him I said, “they are not intending to still plant here, are they?” And he answered, “oh, yeah they are but they’re just going to be careful. I was just checking because when they plant, you will not have your telephones”. Hold on—this is a business that is compliant everyway with not only SF but the State and Federal as well. There are so many fees, taxes, revenue paid to the City as well as the other government entities. Isn’t that worth at least a consideration? Forty six years’ worth this year of business.

Is all this necessary? It’s going to take so much extra time and expense because the City HAS to have a tree in front of our front door! I will be sending along the correspondence and photos I first sent to the first four email addresses on this email correspondence but now am including the Board of Supervisors as a whole with the urgent request that the City bypass this location for all of the reasons I am asking you to PLEASE read and respond to me as soon as you are able to do so.

Valerie Lofrano, Director of Human Resources
F. Lofrano & Son, Inc.
3355 17th Street
San Francisco, CA 94110
Ph. 415 865-8409, Fax 415 520-0509
www.lofrano.com

call us

FIRST



From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [Somera, Alisa \(BOS\)](#)
Subject: FW: Submittal of the Department of Human Resources, 2020 Annual Workforce Report
Date: Wednesday, March 11, 2020 4:30:00 PM
Attachments: [2020 Annual Workforce Report.pdf](#)
[Transmittal Memo 2020 Workforce Report.pdf](#)
[image001.png](#)

From: Tugbenyoh, Mawuli (HRD) <mawuli.tugbenyoh@sfgov.org>
Sent: Wednesday, March 11, 2020 4:27 PM
To: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>
Cc: Somera, Alisa (BOS) <alisa.somera@sfgov.org>; Callahan, Micki (HRD) <micki.callahan@sfgov.org>; Buick, Jeanne (HRD) <jeanne.buick@sfgov.org>
Subject: Submittal of the Department of Human Resources, 2020 Annual Workforce Report

Good afternoon Ms. Calvillo:

Pursuant to ordinance no. 188-19, I am submitting the attached report to your office for distribution to the Board of Supervisors.

Thank you.

Regards,



Mawuli Tugbenyoh 杜本樂

[He, Him, His]

Chief of Policy

Department of Human Resources

One South Van Ness Ave., 4th Floor

San Francisco, CA 94103

Phone: (415) 551-8942

Website: www.sfdhr.org



MEMORANDUM

DATE: March 10, 2020
TO: London N. Breed, Mayor
Norman Yee, President, Board of Supervisors
FROM: Micki Callahan
Director, Human Resources Department
SUBJECT: 2020 Annual Workforce Report, Phase I

Pursuant to ordinance no. 188-19 I am pleased to submit to you the first Workforce Report prepared by the Department of Human Resources to Mayor London N. Breed and the Board of Supervisors.

The data in this report highlights existing inequities in the City workforce with respect to wages, discipline and corrective action, and promotional opportunities. DHR is committed to expanding the diversity of the City's workforce and to supporting all of our employees once they have been hired. Some of our recent steps include:

- Launching our Diversity Recruitment Team, whose goals are to provide targeted outreach to communities underrepresented in City workforce, and to remove barriers to hiring and promotion that are experienced by underrepresented groups.
- Implementing de-identification to remove implicit biases by redacting the names, schools, and addresses of applicants who are being considered for interview.
- Expanding the scope and number of trainings offered in City departments in order to reduce discrimination and improve workplace culture.
- Collaborating with our partners in GARE, the Mayor's Task Force on Diversity and Inclusion, labor committees on diversity and equity, and the Office of Racial Equity to answer questions and discuss solutions.
- Creating an interactive database on the DHR website so individuals can access and compare data on workplace demographics by department, classification, race, gender, and appointment status.

Due to data limitations, this report represents a Phase I analysis. The 2020 Phase II analysis and report will provide a more granular review of the intersection of department-specific employment decisions and race as well as gender, namely for hiring, promotions, professional development, terminations, medical separations, and compensation decisions for all City employees.

[Type text]

I extend my appreciation to DHR, Controller, and Office of Racial Equity staff who assisted with the preparation this report. If you have any questions or concerns, please contact me at (415) 557-4845 or Micki.Callahan@sfgov.org.

The Department of Human Resources

2020 ANNUAL WORKFORCE REPORT

Phase I





2020 Annual Workforce Report

An Analysis of the Diversity of the City and County of San Francisco Workforce

Phase I Report

March 2020

Produced by

The Department of Human Resources

in collaboration with

City Performance Group of the Controller's Office

The Office of Racial Equity

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I. INTRODUCTION

The mission of the San Francisco Department of Human Resources (DHR) is to use fair and equitable practices to hire, develop, support, and retain a highly qualified workforce. Our vision is one of empowered and diverse employees delivering excellent services to our communities through innovation, collaboration, and human-centered values. The way to achieve our mission and turn that vision into reality is to make our San Francisco City workplaces inclusive, equitable, and supportive for all employees.

Our City worksites are not immune from the systemic and institutional racism that pervades our society. While City policies and our merit system have positive impacts on the diversity of our workforce, the data show serious disparities between demographic groups, particularly along racial lines. Most notably, in comparison to those of other races, our Black employees have lower-paying jobs, are less likely to be promoted, and are disciplined and fired more frequently. Until we address these disparities in the experience of our Black employees, we cannot achieve our vision of an inclusive and welcoming workforce for everyone.

There is no one solution to these disparities in the workplace, and the most effective tool to address inequity in the workplace is not even available to us. As a public agency in California, the City is prevented by Prop 209 from using affirmative action to address workplace disparities. We must therefore collaborate to identify and implement a broad spectrum of other policies, controls, and training intended to offset and ultimately eliminate racial disparities in the City workplace.

The data in this report highlights existing inequities in the City workforce with respect to wages, discipline and corrective action, and promotional opportunity. DHR is committed to expanding the diversity of the City's workforce and to supporting these diverse employees once they have been hired. Some of our recent steps include:

- Launching our Diversity Recruitment Team, whose goals are to provide targeted outreach to communities underrepresented in City workforce, and to remove obstacles to hiring and promotion that are experienced by underrepresented groups.
- Implementing de-identification to hide the names, schools, and addresses of applicants who are being considered for interview. Hiring managers must decide whom to interview without knowing information that might give them clues as to the race, gender, or ethnicity of job applicants.
- Expanding the scope and number of trainings offered in City departments in order to reduce discrimination and improve workplace culture. These include trainings in Implicit Bias, Respect in the Workplace, Fairness in Hiring, Communicating Across Cultures, and Preventing Harassment.

- Collaborating with our partners in GARE, the Mayor’s Task Force on Diversity and Inclusion, labor committees on diversity and equity, and the Office of Racial Equity to answer questions and discuss solutions. Normalizing conversations about race is one of the first steps toward addressing racial equity.
- Creating an interactive database on the DHR website so individuals can access and compare data on workplace demographics by department, classification, race, gender, and appointment status. This increases transparency and allows individuals to do their own comparisons of workforce disparities and trends.

DHR and our human resources partners across the City will continue to learn and listen to thought leaders in the field of racial equity and the San Francisco community to gather insights on the equity challenges faced by our employees and applicants. We will look critically at ourselves and our policies and rules to determine whether they have unintended impacts and thereby inadvertently contribute to racial disparities in discipline, promotions, hiring, and other workplace actions.

The data in the report will guide DHR and policymakers in determining where we need to focus our efforts. However, DHR cannot implement change on its own. Change must come from the collaboration of all stakeholders, including the leadership of City departments and the Civil Service Commission with good faith efforts to hear each other and be open to change. And while each change we make is not enough on its own to eliminate discrimination and the impacts of racism, the cumulative effect of many changes will make a very real positive shift in our workplace culture.

II. DATA AND ANALYSIS

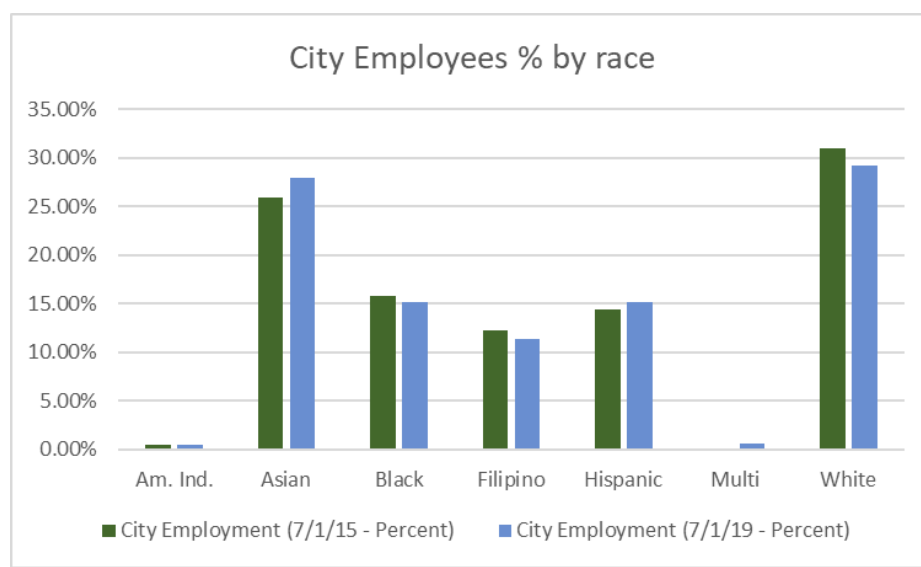
The information in this section is disaggregated by race. Race is self-reported by individuals at the time of application using race and ethnicity standards based on Federal statistics and administrative reporting. It is important from a public policy perspective to have data that is disaggregated on racial and ethnic lines to identify necessary changes in public policies and institutional practices. It is necessary to have a deeper level of disaggregated data because an individual's experiences based on their identity may not be captured in a broadly defined racial group. Racial and ethnic workplace disparities can only be addressed if there are tools to track inequities. Our current data has limitations in this regard. For example, San Francisco has a significant Pacific Islander/ Hawaiian population but because of Federal race and ethnicity standards, those individuals are not individually tracked, they are grouped under Asian.

This section addresses the data that DHR has collected, identifies trends, and offers an analysis of the data. In addition, this section identifies information gaps and further analysis that may be needed to understand apparent disparities and the appropriate interventions to address these disparities.

A. Employees by Race

The City and County of San Francisco is San Francisco's largest employer, with more than 37,000 people across sixty departments, encompassing a wide span of missions and responsibilities. Recognizing the importance of a diverse workforce is key to advancing racial equity and supporting robust employee engagement. The chart below provides a comparison by race of the City's workforce demographics between the years 2015 and 2019.

Exhibit 1: CCSF Employees by Race ¹



¹ <https://sfdhr.org/available-workforce-vs-city-employment>

Exhibit 2: CCSF Employees by Race 2015 v. 2019 ²

Year	Am. Ind.	Asian	Black	Filipino	Hispanic	Multi	White
2015	0.54%	25.90%	15.82%	12.23%	14.38%	0.14%	30.99%
2019	0.49%	27.92%	15.21%	11.33%	15.22%	0.67%	29.16%
Percent Difference	-0.05%	+2.02%	-0.61%	-0.90%	+0.84%	+0.53%	-1.83%

As of July 2019, the City and County of San Francisco workforce was 29.16% White, 27.92% Asian, 15.21% Black, 15.22% Hispanic, 11.33% Filipino, 0.67% Multiracial and 0.49% American Indian. As compared with the 2015 workforce, the 2019 San Francisco workforce has an increased percentage of employees who are Asian, Hispanic, or multi-racial. The 2019 workforce shows a small decrease in percentage of American Indian employees, and a larger decrease in Black, Filipino, and White employees.

B. Employment Type and Wages

Exhibit 3: CCSF Employees by Appointment Type ³

Employment Type	Am. Ind.	Asian	Black	Filipino	Hispanic	Multi	White	Total
Permanent Civil Service (PCS)	73.18%	79.89%	76.95%	84.98%	78.43%	38.37%	73.47%	77.62%
Permanent Exempt (PEX)	7.82%	6.03%	5.79%	3.27%	5.48%	15.10%	10.50%	6.97%
Temporary Exempt (TEX)	18.99%	14.08%	17.25%	11.74%	16.09%	46.53%	16.04%	15.42%

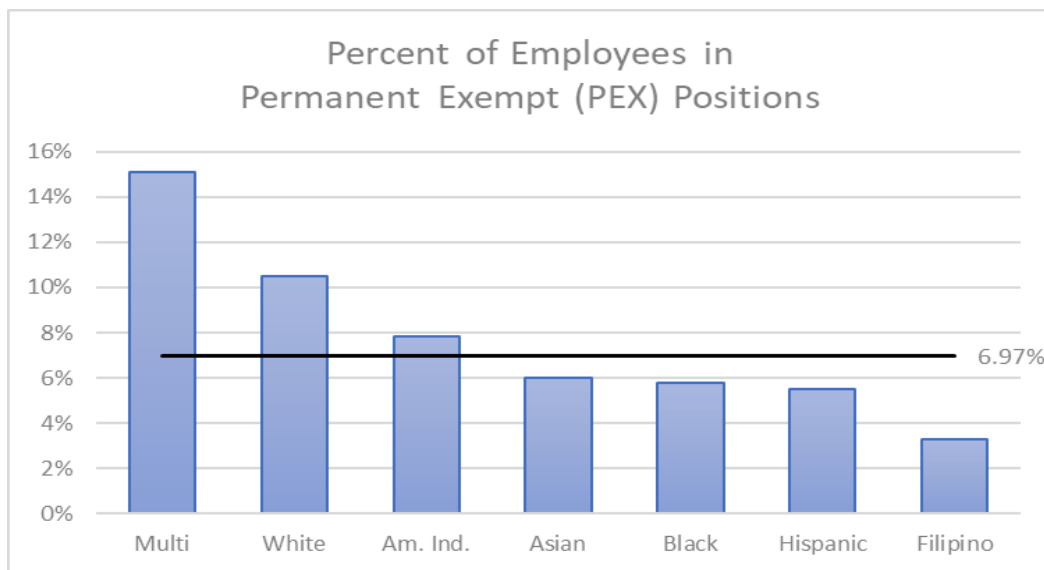
² <https://sfdhr.org/available-workforce-vs-city-employment>

³ <https://sfdhr.org/race-ethnicity-and-appt-type>

The table above shows the composition of our workforce by race for each of the three civil service status categories. On average, 77.6% of all city employees are Permanent Civil Service (PCS) employees. Black, Asian and Hispanic employees are all close to the average, while Multiracial, White and Asian employees are less likely to be PCS than average. There are very few employees who are noted in the City's data system as Multiracial, because that category was only added in 2013. Before that date, employees who identified as Multiracial were included in another racial or ethnic category. As a consequence, the number of Multiracial City employees is under-reported.

The graphs that follow focus on Permanent Civil Service (PCS) and Permanent Exempt (PEX) employees. On average, nearly 7% of employees are classified as PEX. White employees represent the highest percentage of PEX positions, at 10.5%, while Asian, Black, Hispanic, and Filipino employees are less likely than average to be appointed to PEX positions.

Exhibit 4: Permanent Exempt Employees by Race⁴



Does it matter that employees of color are under-represented in PEX positions? When it comes to our concerns about equity, the answer is yes. The type of appointment has everything to do with the rate of pay of the employee. The next section of the report addresses average wage by race as well as by exempt status.

⁴ <https://sfdhr.org/race-ethnicity-and-appt-type>

C. Employment Wages by Race

Exhibit 5 shows the average wage for each of our three categories of employee appointments by race but does not include job classes. Employees who are in the same job class are largely compensated equally due to our very structured classification and compensation system, with salary steps corresponding to the length of time in the job class. The differences we see reflected in the chart below stem from what is known as occupational clustering. Demographic groups are over-represented or underrepresented in certain jobs, and as a consequence they benefit from or are disadvantaged by the pay rate associated with that job. For example, nurses are more likely to be women than men and are overrepresented, at about 90%, in these positions compared to their share of the workforce population. Examples in the San Francisco workforce where we see occupational clustering by race include: the accounting series (Asian), transit operators (Black and Asian) and Patient Care Assistants (Filipino).

Exhibit 5: CCSF Average Wages by Race⁵

Employment Type	Am. Ind.	Asian	Black	Filipino	Hispanic	Multi	White	Total
Average Wages Permanent Civil Service (PCS)	\$48.75	\$47.36	\$42.93	\$48.63	\$46.96	\$43.55	\$56.14	\$49.20
Average Wages Permanent Exempt (PEX)	\$66.47	\$68.53	\$60.75	\$60.71	\$64.97	\$53.96	\$78.86	\$71.02
Average Wages Temporary Exempt (TEX)	\$32.11	\$35.77	\$31.02	\$42.72	\$33.41	\$24.74	\$46.60	\$38.22

As exhibit 5 shows, the average wage for a PCS employee is \$49.20 per hour, while the average wage for a PEX employee is \$71.02 an hour. The average wage for PEX employees is 44% higher than that of PCS employees.

White employees have a higher average salary than the average citywide salary across all three Civil Service status categories. With the exception of Filipino TEX employees, all other racial groups are below the citywide average in all three status categories. Black employees are the lowest paid PCS employees, and among the lowest paid PEX employees. For PCS employees in particular, it appears this trend is driven by the jobs that people are doing, which is itself impacted by the occupational clustering by race.

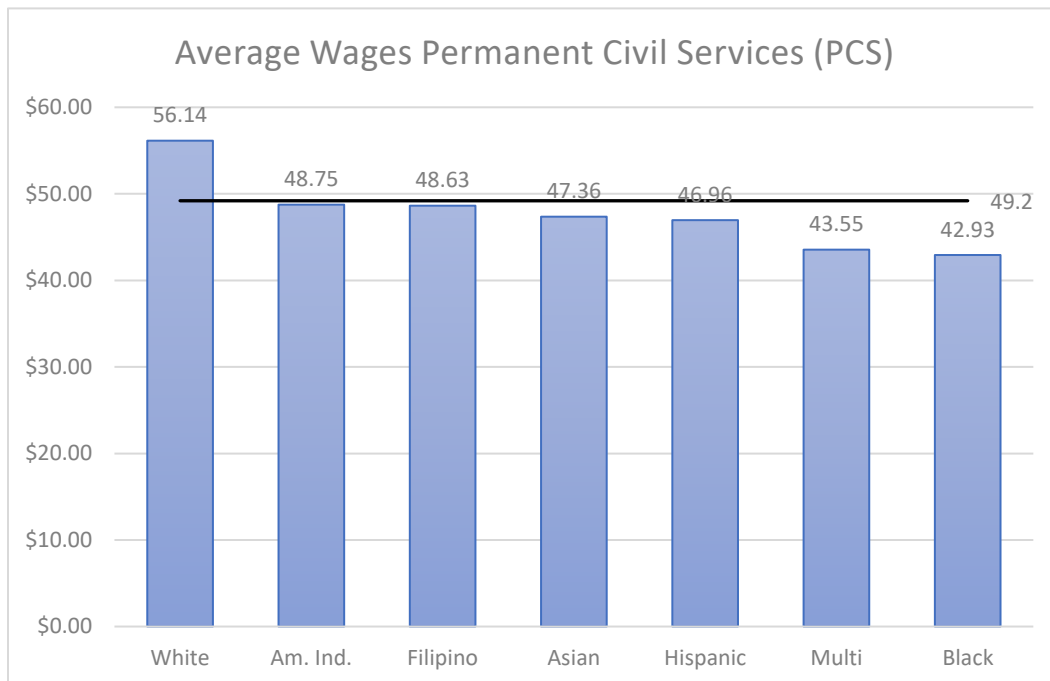
The PCS average wage for White employees is \$56.14, while for Black employees it is \$42.93. The PEX average wage for White employees is \$78.86, while for Black employees it is \$60.75. American Indian employees have the highest rate of temporary exempt appointments, at 18.99%, with Black employees at 17.25%. Hispanic and White employees are appointed to PCS positions

⁵ <https://sfdhr.org/race-ethnicity-and-avg-hourly-rate>

at virtually the same rate, 16.09% and 16.04% respectively. It is here where we see the effects of occupational clustering. While Black employees are around the average for PCS appointments, the type of jobs they are doing are lower wage jobs. This is an indication of a racial pay gap that we see Nationwide for minority employees. Lower wages often mean less economic mobility and stability for the worker. Exhibit 6 shows that Black employees are at the bottom of the PCS average wage scale.

Nationwide, the public sector is the leading employer of Black men and the second-largest employer of Black women, according to the Department of Labor⁶. About 20 percent of Black workers are employed by the government. Whites and Hispanics are employed by the government at a rate of 15% and 11% respectively. Public sector employment has for years been the gateway to the middle class for many Black families and has provided a pathway to stabilization for Black communities. Further analysis may be necessary to identify when this trend began and to identify what the most efficient interventions that are needed to ensure government agencies continue to lead ahead of the private sector in creating well-paying professional employment for minority workers.

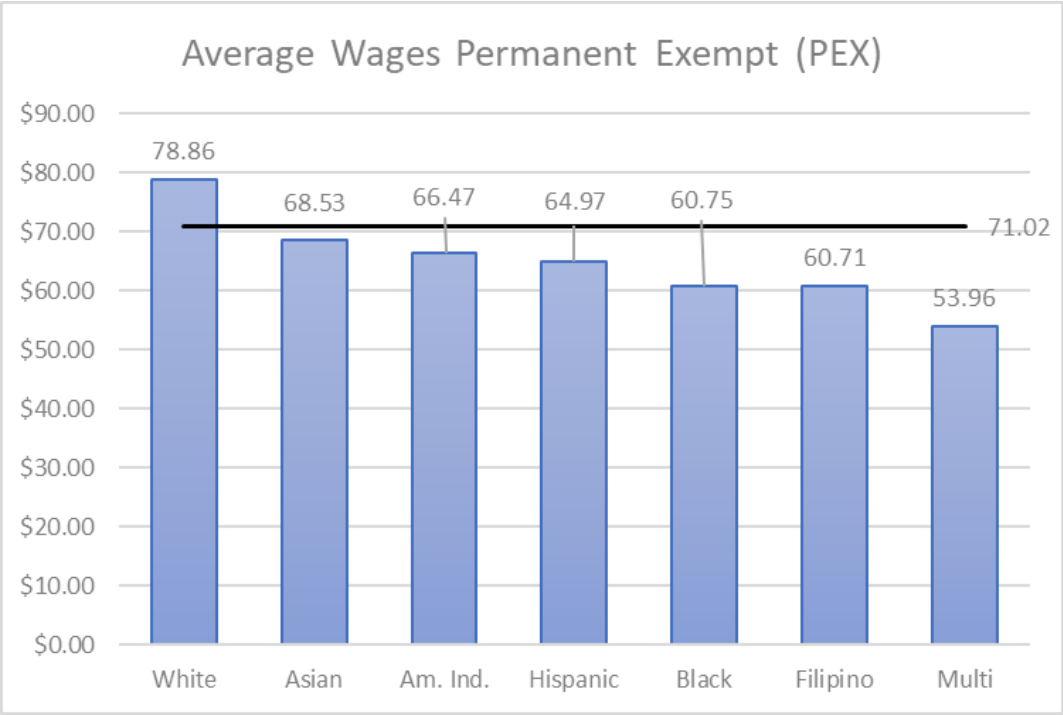
Exhibit 6: Average Wages for Permanent Civil Service Employees ⁷



⁶ <https://www.bls.gov/>

⁷ <https://sfdhr.org/race-ethnicity-and-avg-hourly-rate>

Exhibit 7: Average Wages for Permanent Exempt Employees⁸



⁸ <https://sfdhr.org/race-ethnicity-and-avg-hourly-rate>

Employee Residency

Nearly 43% of City Employees live in San Francisco.⁹ The chart below shows the distribution of all employees by County. Asian employees are the most likely to be City residents, with 56.5% of Asian employees residing in San Francisco. Black, Filipino, and Hispanic employees are far less likely to live in San Francisco than the average.

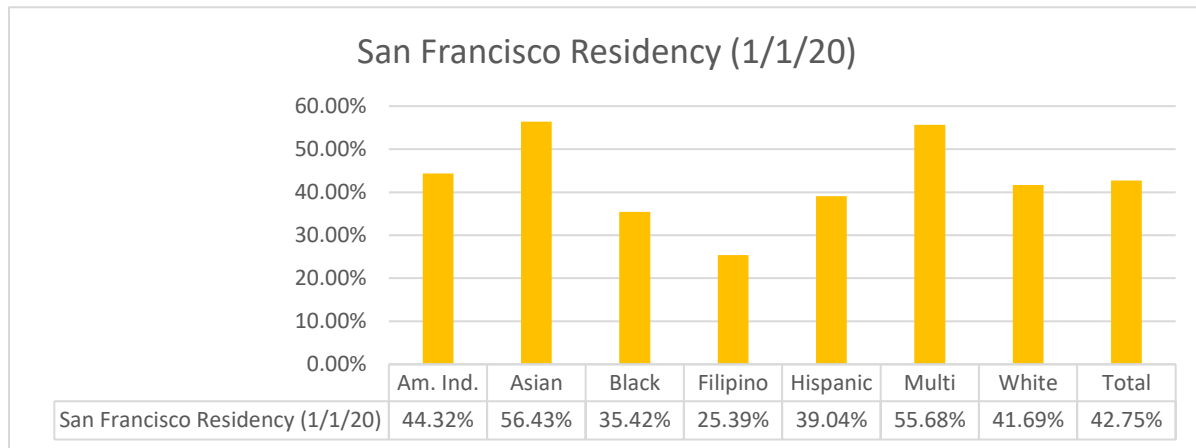
Exhibit 8: CCSF Employees by Residency¹⁰

<u>County</u>	<u>Employees</u>	<u>Percent</u>
San Francisco	15,846	42.75%
San Mateo	7,397	19.96%
Alameda	4,951	13.36%
Contra Costa	4,303	11.61%
Solano	1,277	3.45%
Other¹	1,178	3.18%
Marin	918	2.48%
Sonoma	561	1.51%
Santa Clara	438	1.18%
Napa	138	0.37%
Santa Cruz	60	0.16%
Total:	37,067	
¹ Residence outside of the Bay Area		



⁹ <https://sfdhr.org/residency>

¹⁰ <https://sfdhr.org/available-workforce-vs-city-employment>

Exhibit 9: CCSF Employees by Residency as of January 1, 2020¹¹

In recent decades, Census data suggests that there has been significant Black out-migration from metropolitan cities across the country to the suburbs. In San Francisco, the total overall population of African Americans has decreased significantly in part due to out-migration as a result of urban renewal and other factors. While other populations have either increased or remained stagnant, the Black population has decreased by over 30% since the year 2000. The Latino population has decreased by approximately 10% since 2000. This has a significant impact on the availability of individuals in these groups for City employment.

¹¹ <https://sfdhr.org/residency>

D. Section V: Employee Discipline

Corrective Action and Discipline is defined as written warnings, suspensions, probationary extensions, performance improvement plans, and dismissals of permanent employees. In this area we find some of the greatest level of disparity between races among city employees. In this area we are also seeing some reductions in the disparities due to recent interventions.

1. City (Non-MTA) Corrective Actions

Exhibit 10: Corrective Action/ Discipline by Race¹²

Employment Type/Action	Am. Ind.	Asian	Black	Filipino	Hispanic	Multi	White	Total
Percent by Race	0.45%	27.07%	12.70%	11.66%	15.46%	0.77%	31.90%	31060
City - Corr. Action/Discip. (1/1/19 - 6/30/19) ¹	0.54%	19.14%	25.34%	7.28%	21.29%	1.08%	25.34%	371
City - Corr. Action/Discip. (7/1/19 - 12/31/19) ¹	0.65%	22.15%	20.52%	9.45%	20.85%	2.28%	24.10%	307
Share of Discipline compared to Share of Workforce	0.20%	-4.92%	7.82%	-2.21%	5.39%	1.51%	-7.80%	
Change in Discipline from Period 1 to 2	0.11%	3.01%	-4.82%	2.17%	-0.44%	1.20%	-1.24%	-64

Black and Hispanic workers are over-represented compared to their share of the workforce in receiving corrective action and discipline. White and Asian workers are underrepresented. Across the country, research shows that Black and Hispanic workers often receive a higher level of scrutiny in the workplace, leading to more corrective action and discipline, and eventually a higher rate of terminations as compared to their White and Asian counterparts. Higher rates of corrective action and discipline have a negative impact on the City's ability to successfully recruit, retain, and engage Black and Hispanic employees. This suggests that our implicit bias training is needed to continue to normalize the premise that everyone has implicit biases that need to be managed.

Exhibit 11 indicates the reasons for discipline, as a percentage of overall discipline, are similar across racial groups.

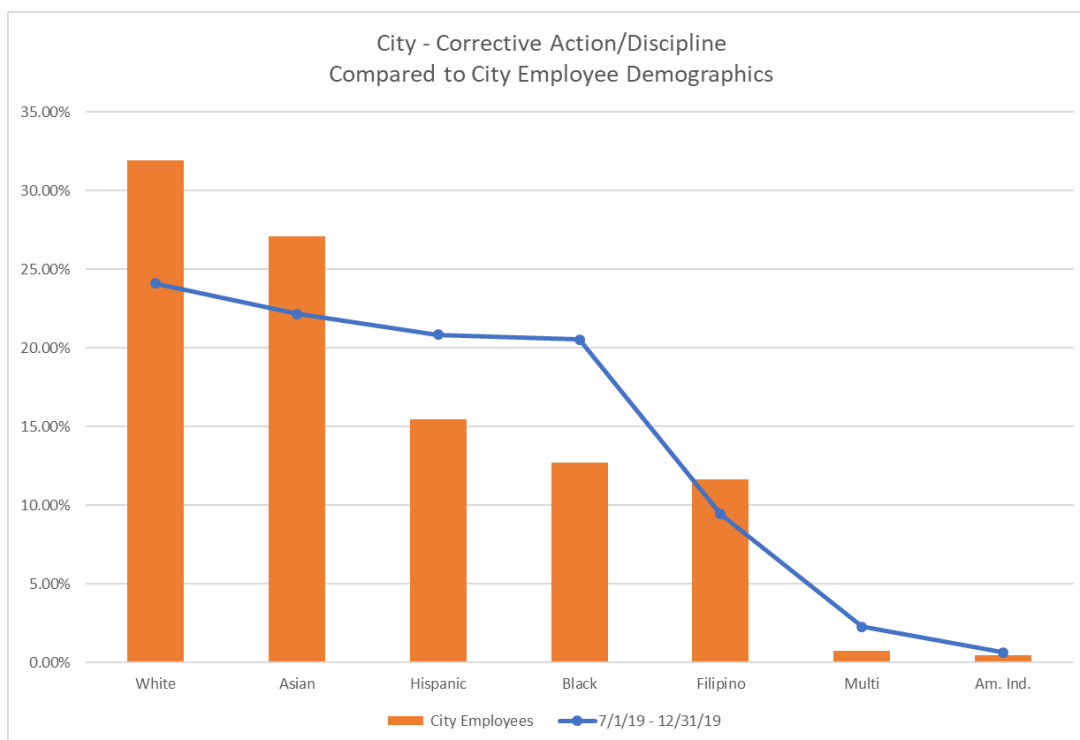
¹² <https://sfdhr.org/sites/default/files/documents/Resources/Corrective-Action-and-Discipline-by-Race-Ethnicity-and-Gender.pdf>

Exhibit 11: Employee Discipline Type by Race¹³

Reason	Am. Indian	Asian	Black	Filipino	Hispanic	Multiracial	White	Female	Male
Attendance	0.00%	9.26%	15.19%	15.38%	12.86%	0.00%	6.10%	13.28%	9.73%
AWOL	0.00%	5.56%	6.33%	0.00%	8.57%	0.00%	14.63%	5.47%	10.27%
Dishonesty	0.00%	1.85%	3.80%	7.69%	5.71%	0.00%	4.88%	6.25%	3.24%
Insubordination	0.00%	9.26%	7.59%	7.69%	7.14%	0.00%	9.76%	7.81%	8.65%
Inattention to Duty	0.00%	20.37%	24.05%	15.38%	25.71%	0.00%	28.05%	17.19%	29.19%
Moral Turpitude	100.00%	5.56%	6.33%	7.69%	0.00%	0.00%	1.22%	2.34%	4.32%
Misuse of Resources	0.00%	7.41%	1.27%	7.69%	2.86%	0.00%	3.66%	4.69%	3.24%
Other	0.00%	1.85%	0.00%	0.00%	1.43%	0.00%	0.00%	1.56%	0.00%
Performance	0.00%	37.04%	31.65%	30.77%	32.86%	100.00%	31.71%	41.41%	27.03%
Substance Abuse	0.00%	0.00%	0.00%	0.00%	1.43%	0.00%	0.00%	0.00%	0.54%
Violence	0.00%	1.85%	3.80%	7.69%	1.43%	0.00%	0.00%	0.00%	3.78%

* 1/1/19 through 6/30/19

Analysis excludes MTA

Exhibit 12: Employee Corrective Action and Discipline Compared to Demographics¹⁴

¹³ <https://sfdhr.org/sites/default/files/documents/Resources/Corrective-Action-and-Discipline-by-Race-Ethnicity-and-Gender.pdf>

¹⁴ <https://sfdhr.org/sites/default/files/documents/Resources/Corrective-Action-and-Discipline-by-Race-Ethnicity-and-Gender.pdf>

As Exhibit 12 shows, over the time that we have been centrally collecting data on discipline and corrective actions, discipline and corrective actions have been moving towards greater alignment with the demographics of our workforce. The implementation of implicit bias training in 2013 has likely had a positive effect on reducing disparities in discipline and corrective actions. More recently, additional training for human resources representatives, along with publication of statistics that highlight these racial disparities, seem to have had a positive effect as well.

2. MTA Corrective Actions

MTA operates under strict federal guidelines for its transit operators. This includes the imposition of discipline for specific infractions.

Overall, 5.3% of employees on average have experienced a disciplinary or corrective action in the last 6 months. 27.8% of MTA employees are African American, but they are significantly overrepresented, receiving 50.1% of discipline and corrective actions. This is an overrepresentation by 22.3 percentage points.

Exhibit 13: MTA Employee Corrective Action and Discipline by Race ¹⁵

	<u>Am. Ind.</u>	<u>Asian</u>	<u>Black</u>	<u>Filipino</u>	<u>Hispanic</u>	<u>Multi</u>	<u>White</u>
1. MTA Employees % by Race	0.6%	33.5%	27.8%	9.6%	13.3%	0.4%	14.7%
2. MTA - Corr. Action/Discip. (1/1/19 - 6/30/19)	1.6%	19.3%	51.4%	5.6%	11.5%	0.9%	9.7%
3. MTA - Corr. Action/Discip. (7/1/19 - 12/31/19)	0.8%	23.6%	50.1%	7.1%	11.9%	0.4%	6.1%
<i>Difference 1 compared to 3</i>	0.2%	-9.9%	22.3%	-2.5%	-1.4%	0.0%	-8.7%

E. Applicant Pool by Ethnicity

The charts and tables below illustrate the San Francisco applicant pool for calendar year 2019. The data is separated by applicant pools for permanent civil service (PCS) and exempt recruitments. The charts provide the percentage of applicants by ethnicity while the tables provide the number and percentages of applicants by ethnicity. Also included is the applicant pool broken down by department, race and ethnicity.

The ethnicity data is self-reported at the time of application and is optional for an applicant. Those who do not declare an ethnicity are classified in the charts and tables as undeclared. Ethnicity categories were changed on May 10, 2019. Asian or Pacific Islanders (except Filipino) became Asian (except Filipino) and Native Hawaiian or Pacific Islander and Multiracial were added as new categories. The total number of applicants may include individuals who have applied for multiple recruitments.

¹⁵ <https://sfdhr.org/sites/default/files/documents/Resources/Corrective-Action-and-Discipline-by-Race-Ethnicity-and-Gender.pdf>

Exhibit 14: Permanent Civil Service Applicants by Ethnicity

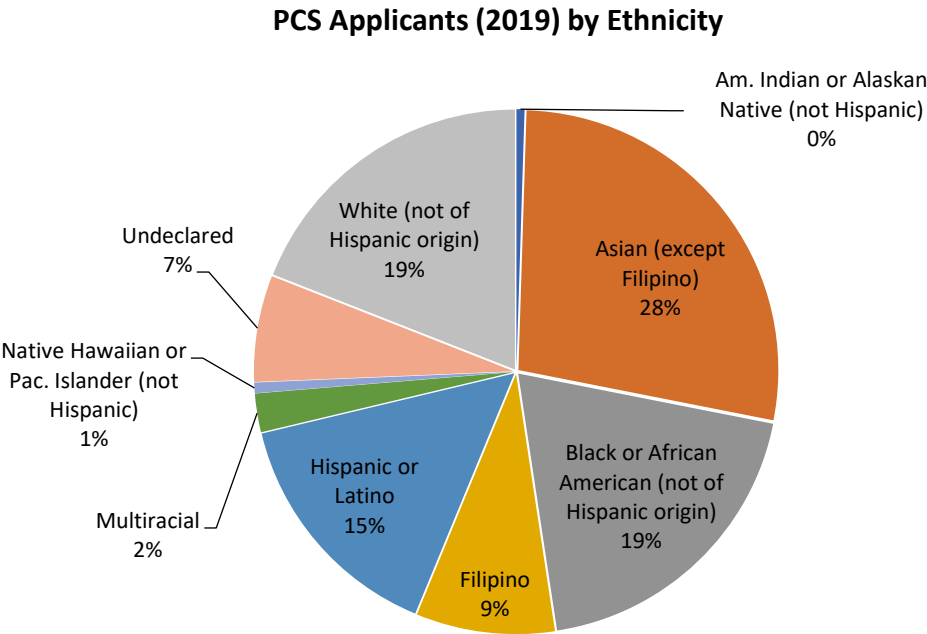


Exhibit 14a: Permanent Civil Service Applicants by Race

Ethnicity	# of Applicants	% of Applicants
Am. Indian or Alaskan Native (not Hispanic)	324	0%
Asian (except Filipino)	17915	28%
Black or African American (not of Hispanic origin)	12661	19%
Filipino	5599	9%
Hispanic or Latino	9764	15%
Multiracial	1562	2%
Native Hawaiian or Pac. Islander (not Hispanic)	427	1%
Undeclared	4295	7%
White (not of Hispanic origin)	12360	19%
Grand Total	64907	100%

From 2015 through 2019, the CCSF applicant pool for recruitments fluctuated in total number of applicants who have applied for PCS positions. The ethnicity demographics have not significantly changed over time for PCS applicants, but there have been some slight increases and decreases in diversity between 2015 and 2019. The ethnicity represented at the highest percentage in the 2019 applicant pool for PCS positions was Asian (except Filipino) at 28% of the total applicant pool. The next-highest representation was White (not of Hispanic origin) and Black or African American, both at 19% of the total applicant pool, and Hispanic or Latino at 15% of the applicant pool. The lowest representation of ethnicities are those of American Indian or Alaskan Native (not Hispanic) at 0%, Native Hawaiian or Pacific Islander (not Hispanic) at 1%, and Multiracial at 2%.

Looking at the applicant pool for permanent exempt positions in the chart below, we see a very similar trend to that of the PCS applicant pool with Asian (except Filipino) at 27% of the total applicant pool. The next-highest representation was White (not of Hispanic origin) at 21%, Black or African American (not of Hispanic origin), at 18%, and Hispanic or Latino at 14% of the applicant pool. The lowest representation ethnicities in the applicant pool are American Indian or Alaskan Native (not Hispanic) at 1%, and Native Hawaiian or Pacific Islander (not Hispanic) at 1%. Also, applicants were given the option to identify as Multiracial in 2019, and there were 3% who selected this option.

Between 2015 and 2019, the total number of applicants who have applied for exempt positions decreased; the applicant pool dropped by 15% between 2015 to 2019. As with the PCS applicant pool, the ethnicity demographics have not significantly changed over time for exempt applicants. This could be an indication that targeted recruitment efforts should be bolstered.

Exhibit 15: Exempt Applicants by Race

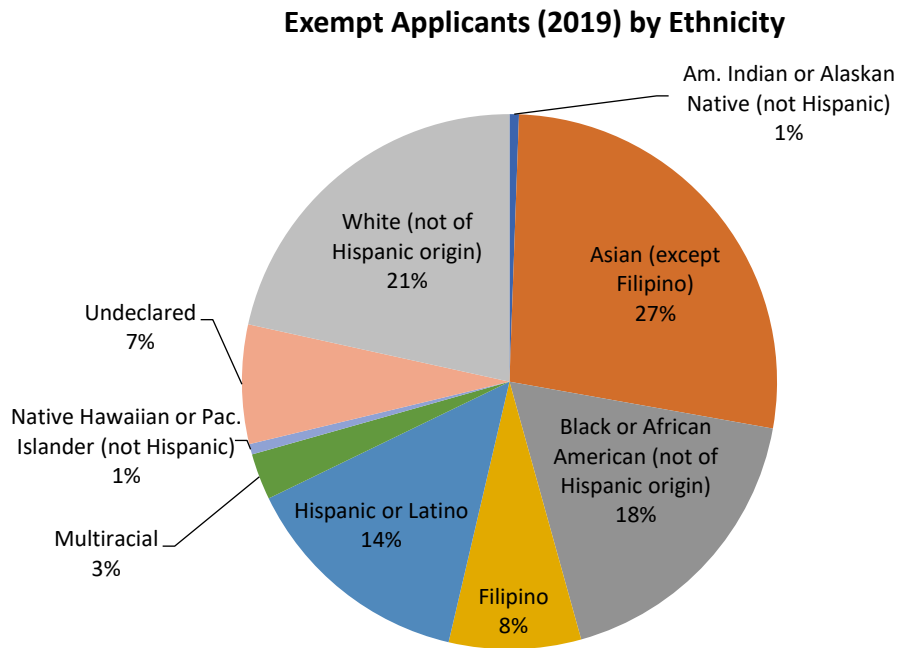


Exhibit 15a: Exempt Applicants by Race

Row Labels	# of Applicants	% of Applicants
Am. Indian or Alaskan Native (not Hispanic)	327	1%
Asian (except Filipino)	15691	27%
Black or African American (not of Hispanic origin)	10299	18%
Filipino	4596	8%
Hispanic or Latino	8158	14%
Multiracial	1614	3%
Native Hawaiian or Pac. Islander (not Hispanic)	365	1%
Undeclared	4144	7%
White (not of Hispanic origin)	12419	21%
Grand Total	57613	100%

F. Applicant Pool by Department

The applicant pool of our candidates is largely diverse, as we see that in the overall applications to individual city departments. This does not always translate into a workforce that is as diverse as the applicant pool. Asians (excluding Filipino) represent the highest number of applications overall for Permanent Civil Service positions at 27%; Black or African Americans are second at 20%; Whites represent 19% of applications; and Hispanic or Latinos represent 15%. For exempt position applications by department, we see a very similar trend to that described above. Exhibits 16 and 16a below provide a detailed look into our applicant pool by race and department by appointment type for calendar year of 2019.

Exhibit 16: Permanent Civil Service Applicant Pool by Department

Permanent Applicant Ethnicity by Department Applications Received from January 1, 2019 to December 31, 2019												
Am. Indian or Alaskan Native (not Hispanic)	Asian (except Filipino)	Black or African American (not of Hispanic origin)	Filipino	Hispanic or Latino	Multiracial	Native Hawaiian (not Pac. Islander) Hispanic)	Undeclared	White (not of Hispanic origin)	Total % of Aps	Total # of Aps		
% of Aps. # of Aps	% of Aps. # of Aps	% of Aps. # of Aps	% of Aps. # of Aps	% of Aps. # of Aps	% of Aps. # of Aps	% of Aps. # of Aps	% of Aps. # of Aps	% of Aps. # of Aps	% of Aps	# of Aps		
Administrative Services* Department of Technology General Services Agency San Francisco Public Works Adult Probation Airport - San Francisco International Asian Art Museum Assessor-Recorder's Office Board Of Supervisors Building Inspection Child Support Services Children and Families Commission Children Youth and Families City Attorney City Planning Citywide ** Community College District Controller Department of Emergency Management Department of Police Accountability District Attorney Economic and Workforce Development Environment Ethics Commission Fine Arts Museum Fire Department Health Service System Homelessness and Supportive Housing Services Human Resources Human Rights Commission Human Services Agency Juvenile Probation Mayor Municipal Transportation Agency Police Port Public Defender Public Health Public Library Public Safety *** Public Utilities Commission Recreation and Parks Rent Arbitration Board San Francisco Employees' Retirement System San Francisco Unified School District Sheriff Treasurer/Tax Collector Grand Total	4 0% 0% 0% 0% 0% 0% 2 0% 1% 0% 0% 1% 0% 0% 1 1% 0% 2 1% 1% 0% 1% 1% 1% 0% 1% 0% 1% 0											

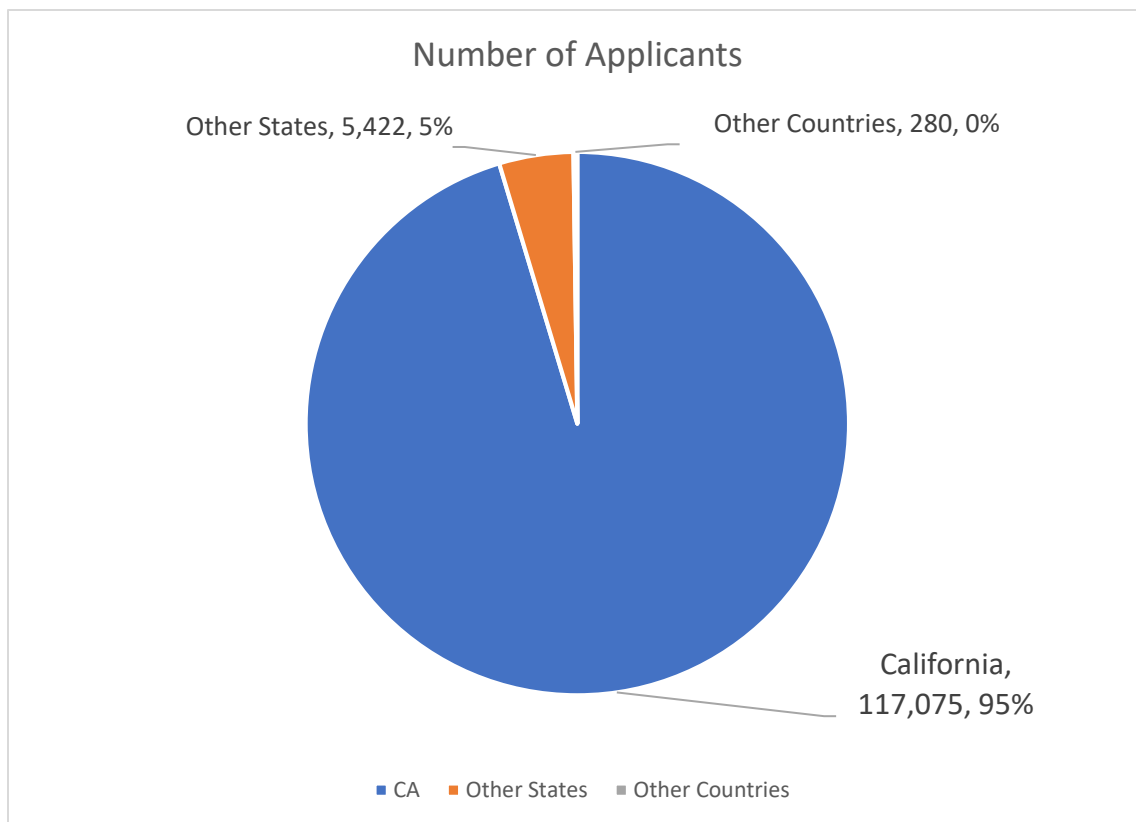
Exhibit 16a: Exempt Applicant Pool by Department

Exempt Applicant Ethnicity by Department Applications Received from January 1, 2019 to December 31, 2019												
Department	Am. Indian or Alaskan Native (not Hispanic)	Asian (except Filipino)	Black or African American (not of Hispanic origin)	Filipino	Hispanic or Latino	Multiracial	Native Hawaiian (not Hispanic)	Undeclared	White (not of Hispanic origin)	Total % of Aps	Total # of Aps	
% of Aps # of Aps	% of Aps # of Aps	% of Aps # of Aps	% of Aps # of Aps	% of Aps # of Aps	% of Aps # of Aps	% of Aps # of Aps	% of Aps # of Aps	% of Aps # of Aps	% of Aps # of Aps	% of Aps # of Aps	% of Aps # of Aps	
Academy of Sciences	10% 1	20% 2	20% 2	0% 0	20% 2	0% 0	0% 0	10% 1	20% 2	100% 10	937	
Access to City Employment Program	2% 16	12% 111	30% 284	5% 50	18% 165	4% 33	0% 0	5% 46	25% 230	100% 100	937	
Administrative Services *	1% 12	26% 545	21% 428	10% 197	15% 301	5% 102	1% 30	6% 122	16% 327	100% 100	2064	
Department of Technology	1% 8	30% 384	12% 154	8% 104	14% 146	2% 27	0% 6	8% 105	27% 341	100% 100	1275	
General Services Agency	0% 3	28% 377	10% 65	6% 37	11% 72	3% 22	0% 1	9% 57	32% 208	100% 100	642	
San Francisco Public Works	1% 13	34% 742	18% 402	8% 171	13% 275	2% 44	1% 11	7% 159	16% 358	100% 100	2175	
Adult Probation	0% 1	17% 51	26% 80	4% 11	26% 81	3% 10	0% 0	7% 20	17% 53	100% 100	307	
Airport - San Francisco International	0% 15	34% 1515	15% 673	9% 422	15% 659	3% 112	1% 33	6% 274	17% 751	100% 100	4454	
Arts Commission	0% 0	23% 170	11% 83	5% 38	12% 87	5% 35	0% 0	9% 65	35% 255	100% 100	733	
Asian Art Museum	0% 0	25% 2	13% 1	0% 0	13% 1	25% 2	0% 0	0% 0	25% 2	100% 100	8	
Assessor-Recorder's Office	0% 2	46% 258	8% 43	8% 47	6% 34	2% 12	1% 3	9% 52	19% 105	100% 100	556	
Board Of Supervisors	0% 2	20% 83	15% 61	7% 29	16% 66	7% 29	0% 2	7% 29	27% 110	100% 100	411	
Building Inspection	0% 0	45% 39	12% 10	7% 6	9% 8	1% 1	0% 0	8% 7	17% 15	100% 100	86	
Child Support Services	1% 1	22% 31	20% 27	17% 24	20% 28	0% 0	0% 0	7% 9	13% 18	100% 100	138	
Children and Families Commission	0% 0	0% 0	50% 1	0% 0	0% 0	0% 0	0% 0	0% 0	50% 1	100% 100	2	
Children Youth and Families	0% 0	29% 39	24% 32	4% 5	14% 18	4% 5	2% 2	8% 10	17% 22	100% 100	133	
City Attorney	0% 1	19% 43	15% 34	5% 12	16% 35	3% 6	0% 0	12% 26	29% 65	100% 100	222	
City Planning	1% 6	28% 298	7% 81	5% 52	14% 147	1% 9	0% 1	10% 103	36% 385	100% 100	1082	
Community College District	1% 1	17% 27	15% 24	10% 15	22% 34	4% 6	1% 2	13% 21	17% 27	100% 100	157	
Controller	0% 5	46% 498	9% 99	8% 82	8% 83	2% 18	0% 1	8% 88	20% 212	100% 100	1086	
Department of Elections	0% 8	26% 879	21% 717	11% 379	16% 533	4% 119	1% 29	5% 177	15% 519	100% 100	3360	
Department of Emergency Management	0% 0	8% 7	16% 14	3% 3	7% 6	2% 2	0% 0	5% 4	58% 50	100% 100	86	
Department of Police Accountability	2% 3	10% 5	23% 12	6% 3	12% 6	0% 0	0% 0	10% 5	38% 20	100% 100	52	
District Attorney	0% 3	14% 156	17% 189	4% 42	20% 214	5% 50	0% 4	9% 96	31% 332	100% 100	1086	
Economic and Workforce Development	1% 5	26% 158	20% 117	7% 41	13% 79	2% 11	0% 1	8% 50	23% 136	100% 100	598	
Environment	1% 5	18% 148	8% 68	5% 40	14% 114	4% 31	0% 4	9% 69	41% 330	100% 100	809	
Ethics Commission	0% 0	0% 0	0% 0	0% 0	0% 0	0% 0	0% 0	100% 1	0% 1	100% 100	1	
Fine Arts Museum	1% 4	15% 118	31% 243	12% 96	13% 99	3% 21	1% 10	7% 53	18% 137	100% 100	781	
Fire Department	0% 1	23% 64	9% 26	7% 19	10% 29	3% 8	0% 0	8% 23	39% 107	100% 100	277	
Health Service System	1% 4	28% 142	13% 68	7% 37	13% 65	4% 21	1% 3	7% 37	25% 127	100% 100	504	
Homelessness and Supportive Housing Services	1% 12	22% 356	23% 375	6% 100	13% 204	1% 20	0% 3	9% 139	25% 405	100% 100	1614	
Human Resources	0% 8	29% 559	19% 361	9% 184	14% 276	3% 54	1% 13	7% 139	18% 353	100% 100	1947	
Human Rights Commission	0% 9	18% 9	14% 7	0% 0	26% 13	0% 0	0% 0	8% 4	34% 17	100% 100	50	
Human Services Agency	1% 36	24% 996	26% 1087	8% 341	18% 728	3% 107	1% 53	6% 257	12% 506	100% 100	4111	
Juvenile Probation	0% 1	32% 75	16% 37	11% 25	15% 35	1% 3	0% 2	7% 17	18% 41	100% 100	233	
Mayor	0% 7	23% 387	24% 400	5% 91	13% 212	3% 53	1% 13	7% 123	23% 380	100% 100	1663	
Municipal Transportation Agency	1% 18	31% 1005	18% 579	6% 210	11% 373	3% 97	1% 23	7% 215	23% 378	100% 100	3278	
Police	0% 3	23% 164	15% 107	6% 43	17% 123	4% 31	1% 5	7% 48	26% 187	100% 100	711	
Port	0% 0	20% 67	14% 47	7% 23	17% 57	2% 6	0% 1	7% 25	34% 115	100% 100	341	
Public Defender	0% 0	15% 3	15% 3	0% 0	25% 5	5% 1	0% 0	5% 1	35% 7	100% 100	20	
Public Health	1% 48	28% 2251	19% 1537	11% 884	14% 1124	2% 138	0% 32	7% 575	19% 1590	100% 100	8179	
Public Library	1% 5	23% 81	12% 42	7% 26	13% 47	3% 10	0% 0	10% 34	31% 108	100% 100	353	
Public Utilities Commission	1% 46	32% 1948	14% 882	7% 456	13% 821	3% 155	1% 43	8% 465	22% 1359	100% 100	6175	
Recreation and Parks	1% 17	17% 528	19% 574	5% 143	17% 524	5% 152	1% 29	8% 239	28% 871	100% 100	3077	
Rent Arbitration Board	0% 0	26% 18	12% 8	1% 1	12% 8	0% 0	3% 2	7% 5	39% 27	100% 100	69	
San Francisco Employees' Retirement System	1% 1	18% 18	9% 9	4% 4	11% 11	2% 2	0% 0	14% 14	41% 41	100% 100	100	
San Francisco Unified School District	1% 6	35% 370	12% 125	5% 57	13% 139	1% 15	0% 4	9% 94	23% 246	100% 100	1056	
Sheriff	1% 1	21% 42	14% 27	6% 11	10% 20	7% 13	1% 1	8% 16	34% 67	100% 100	198	
Status of Women	0% 0	13% 6	7% 3	0% 0	13% 6	11% 5	0% 0	4% 2	51% 23	100% 100	45	
Treasurer/Tax Collector	0% 0	32% 112	15% 51	9% 32	12% 43	5% 16	0% 1	6% 21	20% 69	100% 100	345	
War Memorial	0% 0	25% 4	0% 0	19% 3	13% 2	6% 1	0% 0	13% 2	25% 4	100% 100	16	
Grand Total	1% 327	27% 15691	18% 10299	8% 4596	14% 8158	3% 1614	1% 365	7% 4144	22% 12419	100% 100	57613	
* Administrative Services an umbrella agency for certain other departments, including Department of Technology, General Services Agency and San Francisco Public Works.												
**Citywide is a designation DHR uses for examinations and exempt recruitments on behalf of multiple departments.												
*** Public Safety is the umbrella for recruitments of sworn officers in the Fire, Police, and Sheriff departments.												
Ethnicity data are self-reported by each applicant at the time of application. Effective May 10, 2019, applicants could select Native Hawaiian or Pacific Islander and Multiracial in addition to the other categories above.												
Total # of applicants above may reflect individuals who have applied for multiple recruitments.												

Exhibit 17: Number of Applicants

2019 Residency Data of Applicants

Row Labels	Sum # of Applicants	% of Applicants
California *	117075	95%
Other Countries	280	2%
Other States	5422	5%
Grand Total	122,777	100%



Disclaimers:

- Residency data are self-reported by each applicant at the time of application.
- Other States included the 49 States plus the District of Columbia.
- Other Countries included all residency choices outside of the United States.
- Total # of applicants above may reflect individuals who have applied for multiple recruitments.

*The current applicant tracking system does not allow us to generate reports by city. DHR will need to pull data for San Francisco manually.

G. Analysis of Diversity in Targeted Classifications

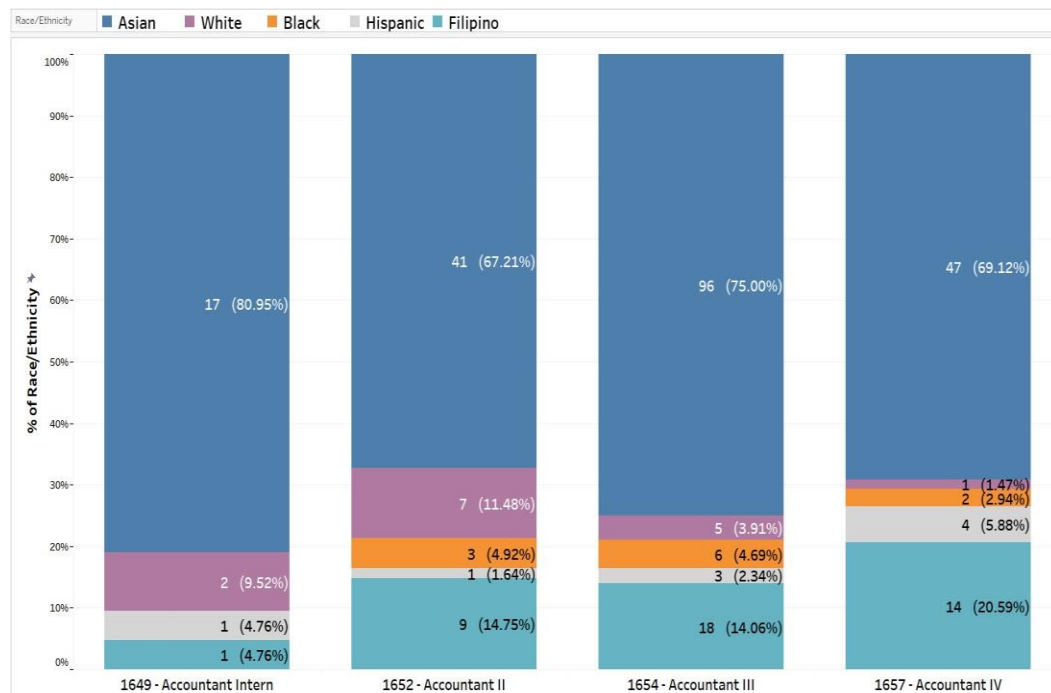
DHR's newly formed Diversity Recruitment Team (DRT) has begun to identify and examine classifications facing diversity challenges. The team interviewed over 25 city departments with the goal of identifying which classifications have recruitment challenges and which have notable diversity disparities. Using workforce demographic data, the DRT is beginning to understand whether a particular recruitment challenge was also accompanied by a diversity disparity in the classification.

Data on these classifications was pulled from multiple platforms, including DHR's workforce demographics data via People and Pay and Job Aps, and qualitative data retrieved via City Departmental interviews. Data included the gender and ethnic makeup of employees, class specifications including minimum qualifications, concerns regarding where diversity decreased in the course of the hiring process, hard to fill classifications, succession and attrition, and general information on the diversity of applicant pools. The DRT is focusing on citywide classifications because they have a larger number of positions and impact multiple city departments.

Below we provide examples of some of the research the DRT has begun. Identifying where diversity challenges exist allows the team to begin to modernize and diversify City recruitment efforts through Marketing, Branding, and Social Media.

1. Accounting Internship

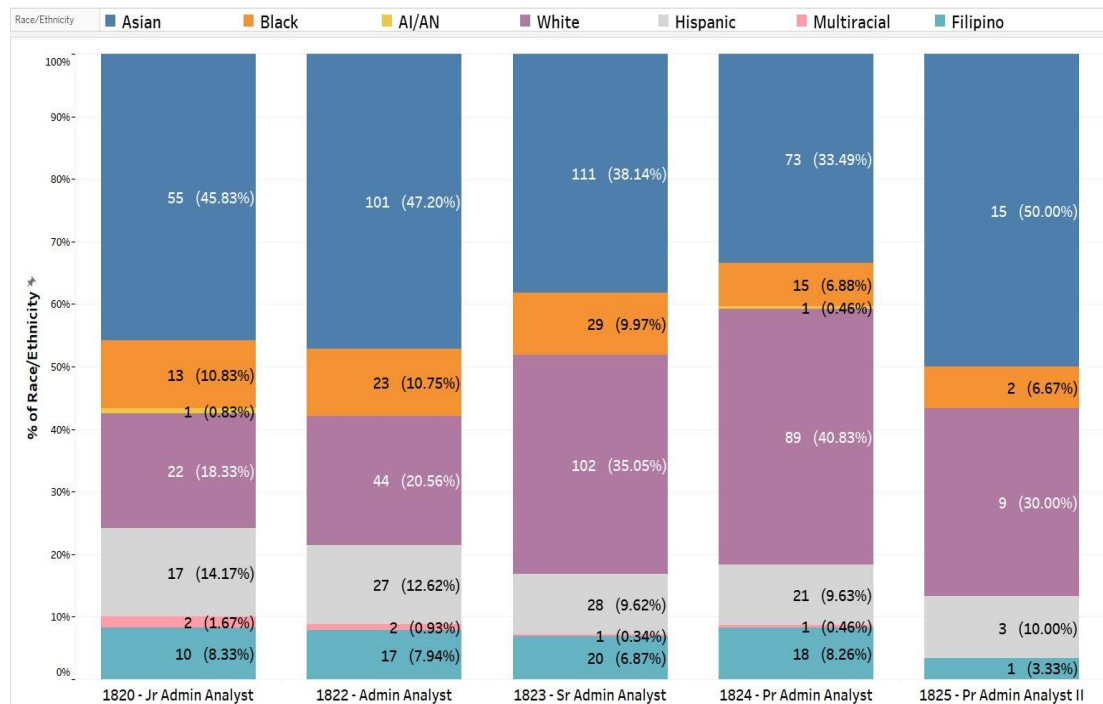
The Accounting Series lacks racial diversity in its employees. In FY 19-20, the entry-level, pipeline 1649 Accounting Internship had no Black employees, and only one (1) Hispanic employee. Additionally, Asian and Filipino employees combined make up at least 80% of those employed in all Accountant classifications. Over thirty (30) City departments utilize the Accountant Series, and over 300 Accountants & Accountant Interns are employed throughout the City. Diversifying the Accounting Internship is the initial focus our efforts to increase representation across the series.



2. Administrative Analyst Series (182X series)

The 182X classification has a diverse pool of applicants. However, we find that diversity drops as employees move up into higher classifications in the series, especially for Filipino and Black employees. Over forty (40) City departments utilize the 182X Administrative Analyst Series, and over 900 administrative analysts are employed across the City.

Based on analysis of the data and recent interviews with departments, this classification examination was noted as difficult and challenging for current employees to pass. Within the FY 18-19 recruitment for the 1820 classification, only 20% of Black applicants who met the minimum qualifications successfully made it onto the eligible list, compared to over 63% of Asian applicants. In addition, most of the positions have a wide range of special conditions attached such as a background clearance requirement, driver license, language, or a certain level of administrative or oversight experience. These special conditions sometimes seem to be a barrier for current employees in some ethnic groups to successfully promote into higher administrative analyst positions.



a. Guidance for Using Workforce Tools

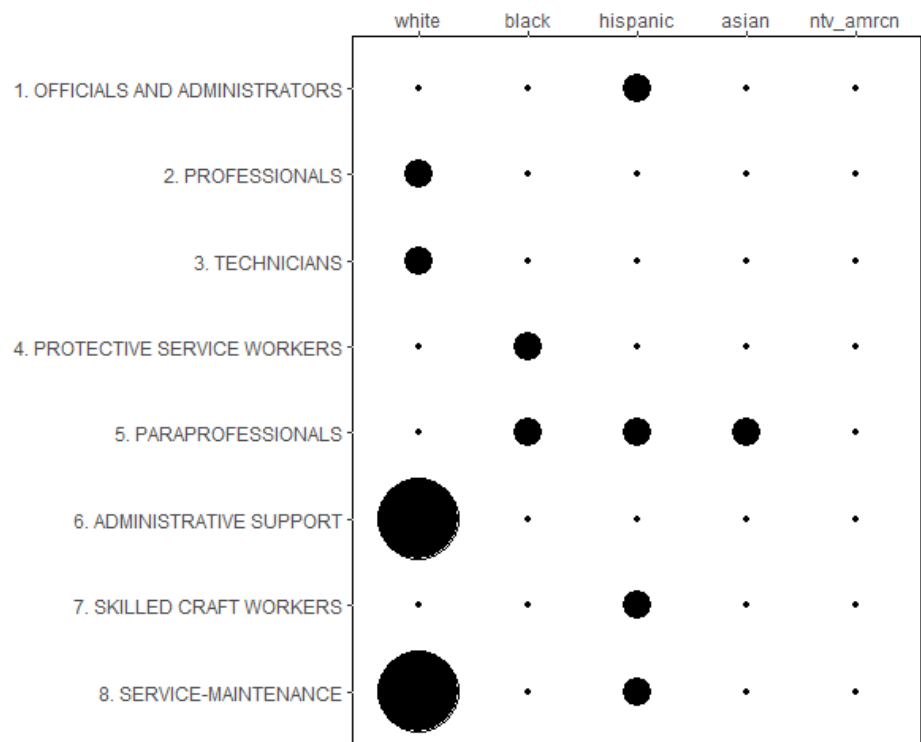
DHR recently developed a series of online demographic tools, two of which provide department-specific filters and can be helpful in compiling departments' future Racial Equity Action Plans as required by the City Administrative Code. While most of these tools are convenient ways to identify citywide racial demographic trends (such as for new hires, promotions, average salary, and appointment type), two of the tools are especially helpful for departments in that they provide department-specific employment filters. The "Race/Ethnicity and Department"¹⁶ tab allows users to filter by a specific department and observe the overall racial makeup of the department across the most recent five years of data. Similarly, DHR's "Corrective Action and Discipline by Race/Ethnicity and Gender" data¹⁷ allows the largest departments (AIR, HSA, DPH, DPW, PUC, and MTA) to identify disparities by comparing their overall racial demographics with the racial demographics of their corrective and disciplinary actions.

In addition, the attached utilization analysis identifies the degree to which departments may have underrepresentation of particular races within specific occupational categories. The analysis compares the racial composition of each department with the broader pool of employed individuals within the 11 counties where City employees reside. Utilizing data from the City's EEO-4 reports, job groups are summarized by eight occupational categories: (1) officials and administrators, (2) professionals, (3) technicians, (4) protective service workers, (5) paraprofessionals, (6) administrative support, (7) skilled craft workers, and (8) service-maintenance. The example below provides the results of this analysis for the Airport and similar charts for all departments can be found in Appendix A. Larger dots represent a greater degree to which a department's workforce is underrepresented compared to the broader labor pool, whereas the smaller dots represent areas in which the department's workforce is roughly equal to or exceeds the labor pool.¹⁸

¹⁶ <https://sfdhr.org/race-ethnicity-and-department>

¹⁷ <https://sfdhr.org/sites/default/files/documents/Resources/Corrective-Action-and-Discipline-by-Race-Ethnicity-and-Gender.pdf>

Exhibit 18: Example Utilization Analysis for the San Francisco International Airport—Larger Dots Associated with Greater Underrepresentation Compared to Available Labor Market



Departments should consider the degree to which groups of employees are underrepresented when they develop their forthcoming Racial Equity Action Plans. While it is illegal to consider race when making an employment decision, departments may engage in practices to make the hiring process and workplace more accommodating and welcoming to those groups of employees who are underrepresented. In the example above, the Airport may focus on employing more Hispanic officials and administrators through efforts such as:

- Engaging in targeted outreach for job openings to organizations of Hispanic officials and administrators,
- Reviewing minimum qualifications, special conditions, or other job requirements that may disproportionately disqualify Hispanic applicants,
- Identifying and implementing examination instruments which reduce potential adverse impacts in the testing process,
- Developing Hispanic affinity groups within the department,
- Assessing factors that contribute to the termination (voluntary and involuntary) of Hispanic employees.

The Office of Racial Equity and the Department of Human Resources have resources to assist departments with recruitment and engagement strategies to improve the diversity of their workforces.

Using DHR's disciplinary action report, departments can compare the distribution of their disciplinary actions by racial category to the racial makeup of their departments. As mentioned before, the publicly posted report includes department-specific disciplinary actions by racial category for the Airport, Human Services Agency, Department of Public Health, Public Works, the Public Utilities Commission, and the San Francisco Municipal Transportation Agency. These departments should reference page 3 of the report and assess whether the distribution of disciplinary actions by race exceeds 120% of the racial distribution of employees. If so, these departments should consider efforts to reduce disciplinary actions for these groups of employees and detail these efforts within their racial equity action plans. For example, a department that may appear to overissue disciplinary actions to certain races of employees may assess how similar infractions tend to be addressed for other racial groups and communicate these findings to relevant supervisors issuing the disciplinary actions.

The Department of Human Resources, the Office of Racial Equity, and the Office of the Controller will develop additional tools for departments to utilize in compiling their Racial Equity Action Plans over the next six months. These tools will provide department-specific assessments of employment actions by race, including hiring, promotion, termination, and compensation decisions.

III. INTERVENTIONS AND RECOMMENDATIONS

To reach our goal of a more diverse and inclusive workforce a strategic plan incorporating recruitment, retention, and growth opportunities is necessary. The above data illustrates the need for focused strategies to keep and improve the diversity of our City workforce. Although the percentage change in racial demographics was not severe from 2015 to 2019, it does seem static. With more interventions and a focus on diversity and inclusion we expect to see higher percentages of representation and retention of diverse employees. Below are some of the ways DHR has increased the positive workspace for employees and opportunities for employee growth.

A. Discipline and Corrective Actions

In order to improve the consistency and fairness of the administration of discipline and corrective actions, DHR has taken the following steps:

1. Citywide standardized training for HR staff who serve as Skelly (disciplinary) Officers.
2. Issuance of checklists and additional training for HR representatives on discipline, performance improvement plans, probationary extensions, and probationary releases.
3. Integration of these checklists and topics of fairness in the performance planning process into DHR's 24 Plus training for new supervisors and managers citywide.
4. The MTA is implementing department wide standardized discipline procedures. This means that all employees will receive the same level of discipline for a particular policy violation. MTA is also developing a policy that outlines the Management / HR review process for all discipline for rule violations. MTA will train Employee Labor Relations staff and managers on all new policy and new procedures.
5. Similarly, in the Human Services Agency, there will be a scaled back discipline process that will require managers and supervisors to complete a checklist before discipline is issued to an employee to identify what level of discipline is appropriate, if any.

The Department of Public Health will collaborate with DHR to begin performing discipline audits to determine where there are disparities in discipline and why.

The availability and publication of data on racial disparities in discipline and corrective actions has already made an impact. In the second six-month reporting period, we saw a reduction in the disparity of these actions. While the racial disparities still continue, the direction is promising.

B. Recruitment

1. Hiring Modernization Project- Job Recruitment Page

DHR is in the process of acquiring a new applicant tracking system (ATS) that will provide widely expanded functionality to advertise recruitments on multiple platforms giving us the ability to reach a much broader audience and different communities. The ATS system will also have the capability to target potential applicants with similar qualifications for a single recruitment. A more user-friendly, accessible, and modern application platform will help us engage a diverse pool of applicants as well as maintain better data about where our applicants are coming from and what types of communications and advertisements are most successful.

2. Minimum Qualifications

In the past several years DHR has undertaken a systematic review of the minimum qualifications of the City's more than 1,100 classifications. The intent of the project is to eliminate any minimum qualifications that may present unnecessary barriers to employment and unfairly screen out qualified candidates who could be successful employees. DHR's Classification and Compensation Division has revised the minimum qualifications of hundreds of job classifications in order to broaden access to City employment. A recent notable example is the revision of the IT series qualifications, which now allows for complete substitutions of experience for secondary education. This will help adjust for society's inequity of educational opportunities and allow more diverse candidates to compete for and promote into higher-level City jobs. DHR will continue to evaluate minimum qualifications on an ongoing basis.

3. Diversity Recruitment Team

In order to increase diversity and generate a more robust applicant pool for City recruitments, In fall 2019, DHR established a Diversity Recruitment Team (DRT) that works in partnership with City departments to conduct outreach for targeted classifications through social media, and collaboration with educational institutions, professional organizations, and community-based organizations to reach a diverse audience of jobseekers. The Diversity Recruitment team's scope of work includes the following:

a) Analysis of Diversity in Targeted Classifications

The DRT conducts data analysis of workforce demographic data to identify classifications facing diversity challenges in which there is underrepresentation of groups based on gender and/or race. The DRT pulls data from multiple platforms including DHR's workforce demographics data via People and Pay and Job Aps and is focusing on

citywide classifications that have a larger number of positions and impact multiple city departments.

b) Conducting City Departmental Interviews and Establishing Diversity Recruitment Partnerships

To better understand the City's diversity recruitment challenges, the DRT met with over 25 City Departments throughout Quarter 2 and 3 of the 2019-20 fiscal year to discuss recruitment needs regarding specific classifications, identify best practices, and discuss how DHR can support outreach efforts to diverse candidates.. These initial meetings have set the groundwork for partnership between DHR and the HR teams at each department to support diversity recruitment efforts. The DRT will continue to build on these partnerships by supporting departments with the development of diversity outreach plans and promoting recruitments for specific classifications through social media and through DHR's participation in career fairs and other community outreach opportunities.

c) Convening New Citywide Diversity Recruitment Workgroup

To promote coordination and sharing of best practices between recruiters and HR analysts To better understand the City's diversity recruitment challenges, the DRT met with over 25 City Departments throughout Quarter 2 and 3 of the 2019-20 fiscal year to discuss recruitment needs regarding specific classifications, identify best practices, and discuss how DHR can support outreach efforts to diverse candidates.. These initial meetings have set the groundwork for partnership between DHR and the HR teams at each department to support diversity recruitment efforts. The DRT will continue to build on these partnerships by supporting departments with the development of diversity outreach plans and promoting recruitments for specific classifications through social media and through DHR's participation in career fairs and other community outreach opportunities.

To promote coordination and sharing of best practices between recruiters and HR analysts across multiple City departments, the DRT launched a citywide Diversity Recruitment Workgroup. Over thirty (30) City departments were represented during the first workgroup meeting held on January 28, 2020. The workgroup provides participants with the opportunity to establish citywide connections with other HR professionals who are diligently working to increase City workforce diversity. Participants are interested in cross-departmental collaboration to increase the diversity in applicant pools, find candidates for classifications facing employee shortages (e.g., Crafts & Trades), and develop effective recruitment strategies. The Diversity Recruitment Team will continue to support citywide collaboration by hosting monthly Diversity Recruitment Workgroup meetings.

d) Creating New Diversity Recruitment Toolkit

The Toolkit is intended to be one of many resources available for HR professionals, supervisors and hiring managers to consult as they seek to maximize their outreach efforts and build an inclusive and diverse workforce. The Toolkit will contain resources to help guide and support HR Professionals in the outreach, recruitment, and hiring of highly qualified diverse employees. Additionally, the Toolkit will aim to provide a consistent framework for City departments to utilize throughout the recruitment process. The Toolkit will include an extensive list of community partners, educational institutions, and professional organizations that will be important sources of diverse candidates. This Toolkit will be available at the beginning of the 2020-21 fiscal year.

e) DHR Community Outreach and Social Media Efforts

To promote City employment in general, to increase the City and County of San Francisco's presence in the community and direct interactions with a diversity of jobseekers, and to help department partners promote specific job vacancies, the DHR Diversity Recruitment team is actively participating in numerous community outreach events including career fairs. They are also meeting with community organizations and Neighborhood Access Points to share information about City job opportunities. They plan to begin conducting educational workshops for community members to help them understand how to navigate through the City's job application process. Additionally, the Diversity Recruitment team is working in partnership with DHR's Communication & Policy team to develop a coordinated communication strategy using different social media platforms including LinkedIn and Facebook.

f) Partnering with ApprenticeshipSF Program to Recruit for Skilled Crafts and Trades

On February 13, 2020, DHR's ApprenticeshipSF Program co-sponsored a major citywide recruitment fair at Port 50 for skilled crafts and trades. The DRT was instrumental in conducting outreach for this career fair, including reaching out to schools and youth-serving organizations. Youth and adult job seekers who attended the career fair learned about future careers in the skilled crafts and trades. They also learned about the City's paid apprenticeship and career pathway opportunities. The City's "learn while you earn" apprenticeship opportunities provide diverse individuals with career pathway opportunities into City employment.

The City's recently negotiated labor agreements with the building trades unions specifically promote diversity in apprenticeship, including allowing the City to review apprenticeship examinations to ensure they are job-related and non-discriminatory, and to partner with the unions to ensure a recruitment process that focuses on diversity. The City's ApprenticeshipSF staff and DRT will continue to collaborate with the unions, with

community based organizations, and with local educational agencies to promote the City's apprenticeship opportunities to diverse audiences, and ensure there are fair hiring practices that will help diversity the City's skilled crafts and trades classifications.

g) Access to City Employment (ACE) Program

The DRT leads the City's ACE Program. The ACE program provides an alternative path to permanent City employment for people with disabilities. It allows qualified disabled individuals to enter City service without going through the competitive hiring process. Employees in the program have a one-year evaluation period with three performance appraisals. After successful completion of that one-year period, the employee will receive permanent civil service status in the classification. The ACE program is an important strategy to diversify the City's workforce.

C. Employee Retention

DHR's Workforce Development team offers trainings and team building workshops that support positive workplace culture within City departments. DHR also provides a five week 24-PLUS management workshop for supervisors and managers providing them with the tools necessary to lead a large or small team. These workshops build leadership skills and promote positive relationship building between employees which increases employee engagement, satisfaction, and retention. These workshops include the following efforts.

1. Respect in the Workplace Training

At the beginning of the 2019 calendar year, DHR partnered with SFMTA to design and deliver a new Respect in the Workplace training. Designed to help the agency with organizational culture change and promote its core value of respect, DHR trainers delivered 18 sessions of this new training to over 500 SFMTA supervisors, managers and employees over the 2019 calendar year. DHR's Respect in the Workplace training is now available to other City departments who similarly want to provide foundational training to employees on respect in the workplace. This training teaches employees at all levels that how we interact, listen, and learn to understand each other, are all necessary for a more inclusive workplace. This Spring, DHR will begin a new organizational culture change initiative in partnership with the Department of Public Health and the Human Services Agency. This initiative will involve providing the Respect in the Workplace trainings broadly across both organizations.

2. Managing Implicit Bias: Creating Awareness and Building Inclusion

To promote a diverse, equitable, and inclusive community across City departments, DHR continues to offer a full day, in-person implicit bias training to hundreds of City employees across all levels of the organization. DHR continues to partner with the San Francisco Police

Department to deliver implicit bias training to all levels of its workforce, including sworn officers and civilian staff. Additionally, in the Fall of 2019, DHR delivered the implicit bias training to the City's department heads, including Mayor Breed. In this training, participants understand the effects of bias on decision-making, and learn tools to create inclusive workplace environments. Since DHR's inception of the implicit bias training in 2016, DHR has trained almost 5,000 City employees.

3. Communicating Across Cultures

Participants in this session will explore various strategies to enhance communication and build a culture of trust. This is particularly helpful in breaking down barriers between employees of different racial and ethnic backgrounds. DHR successfully piloted this training in 2017 and 2018 to teams at Laguna Honda Hospital, and now offers this workshop to intact teams of any requesting City department. In Spring 2020, DHR will launch a Train the Trainer program to share this program with Learning and Development colleagues at other City departments. Our goal is to build the capacity of numerous trainers across the City to deliver this training to their own departments, in order to scale cross cultural communication training across the City.

D. Employee Promotions

DHR is exploring a number of promising practices to support more equitable access to promotive opportunities. These include:

Mentorship

One way to increase diversity in our workforce and in leadership roles is to improve mentoring opportunities for women and people of color. For mentorship programs to be successful, they must have buy-in by the entire leadership including the mentor. Both mentors and mentees must be supported and coached on how to build productive relationships that support the mission of the organization or department. DHR is identifying best practices for implementation of a mentorship program in San Francisco. A program such as this helps create a pathway for talented employees that do not always have the direct access to management that other groups may have.

Career Coaching

Career coaching empowers employees to make informed decisions about their trajectory in the workplace. Career coaching can be done at any level, career coaches can work with new employees as well as more established employees. Career coaches work in partnership with employees to provide direction, provide job applications or write cover letters or resumes. Career coaches assist with navigating career challenges, job application processes, and give advice about career opportunities. DHR is exploring the possibility of implementing a career coaching program for city employees. Implementation of this strategy will depend on funding that is available. This career coaching would augment DHR's current Growing Your Career training series. This training provides employees with an opportunity to reflect on their career goals, learn how to explore career opportunities within the City, and understand how to navigate the City's job application and exam processes.

Rotation of Acting Assignments

In the event of a long-term absence of a supervisor or manager, it has been practice in the past to appoint a single individual as the interim or acting appointment. DHR now recommends as a best practice that all qualified and interested employees have the opportunity to serve equal amounts of time in an acting role during long term absences or during the period prior to filling a permanent vacancy. This presents an opportunity for these individuals to gain the experience of serving in an acting role and to prove their capabilities to the hiring manager. This is a more fair and equitable approach to filling acting assignments, so that several qualified and interested employees get the chance to experience work at the promotional level.

Stretch Assignments

One way that individuals develop and have the opportunity to demonstrate their skills and potential is by taking on stretch assignments. A stretch assignment is a project or task given to employees which is within their abilities, but may be something they have not done before, perhaps beyond their current knowledge or skills level. Stretch assignments challenge employees by giving them the opportunity to work with support beyond the comfort zone of their normal work duties in order to learn new skills. One promising practice is to ensure that stretch assignments rotate between employees and to ensure that they have support from management to succeed.

IV. PHASE II STRATEGY / RECOMMENDATIONS

Scope of Phase II analysis

As a follow-up to the Phase I report publication, DHR will work with the Office of Racial Equity and the Office of the Controller to produce a Phase II analysis. The key distinction from the Phase I and Phase II analyses is that Phase II will provide a more granular review of the intersection of department-specific employment decisions and race as well as gender, namely for hiring, promotions, professional development, terminations, and compensation decisions for all City employees. There are two ways that the Phase II analysis will be more robust than that of Phase I – it will be based both on job classes and employment decision ratios:

- *Analysis Based on Job Classes* – Phase I examines Citywide employment outcomes, with the exception of the utilization analysis that looks at occupational categories by department. Phase II will be more robust by evaluating all employment decisions at the job class level for similarly situated employee groupings, based on shared knowledge, skills, and availability. Such an approach will allow the City to identify disparate employment outcomes within various levels of an organization. (For example, identifying that a particular racial group is less likely to be promoted into higher-level positions than lower-level positions within a department.) Although work will be ongoing to identify appropriate employee groupings, job families will likely serve as a starting point for this approach.
- *Employment Decision Ratios*. Rather than identifying the racial composition of the outcomes of employment decisions, Phase II will assess the likelihood that race may have played a role in the employment decisions themselves. The analysis will achieve this by considering the number of applicants, by race, for openings within a job class versus the racial composition of individuals that are ultimately successful in being hired. In comparing these applicant-to-hire ratios, by race, statistical techniques will be utilized to identify whether the hire ratios are statistically significant at the 5% significance level. Similar analyses will be completed for promotion and termination (involuntary vs. voluntary) decisions by utilizing pools of individuals eligible for promotions and terminations.

Key elements of the Phase II analysis will include:

- *Report Summary*. A written description of the various employment issues identified within the analysis, the need for further assessments at the department level, and a reminder of the resources available through ORE/DHR for addressing disparities.
- *Assessment of Employment Outcomes by Job Class*. By department, a disparate impact analysis comparing hire/promotion/termination ratios of job classes at the 5% level of

significance. Qualitative accounts of job seekers'/employees' experiences will also be included within the analysis.

- *Compensation Analysis.* By department, an ordinary least squares (OLS) regression analysis of job classes comparing readily available employment data likely to impact pay (tenure with City, time on job, etc.) and race. Results of the analysis for those job classes in which race is a statistically significant factor (at the 5% level of significance) and amounts to a greater than \$1,000 per-year income disparity will be published within the Phase II workforce report.
- *Disciplinary Actions, Probationary Releases, and Medical Separations.* Similar to the employment outcomes analyses, disciplinary actions, probationary releases, and medical separations will be assessed at the department level by racial category, then compared to the broader racial makeup of the department. In instances where these ratios (on the basis of race) differ at the 5% level of significance, the results will be published as part of the Phase II analysis and departments will be asked to conduct further investigations.

These statistically significant job-class disparities will be shared with departments for consideration and development of their Racial Equity Action Plans. Additional guidance will be provided to departments at that time.

Should departments have any questions throughout this process, they shall consult the Office of Racial Equity or the Department of Human Resources.

- Diversity Recruitment During Quarters 3 and 4 of this fiscal year and continuing in the new fiscal year, the Diversity Recruitment Team will continue to meet with City Departments and community stakeholders, conduct Civil Service Application workshops in the community, launch a Diversity Recruitment website, build a Diversity Recruitment Toolkit, and hold Citywide Diversity Recruitment Workgroups for City HR Professionals to collaborate and discuss best practices around hiring diverse and qualified candidates.

Additional data analysis is necessary to better understand where diversity decreases in the hiring process. This process includes identifying if diversity exists in applicant pools, identifying if diversity decreases when determining if minimum qualifications are met, during the examination phase, at the interview phase, and analyzing those who were hired. This thorough analysis would provide insight on necessary interventions.

The DRT will pilot some interventions by focusing on a few targeted classifications where diversity is lacking, including the accountant entry level position, the Administrative Analyst series, and the Medical Exam Assistant entry level position. These interventions include collaborating with the Controller's Office to engage in comprehensive outreach efforts to numerous Bay Area colleges to promote the accountant internship to diverse students studying foundational finance courses. For the Administrative Analyst series, the DRT will collaborate with the DHR Employment Services Division to analyze the exam and determine where diversity drops off in the hiring and selection process. For the Medical Exams Assistant, the DRT will explore the development of career pathways that would attract job seekers to this entry level position by linking this position to other opportunities such as firefighter and EMT.

Hiring Modernization Project- Applicant Tracking System

1. Testing

The Department of Human Resources leads the citywide effort in developing selection instruments that are valid and culturally sensitive. Valid instruments reflect industry best practice, and cultural sensitivity can lead to a more diverse workforce.

2. Administrative Analyst Series (182X series)

The Diversity Recruitment Team will focus their efforts on the internal hiring process for this class; look at where the diversity drops and working with RAS Team to review the examination and talking to Departmental Subject Matter Experts on a possible Pilot Management Program to support the current employees and provide equal access to move up in the series.

The Diversity Recruitment Team will focus their outreach on recruiting for a diverse pool of qualified candidates for the 182X series with the hopes of increasing diversity along the series.

The Diversity Recruitment Team will work on a Recruitment Toolkit, including discussing best practices for hiring, ways to recruit for diverse and qualified candidates. In addition, activity recognizing City departments best practices is essential.

3. Registered Nurses (2320)

The Diversity Recruitment team will work in collaboration with DHR's Employment Services Division to address these challenges. Diversity Recruitment Team is currently working on a Recruitment Tool Kit specifically for this classification. The toolkit will include the best practices for recruiting, hiring and retaining nurses within Department of Public Health. In addition, it will list National and Professional Organizations where we can outreach and recruit. Job Boards (paid and free), as well as career events and conferences to attend. The

Diversity Recruitment Team will focus on recruiting specialized registered nurses in the Bay Area with the hopes of increasing the Hispanic and Black percentages in this class.

4. Accounting Internship

The Diversity Recruitment team plans to create a specialized Recruitment Toolkit for the Accountant classification. The Recruitment Toolkit will include a list of diverse job boards to post recruitments, national/professional organizations to send job leads, colleges/universities to post, agencies to outreach. The Diversity Recruitment Team will conduct outreach to high schools alongside the Controller's Office and encourage young students to look into an Accountant career. The Diversity Recruitment Team will conduct outreach to community colleges and SFUSD. The Diversity Recruitment Team plans to conduct outreach to CBO's that focus on assisting job seekers with a degree in Accounting. The Diversity Recruitment Team will look into the Top 10 undergraduate Accounting Programs in California. The Diversity Recruitment Team will collaborate effectively with the Office of the Controller and other City Departments that are working on this effort. The Diversity Recruitment Team will assist the Controller's office with outreach and marketing on DHR's social Media Accounts such as Facebook, Handshake and Twitter.

Conclusion

The San Francisco Department of Human Resources is uniquely positioned and committed to making a significant and positive difference in the lives of all City employees. Unfortunately, not all City employees have the same experiences in their role as public employees. It is our goal to identify those different experiences through both quantitative and qualitative data and implement interventions that will close the disparity gaps in corrective action and discipline, promotional opportunities, salaries and others.

Focusing on inclusion as well as diversity ensures that employees feel welcomed, understood, and respected in the workplace. Diversity with inclusion provides a healthy work environment leading to higher retention rates and better employee engagement. Identifying disparities in promotions, underrepresentation within classifications, better recruitment and employee engagement strategies are all central to the success of city government. We will focus on clearly identifying where the gaps are in these critical areas in Phase II of the 2020 annual workforce report and also focus on the interventions being implemented by the Department of Human Resources.

Across the country, cities are making a commitment to work towards racial equity and to right the wrongs that began at the inception of our country and which persist through the present day. The City is committed to breaking the chain of racial inequities and addressing the underlying causes of the inequities that exist. San Francisco has been at the forefront of many critical equity policies that have been replicated across the country, from the Fair Chance Ordinance and deidentification policies, to criminal justice reform, to the Access to City Employment Program, we have always championed the goal of a more equitable city. Achieving racial equity requires ongoing and persistent, daily practice and commitment from all employees, especially those in management.

Conducting further analysis and more importantly, implementing the interventions and recommendations in this report will undoubtedly be challenging, but it is necessary. San Francisco is a beacon of hope and held up as an example of diversity and inclusion for millions of people around the world. It is our duty to live up to that expectation.

V. Appendix A - Statistical Overview by Race, Ethnicity, and Gender

Summary of Workforce Demographics Last Updated on 3/5/20										
Employment Type/Action	Am. Ind.	Asian	Black	Filipino	Hispanic	Multi	White	Male	Female	Total / Average
Permanent Civil Service (PCS)	73.18%	79.89%	76.95%	84.98%	78.43%	38.37%	73.47%	80.75%	73.57%	77.62%
Permanent Exempt (PEX)	7.82%	6.03%	5.79%	3.27%	5.48%	15.10%	10.50%	5.96%	8.27%	6.97%
Temporary Exempt (TEX)	18.99%	14.08%	17.25%	11.74%	16.09%	46.53%	16.04%	13.29%	18.16%	15.42%
San Francisco Residency (1/1/15)	46.37%	57.45%	38.84%	25.87%	39.77%	61.90%	42.82%	41.05%	46.56%	43.44%
San Francisco Residency (1/1/20)	44.32%	56.43%	35.42%	25.39%	39.04%	55.68%	41.69%	40.15%	46.12%	42.75%
Difference	-2.05%	-1.02%	-3.42%	-0.48%	-0.73%	-6.22%	-1.13%	-0.90%	-0.44%	-0.69%
Average Hourly Wage	\$47.03	\$46.99	\$41.90	\$48.33	\$45.75	\$36.37	\$56.95	\$48.94	\$49.11	\$49.01
City Employment (7/1/15 - Percent)	0.54%	25.90%	15.82%	12.23%	14.38%	0.14%	30.99%	56.71%	43.29%	100.00%
City Employment (7/1/19 - Percent)	0.49%	27.92%	15.21%	11.33%	15.22%	0.67%	29.16%	56.40%	43.60%	100.00%
Difference (Percent)	-0.05%	2.02%	-0.61%	-0.90%	0.84%	0.53%	-1.83%	-0.31%	0.31%	-
City Employment (7/1/15 - Count)	179	8,650	5,283	4,084	4,803	46	10,348	18,937	14,456	33,393
City Employment (7/1/19 - Count)	180	10,259	5,588	4,163	5,591	245	10,714	20,722	16,018	36,740
Difference (Count)	1	1,609	305	79	788	199	366	1,785	1,562	3,347
New Hires	0.73%	25.54%	17.37%	8.47%	17.56%	2.59%	27.75%	50.80%	49.20%	4,134
Promotions	0.34%	31.47%	12.93%	9.25%	15.22%	0.61%	30.17%	53.00%	47.00%	2,615
Releases (Exempt)	0.79%	22.16%	21.73%	7.99%	15.32%	2.45%	29.57%	50.36%	49.64%	1,390
Resignations	0.41%	20.57%	16.54%	9.66%	13.52%	1.96%	37.34%	45.82%	54.18%	1,687
City - Corr. Action/Discip. (1/1/19 - 6/30/19) ¹	0.54%	19.14%	25.34%	7.28%	21.29%	1.08%	25.34%	61.46%	38.54%	371
City - Corr. Action/Discip. (7/1/19 - 12/31/19) ¹	0.65%	22.15%	20.52%	9.45%	20.85%	2.28%	24.10%	58.96%	41.04%	307
Difference	0.11%	3.01%	-4.82%	2.17%	-0.44%	1.20%	-1.24%	-2.50%	2.50%	-64
MTA - Corr. Action/Discip. (1/1/19 - 6/30/19)	1.56%	19.31%	51.40%	5.61%	11.53%	0.93%	9.66%	77.57%	22.43%	321
MTA - Corr. Action/Discip. (7/1/19 - 12/31/19)	0.81%	23.64%	50.10%	7.07%	11.92%	0.40%	6.06%	76.57%	23.43%	495
Difference	-0.75%	4.33%	-1.30%	1.46%	0.39%	-0.53%	-3.60%	-1.00%	1.00%	174
Available Workforce (2013) ²	0.42%	20.76%	4.66%	N/A	18.01%	2.95%	46.38%	53.14%	46.86%	5,068,828
Available Workforce (2018) ²	0.40%	21.01%	4.48%	N/A	18.55%	3.63%	43.10%	54.23%	45.77%	5,312,659
Difference	-0.02%	0.25%	-0.18%	N/A	0.54%	0.68%	-3.28%	1.09%	-1.09%	243,831

• Employment Type/Action as of 7/1/19 / FY18-19 unless noted otherwise.

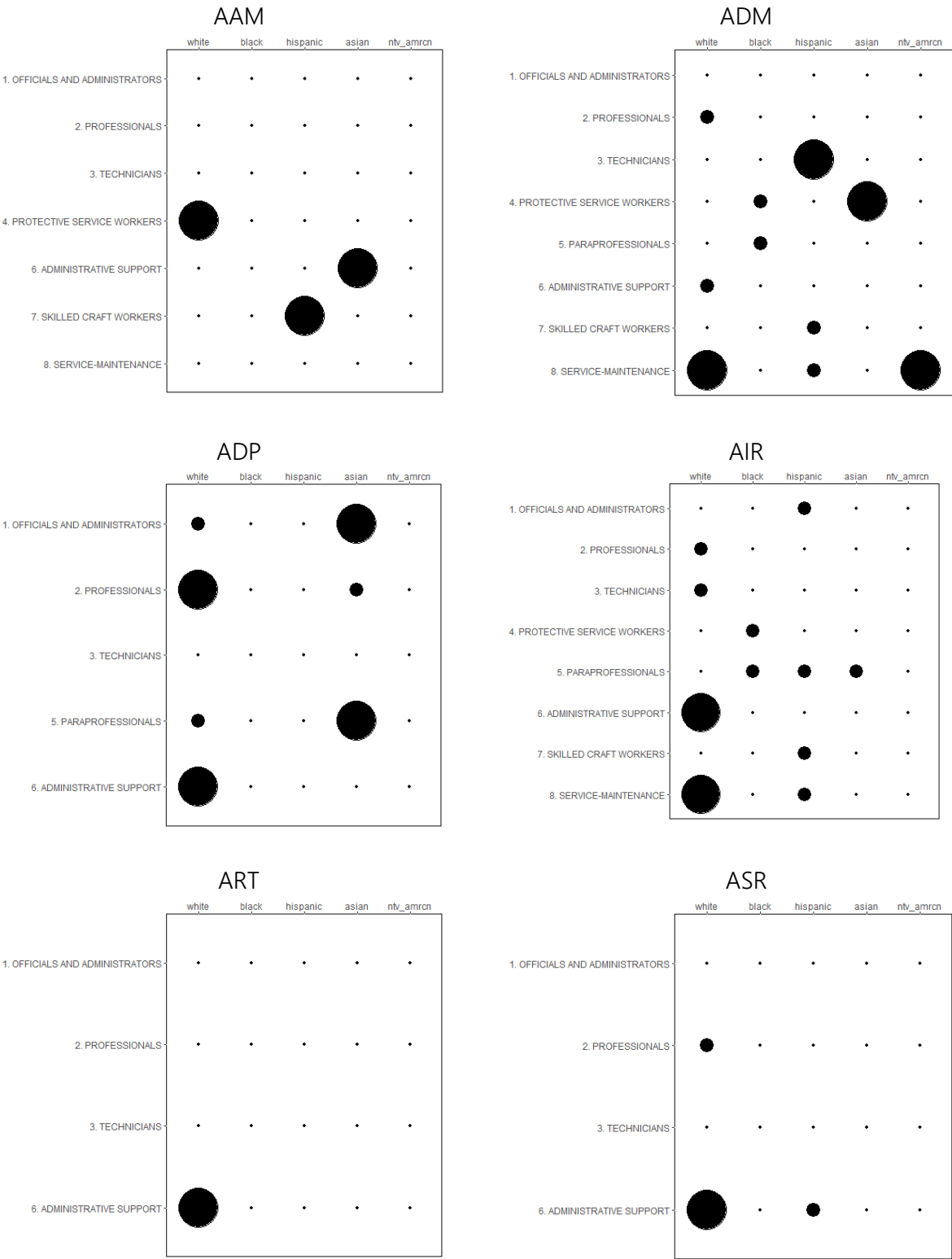
• Appointment Types and San Francisco Residency are percentages of the noted race/gender. City Employment, New Hires, Promotions, Releases (Exempt), Resignations, and Corr. Action/Discip. are percentages of the total.

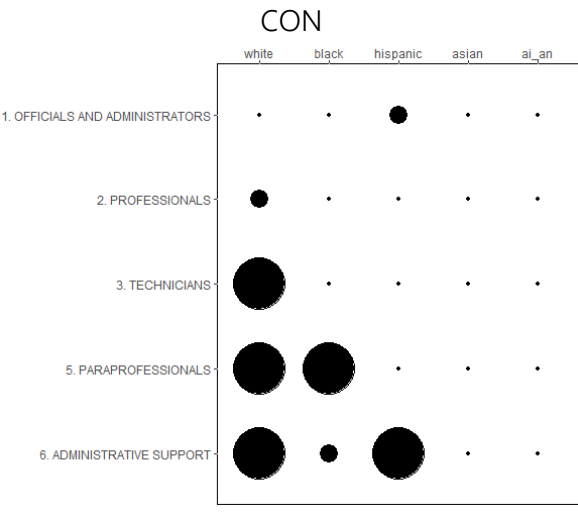
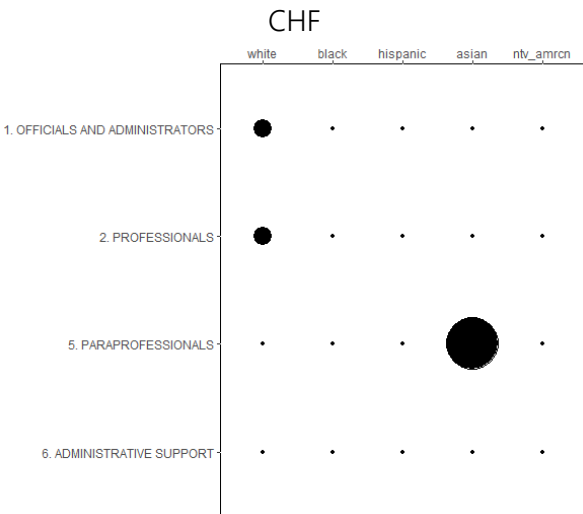
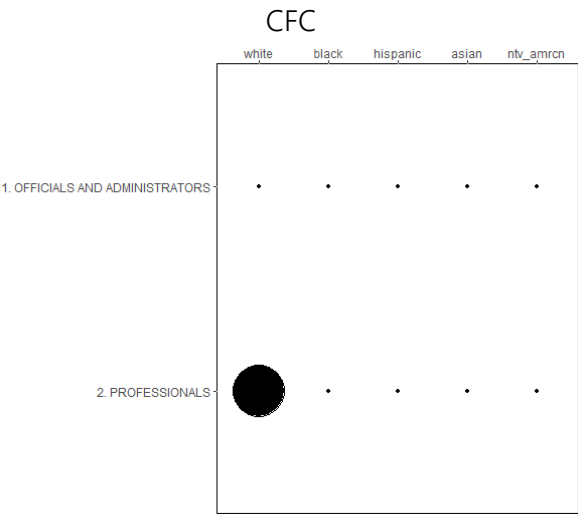
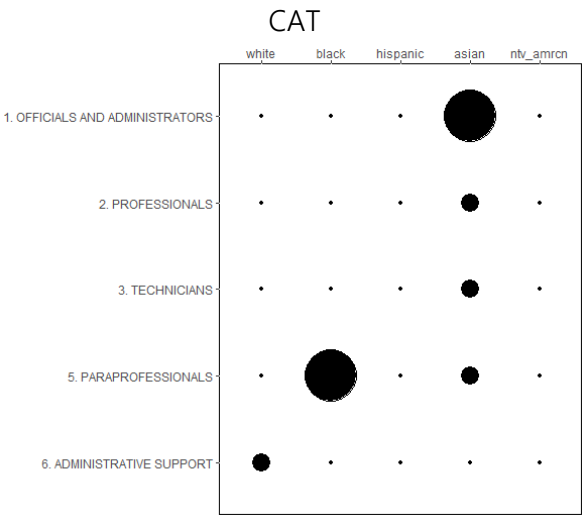
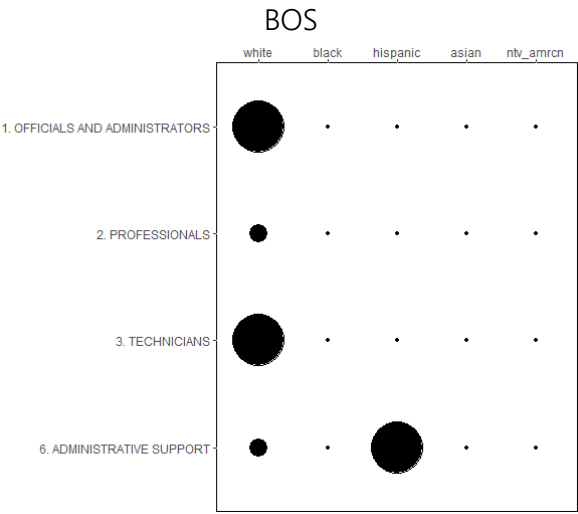
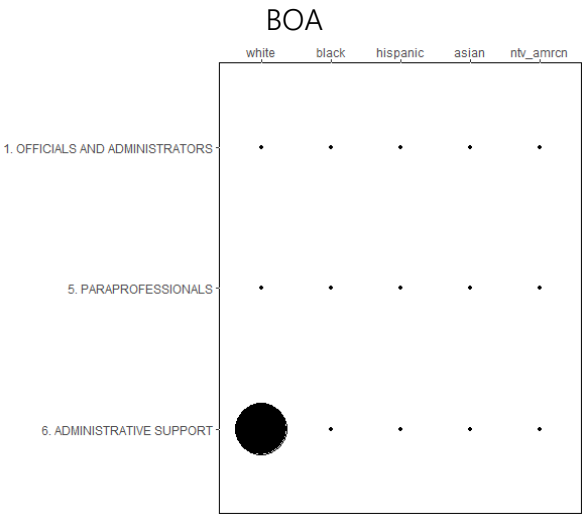
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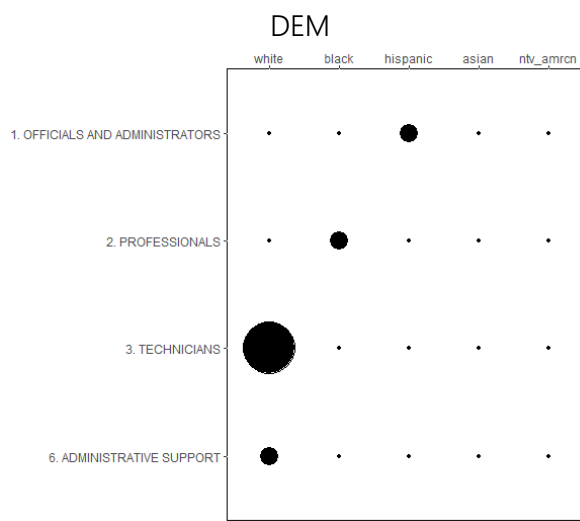
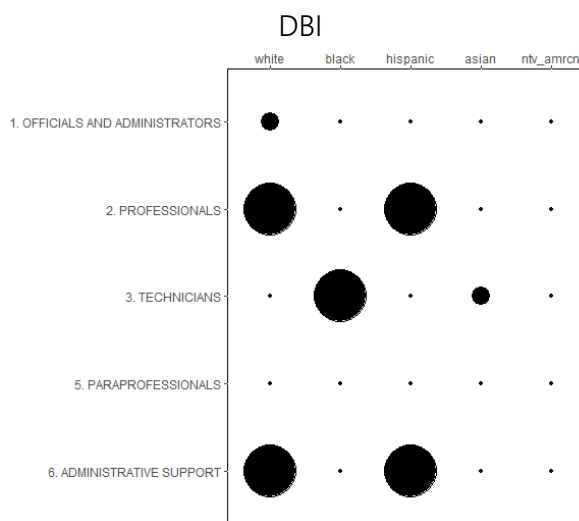
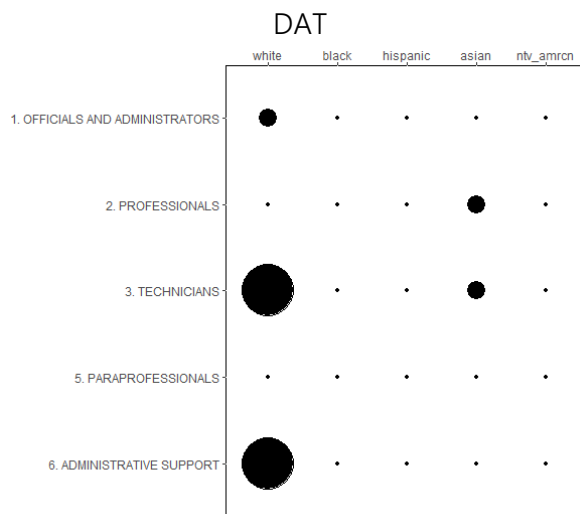
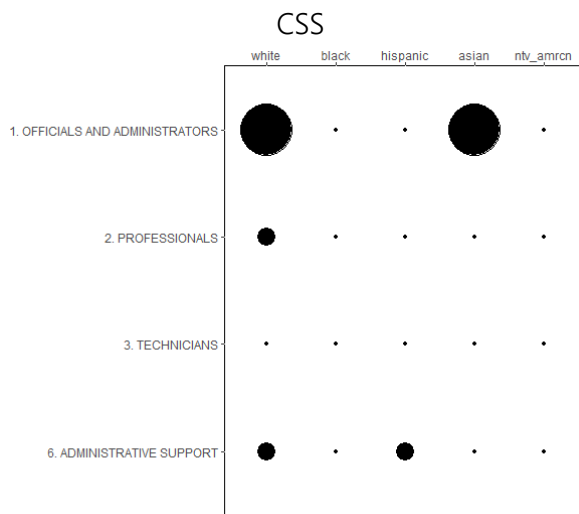
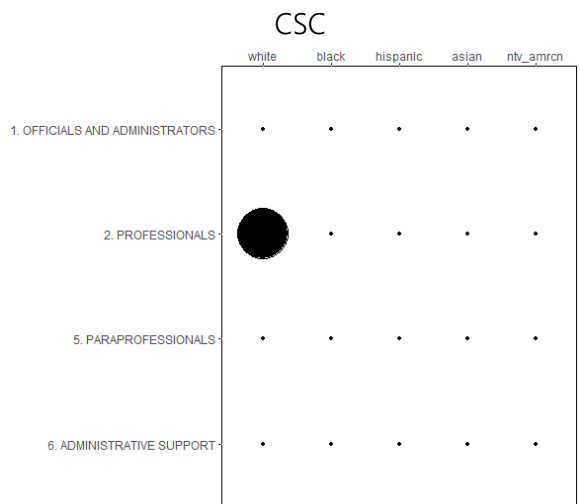
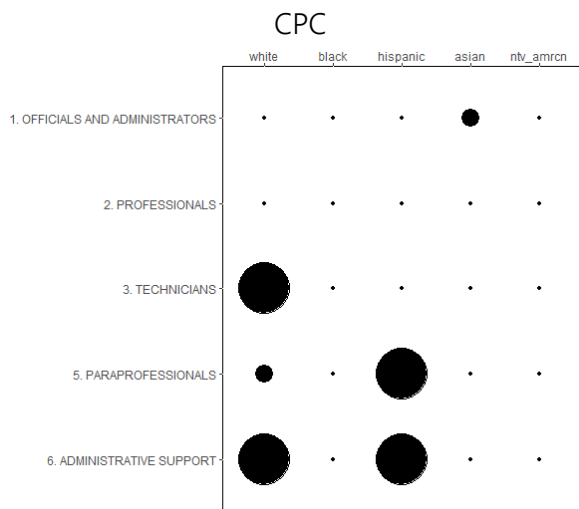
¹ Analysis excludes MTA.

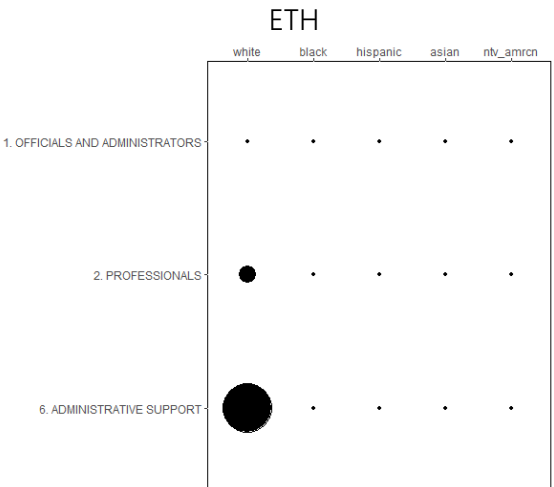
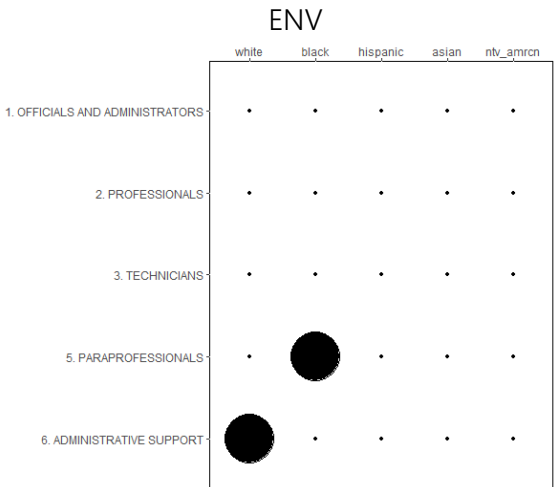
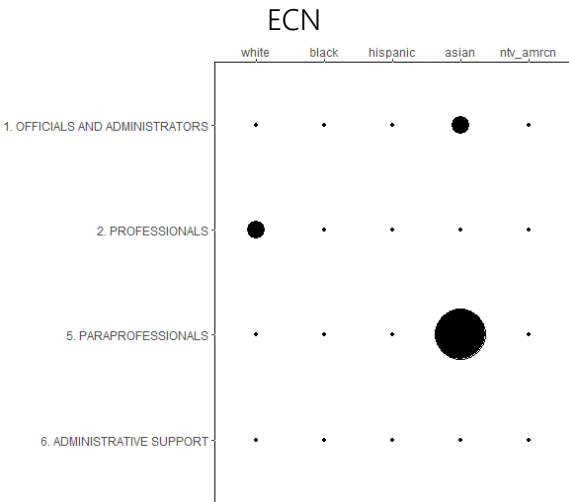
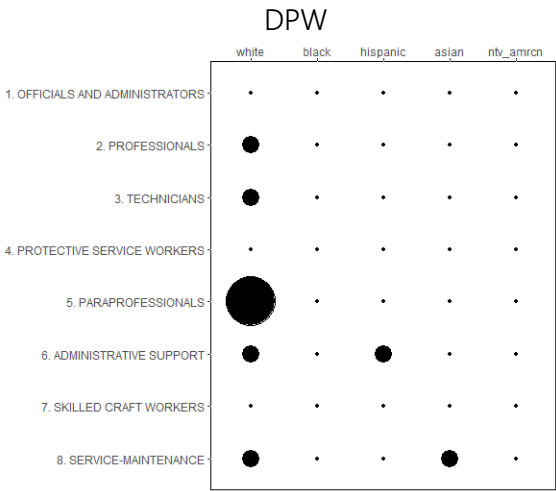
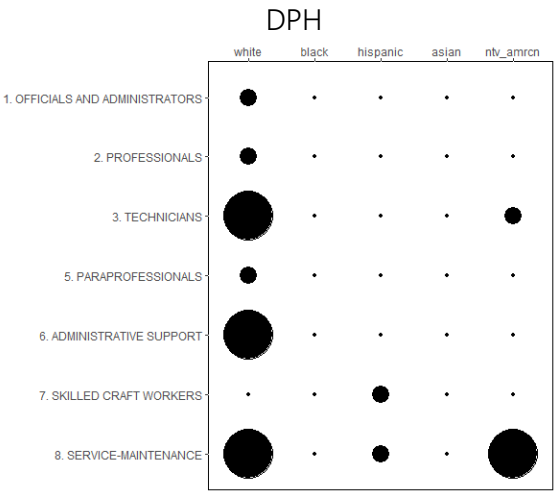
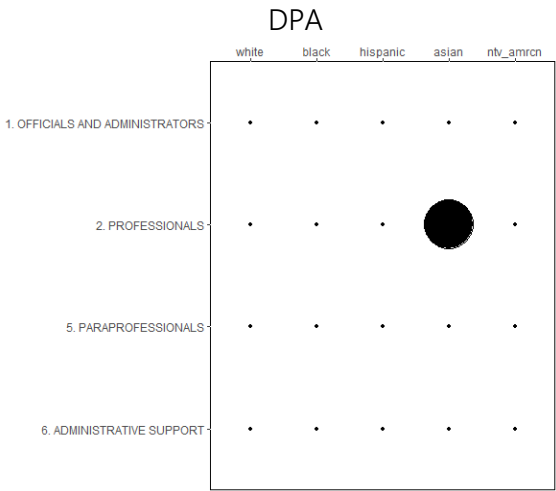
² Available Workforce is comprised of data for 10 Bay Area counties from the American Community Survey (ACS) 5 Year Estimate. Percentages are of total available workforce in Bay Area. ACS estimates include race/ethnicity categories not captured in City data. ACS combines Filipino data in Asian category.

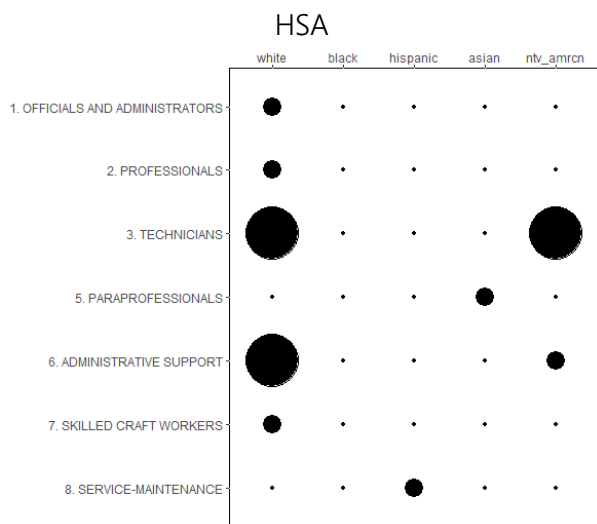
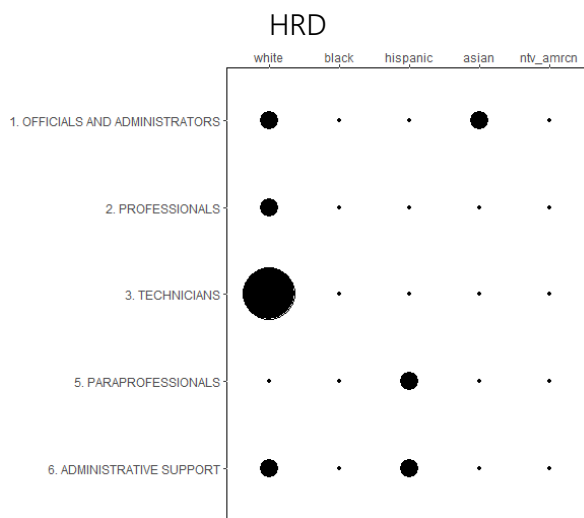
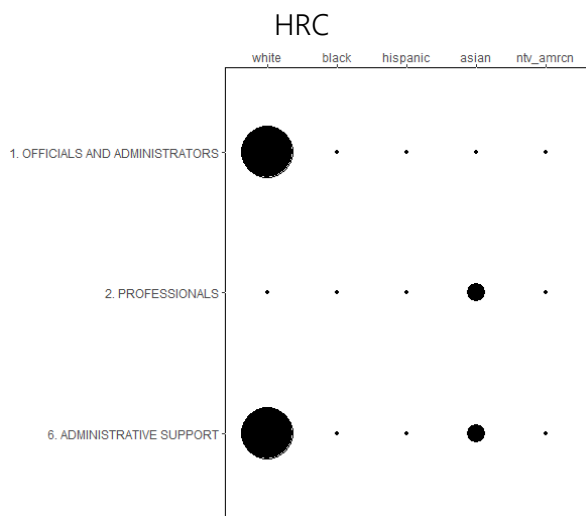
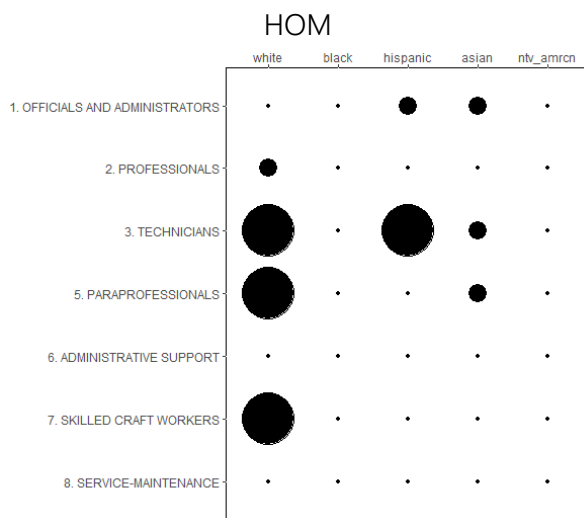
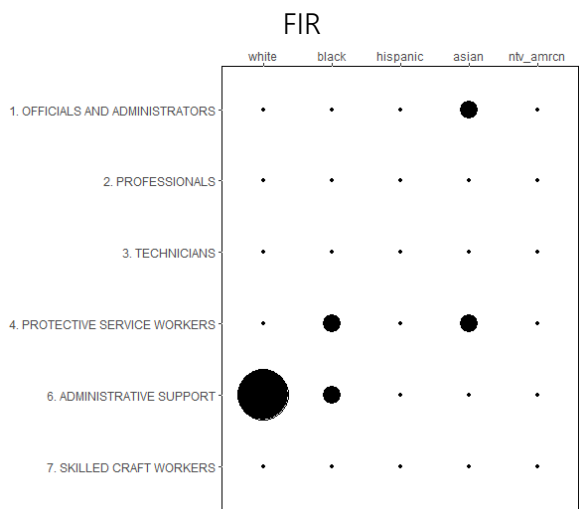
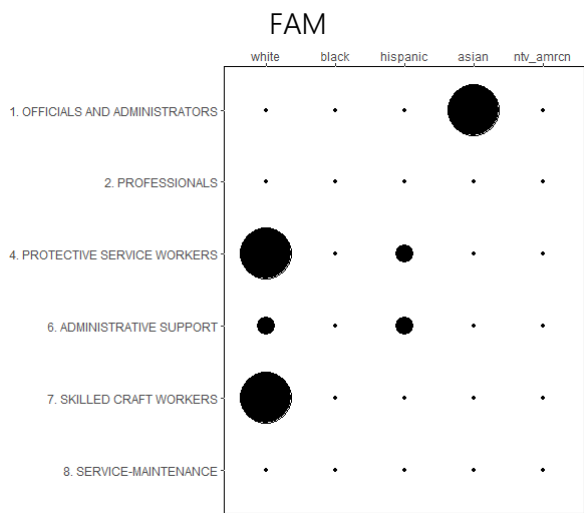
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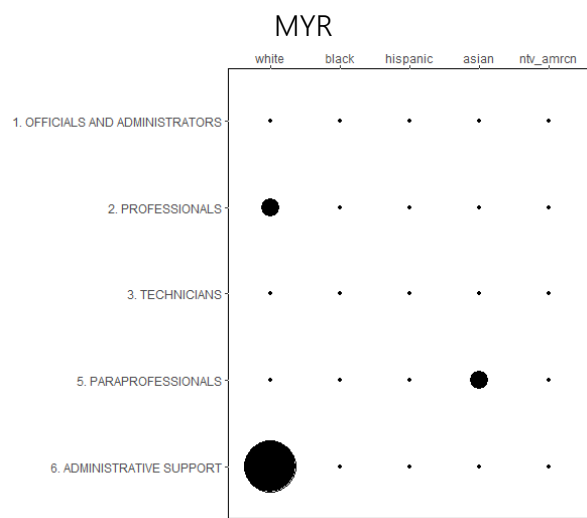
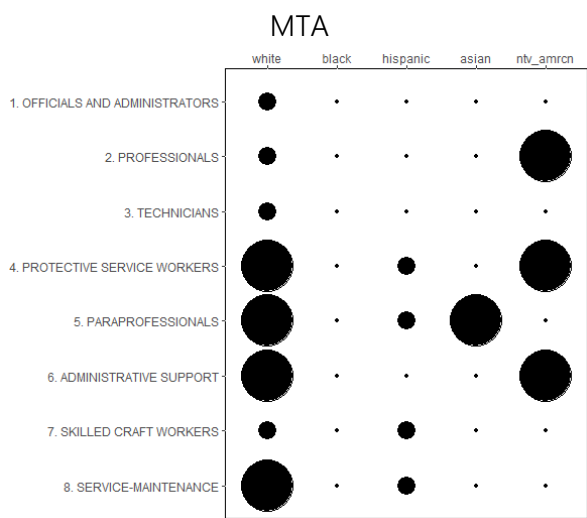
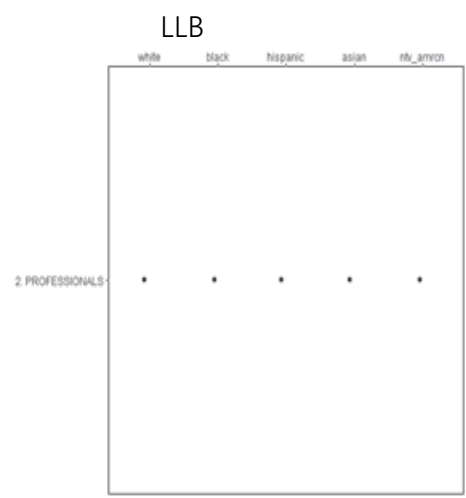
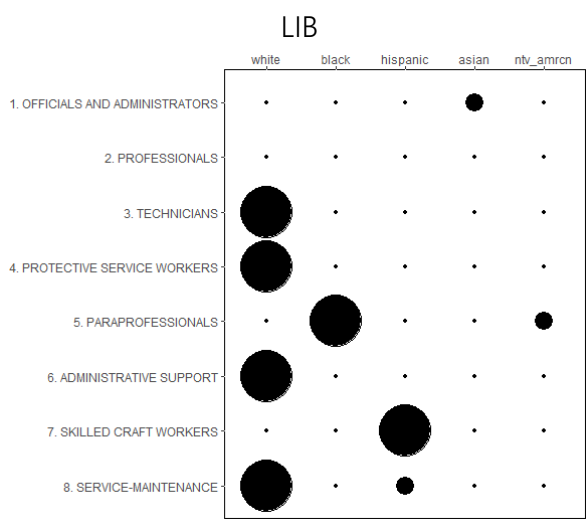
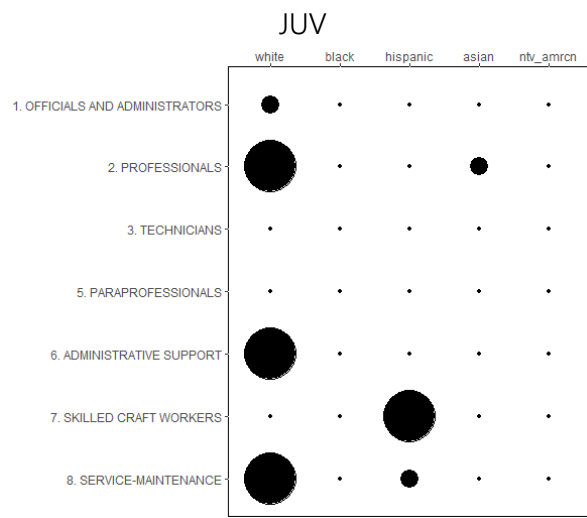
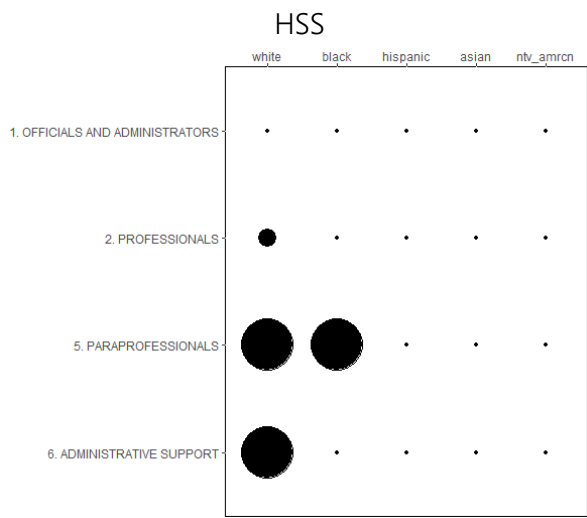






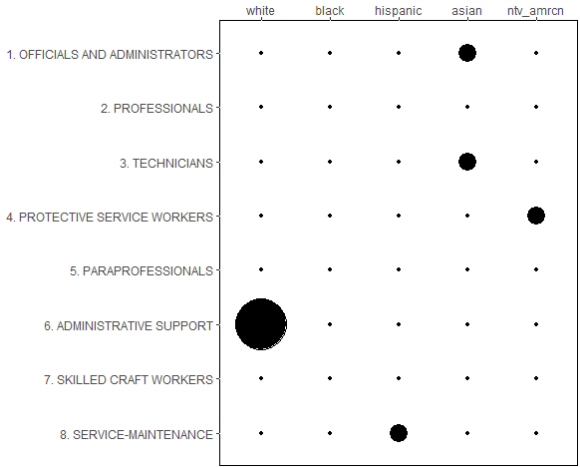
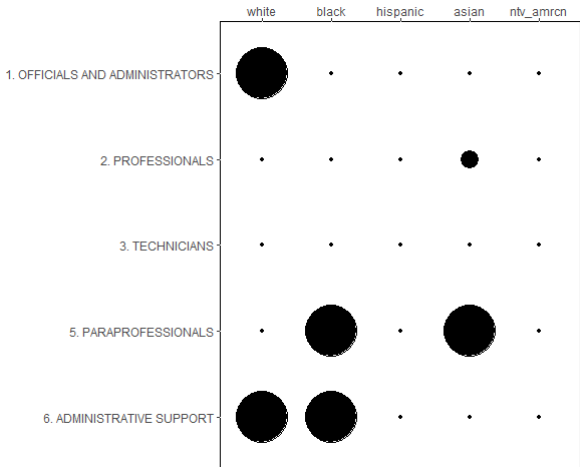




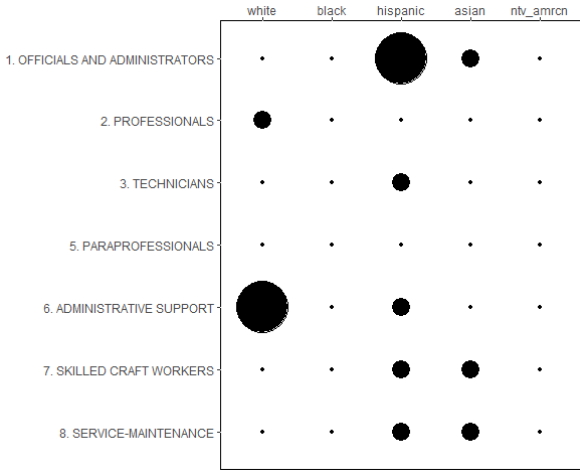


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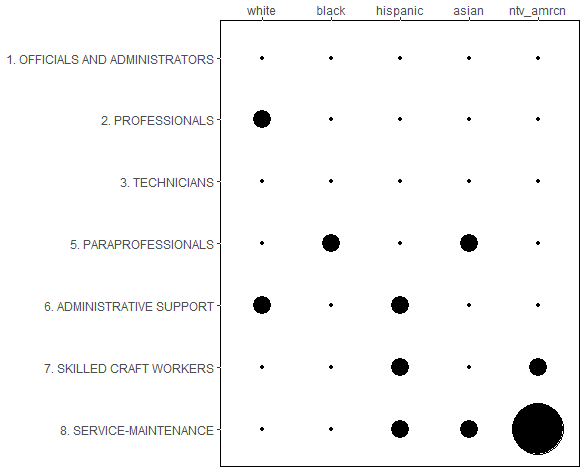
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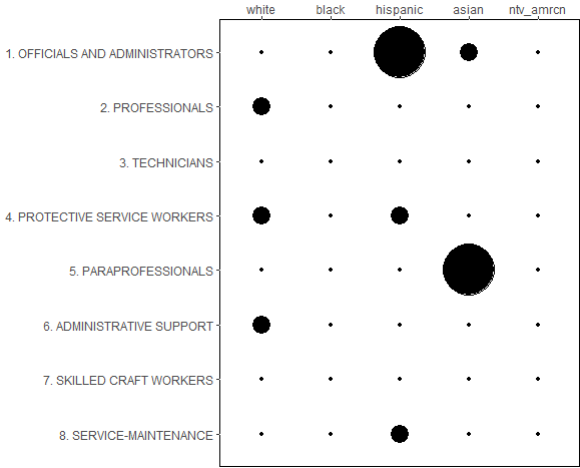
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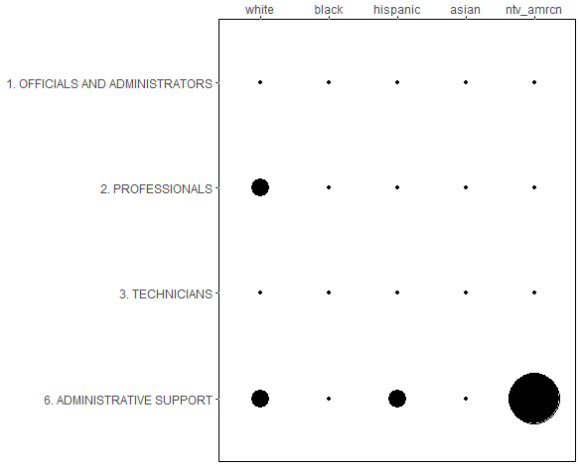
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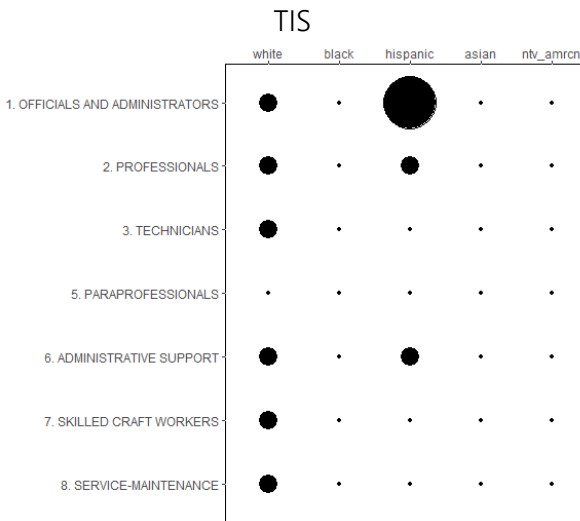
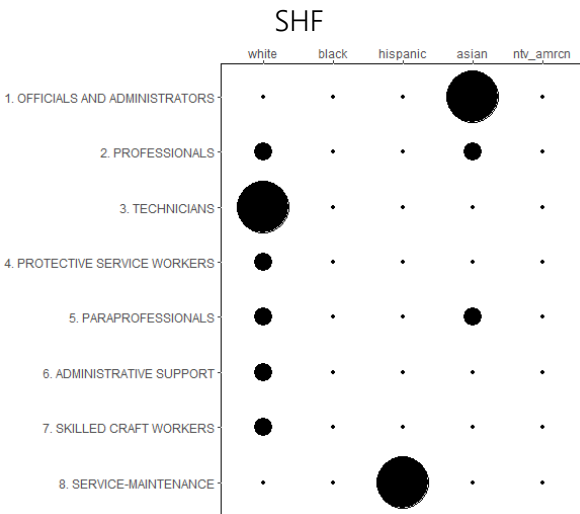
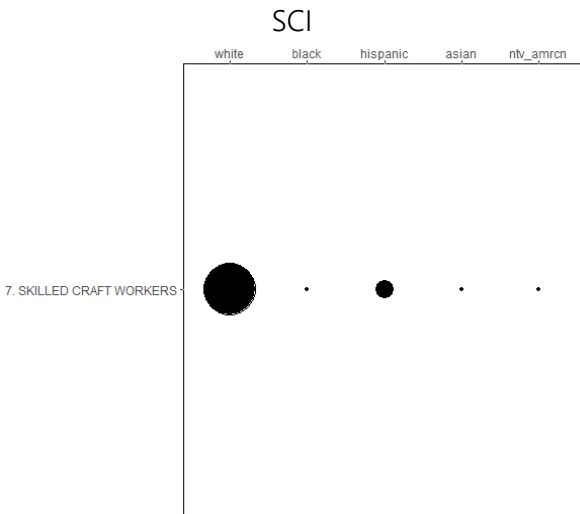
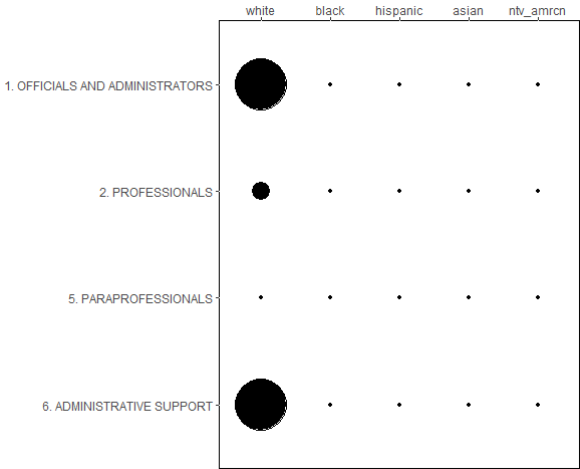
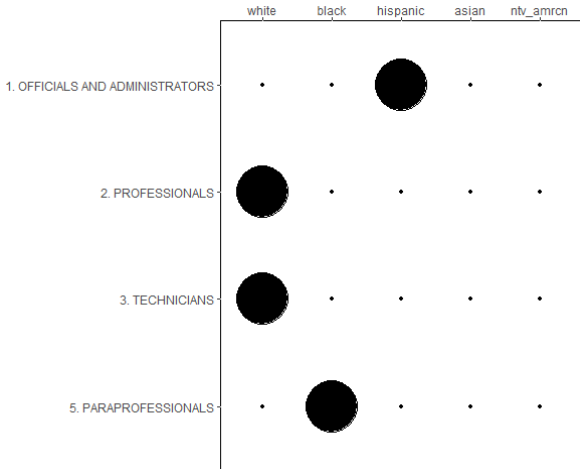


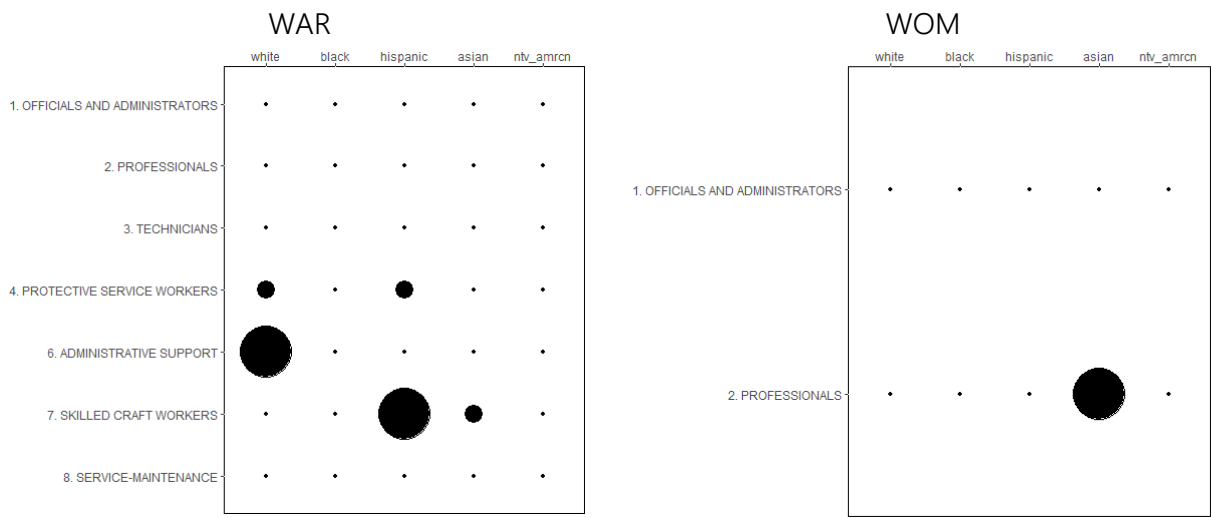
REG



RET

RNT





The smallest dots represent instances where the department’s utilization ratio of a particular racial class of employees is 80% or higher than the 11 Bay Area counties’ availability of workers within that occupational category, the medium dots represent employees that fall between 40-80% of the local availability, whereas the biggest dots represent instances in which the utilization falls below 40% of what would otherwise be expected from the local labor market availability.

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [Wong, Linda \(BOS\)](#)
Subject: FW: SFPUC Callso Scheduling Coordinator Services
Date: Friday, March 13, 2020 6:43:00 PM

From: Thomas Busse <tjbussesf@gmail.com>
Sent: Thursday, March 12, 2020 2:13 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>
Subject: SFPUC Callso Scheduling Coordinator Services

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Members of the Board of Supervisors:

I was reviewing the Board Packet for File 200111 regarding a ballooning contract with a third-party "scheduling coordination" service contract at the SFPUC, and I believe the SFPUC gave the board false and misleading information that could be used to benefit an interested third parties. The Budget and Legislative Analyst's own report also raises red-flags in regard to this contract, but I also believe the Analyst did not perform necessary due diligence at getting to the bottom of the issue in making a "pass" recommendation. What this contract actually does is hand over the city's Hetch Hetchy Operating account to APX, Inc., giving this third party corporation a blank check to draw on funds from the City's power enterprise to buy power from mysterious and undisclosed third parties at mysterious and undisclosed rates all shielded from any oversight because it's a private business. The result is Hetch Hetchy working capital is handed over to energy market operations and the City and County eats eats energy market losses of about \$32 million dollars a year. The City's income statement never show these losses as market losses, and when the city audits its accounts, it relies on the Hetch Hetchy enterprise audit. The scale of these unbooked market operations losses are both material and significant, and they can flip the value proposition of the City's public power initiatives. The cheap and fully capitalized Hetch Hetchy enterprise should be used to benefit the people of San Francisco. Instead, a "Man in the Middle" has popped up through a misleading contract modification under the feigned foolishness ("willful incompetence") of the SFPUC to short-sell public power to purchase more expensive power from third parties.

The SFPUC's presentation to the board states "Without contracting with a certified scheduling coordinator, the SFPUC will not be able to transmit power to its electric customers." This is simply not true. The SFPUC **LIED** to the Board.

Not on the table is any discussion of the SFPUC becoming certified with CalISO as a scheduling coordinator. This is the sensible and cheap approach (and one used by PG&E) because the folks in the Hetch Hetchy Power Enterprise really know their own power generation. How much does it

really cost to coordinate power schedules? Does the SFPUC know? Sunita Jones at the SFPUC said this data was "lost in a FAMIS conversion." How convenient. Have we heard that one before? Sunita Jones is the SFPUC employee who briefed the board with a lie, but when the Budget and Legislative Analyst performed its own research, the person they spoke to is Sunita Jones. Nothing to see here folks, it's just a \$142 million dollar contract modification on a \$5 million dollar contract and it's all hard mathy stuff that got lost and involves CalISO and they've fixed that whole Enron thing.

To put this in perspective, in 2014, the SFPUC extended a contract to APX Inc. for "scheduling coordination" services. As a for-profit enterprise, profit is a component of APX's cost of operations. Then in 2015, it turns out the contract was not a \$5 Million contract, instead it was a \$105 Million dollar pass through of SFPUC ISO Market Operations. This opened up the Hetch Hetchy Enterprise account in the City and County of San Francisco Treasury to APX as their own personal piggy bank for "invoice processing" related to Market operations. What "invoices" are APX processing? To whom are the Treasury warrants written? Do the vendors exist? What is APX buying? Oh, how convenient, all that transaction history was lost in a FAMIS conversion that took place right during the three years of transaction history that the Budget and Legislative Analyst wanted to look at. Prior to this, PG&E handled market operation pass-throughs for the city, and of course they're on the up-and-up.

In other words, this looks like a recipe for letting APX short sell hetch hetchy power and buy expensive power from whomever might want to pay to play - the "sophisticated" way about which San Francisco is the best at this game (as Zula Jones might say). Payments to CalISO for "market operations" have the appearance of being legitimate for anyone inspecting the schedule of disbursements in the county treasury ("oh, those are a passthrough"), but by commingling the passthrough market operations with the hetch hetchy enterprise operations, nobody questions whether unbooked "loss on market operations" are, in-fact, insider deals and giveaways. Why should San Francisco have cheap power when you can pay the cronies?

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Subject: FW: The SFAACC Supports the SFCC Business Community Calls for Coronavirus Economic Recovery Package
Date: Friday, March 13, 2020 6:41:00 PM
Attachments: [untitled](#)
[SFAACC COVID-19 Ltr to federal-state-local leaders Final \(1\).pdf](#)

From: Evita Thornton, SFAACC <admin@sfaacc.org>
Sent: Friday, March 13, 2020 2:13 PM
To: admin@sfaacc.org
Cc: Fred Jordan <frederickjordan@aol.com>; Matthew Ajiake <majiake@sonikacorporation.com>
Subject: The SFAACC Supports the SFCC Business Community Calls for Coronavirus Economic Recovery Package

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Federal, State and Local Elected Officials,

The San Francisco African American Chamber of Commerce (SFAACC) fully supports the attached letter prepared by the San Francisco Chamber of Commerce concerning the economic impacts of COVID-19 on the small business community in San Francisco. The SFAACC is very concerned about the particularly devastating economic impact of the pandemic on African American small businesses and they continue to contact us for assistance and guidance. Historically, and more recently under the shadow of Prop 209, our city's African American small businesses have experienced and suffered continuous hardships that run the gamut from under-capitalization, under-utilization to under-patronization. COVID-19 portends to intensify these challenges by obstructing cash flow, constraining growth and potentially forcing the closure of a substantial percentage of African American small businesses. Some form of government stimulus assistance must be made available, and quickly. As our most trusted leaders, we ask that you place your strongest attention on the import of the call by the SF Chamber for an economic recovery package that would assist our city's small businesses—including provisions for African American-owned businesses—to mitigate cash flow shortfalls and remain viable during this public health and economic catastrophe.

Matthew Ajiake, PhD
President

Frederick E. Jordan, P.E.
Chairman of the Board

cc: Clerk of the Board of Supervisors, to be distributed to all Supervisors; Mayor London Breed; State Senator Scott Wiener; State Assemblymember David Chiu; State Assemblymember Phil Ting; Governor Gavin Newsom; Speaker Nancy Pelosi; Congressmember Jackie Speier; Senator Dianne Feinstein; Senator Kamala Harris; R. Fong, President, SFChamber; A. Linde, Manager Small Business Initiative, SFChamber

Regards,

Evita Thornton
Admin. Director
San Francisco African American Chamber of Commerce
415-749-6400



www.SFAACC.org



SAN FRANCISCO AFRICAN AMERICAN CHAMBER OF COMMERCE

BOARD OF DIRECTORS

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GlobalKonnnect & Co.

Linda Fadeke Richardson, President
ADR Continental Group

Myles C. Stevens, AIA, LA
Stevens + Associates Architect

March 12, 2020

Dear Federal, State and Local Elected Officials,

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The SFAACC is very concerned about the particularly devastating economic impact of the pandemic on African American small businesses and they continue to contact us for assistance and guidance. Historically, and more recently under the shadow of Prop 209, our city's African American small businesses have experienced and suffered continuous hardships that run the gamut from under-capitalization, under-utilization to under-patronization. COVID-19 portends to intensify these challenges by obstructing cash flow, constraining growth and potentially forcing the closure of a substantial percentage of African American small businesses. Some form of government stimulus assistance must be made available, and quickly.

As our most trusted leaders, we ask that you place your strongest attention on the import of the call by the SF Chamber **for an economic recovery package that would assist our city's small businesses—including provisions for African American-owned businesses—to mitigate cash flow shortfalls and remain viable during this public health and economic catastrophe.**

Matthew Ajiake, PhD
President

Frederick E. Jordan, P.E.
Chairman of the Board

cc: Clerk of the Board of Supervisors, to be distributed to all Supervisors; Mayor London Breed; State Senator Scott Wiener; State Assemblymember David Chiu; State Assemblymember Phil Ting; Governor Gavin Newsom; Speaker Nancy Pelosi; Congressmember Jackie Speier; Senator Dianne Feinstein; Senator Kamala Harris



235 Montgomery St., Ste. 760, San Francisco, CA 94104
tel: 415.352.4520 • fax: 415.392.0485
sfchamber.com • twitter: @sf_chamber

March 10th, 2020

Dear Federal, State and Local Leaders,

COVID-19, also referred to as the “novel coronavirus,” began to have a noticeable impact on the federal and state economies and in San Francisco even before the first cases in our city were confirmed. As a result, businesses across the spectrum and some employees are already feeling the fiscal effects. In response, the San Francisco Chamber of Commerce and our community partners urge our federal, state, and local elected leaders to develop an economic recovery package for our businesses impacted by this evolving situation.

We must act swiftly to mitigate the economic consequences on our businesses and provide them with both the resources and information they need. With estimates of 50%-70% cuts in gross receipts for some small businesses in just the first weeks of the outbreak, small business owners and restaurants are already being faced with difficult decisions. Now with new recommendations against gatherings and events, increased international travel restrictions and many employers opting for “work from home” policies, the challenges are only growing. Event cancellations through the coming months and the uncertainty affecting the hospitality industry are troubling factors. Almost every industry in San Francisco will be adversely impacted by the current situation, which will mean further challenges trickling down to small businesses.

Now that there are confirmed cases and presumed community transmission, we are seeing a rapid change in consumer behavior from both residents and visitors. This will amplify the negative effects on all businesses, but especially small businesses that rely more on immediate cash flow to cover overhead, payroll, and other obligations. Small businesses already face several challenges operating in San Francisco. Without economic assistance, the additional strain on their daily cash flow may trigger small business closures and, ultimately, loss of employment.

Due to the nature of our economy, we are seeing impacts on business beyond traditional restaurants and retail businesses as well. Many businesses in San Francisco rely on foot traffic, mass gatherings, and events for their customer base. The decline in these activities impacts related services ranging from printing, production services, hospitality and hotels, and advertising.

Our businesses need an economic recovery package that will help mitigate cash flow shortfalls so they can remain viable through the duration of this public health and economic situation. Furthermore, small businesses need clear guidance and some city policies which direct business behavior should be adjusted to allow businesses to do their part in preventing the spread of the virus while mitigating the financial impacts.



235 Montgomery St., Ste. 760, San Francisco, CA 94104
tel: 415.352.4520 • fax: 415.392.0485
sfchamber.com • twitter: @sf_chamber

Measures to be considered should include but not be limited to:

1. Tax Relief and Extensions

- a. Extend collection date for monthly sales taxes.
- b. Extend collection date for annual taxes coming due this spring until later in the year.
- c. Remove any associated penalties with late payments or underpayment.
- d. Consider raising the gross receipts tax threshold to 2.5 million or higher.

2. Marketing and stimulus plan to boost reinvestment, tourism, and shopping

- a. Consider the direction of lower rates for city-owned venues like Moscone Center and associated fees to help the conference industry recover more quickly.
- b. As the coronavirus situation is contained and addressed, implement a marketing and stimulus plan to boost tourism and shopping in the neighborhood corridors.

3. One-year waiver of all city and county business-related fees for storefront small businesses, including retail and restaurants, such as:

- a. Fees associated with activities that may increase revenue potential like sidewalk encroachment, cafe tables and chair fees, and event fees.
- b. Fees associated with information and marketing like banner fees, sign fees, and those needed to replace an awning.
- c. General city maintenance and administration related fees including litter abatement fees, and plan checking fees.

4. Provide relief from some restrictions or policies as appropriate

- a. Provide flexibility for small businesses around employee schedules.
- b. Allow food and beverage retailers to proactively provide a lid and straw for beverages to reduce customer handling of packaging.
- c. Temporarily expand flexible-use retail city-wide to allow businesses revenue flexibility.

5. Direct financial support

- a. Providing cash flow options for businesses struggling with payroll and rent in the form of low-interest small business loans.
- b. Explore a temporary expansion to unemployment insurance and cover underemployment due to COVID-19.
- c. Work with utilities to encourage relief or payment extensions.

It is paramount that our government leaders act swiftly and decisively in order to mitigate the potential economic devastation of COVID-19. The Chamber of Commerce and our partners look forward to working with our local, state and federal leaders to tailor solutions for the community as the situation evolves.



235 Montgomery St., Ste. 760, San Francisco, CA 94104
tel: 415.352.4520 • fax: 415.392.0485
sfchamber.com • twitter: @sf_chamber

Sincerely,

Rodney Fong

San Francisco Chamber of Commerce

Joe D'Alessandro

San Francisco Travel Association

Laurie Thomas

Golden Gate Restaurant Association

Kevin Carroll

Hotel Council of San Francisco

Maryo Mogannam

San Francisco Council of District Merchants Associations

Sharky Laguana

Small Business Leader

Ben Bleiman

California Music & Culture Association

San Francisco Bar Owners Alliance

cc: Clerk of the Board of Supervisors, to be distributed to all Supervisors; Mayor London Breed; State Senator Scott Wiener; State Assemblymember David Chiu; State Assemblymember Phil Ting; Governor Gavin Newsom; Speaker Nancy Pelosi; Congressmember Jackie Speier; Senator Dianne Feinstein; Senator Kamala Harris

From: [Anonymous](#)
To: [Board of Supervisors \(BOS\)](#); [Board of Appeals \(PAB\)](#); [SFPD Commission \(POL\)](#)
Cc: [SOTF \(BOS\)](#); [Gerull, Linda \(TIS\)](#); [Kelly, Naomi \(ADM\)](#); [Calvillo, Angela \(BOS\)](#)
Subject: Please enable Remote participation in all govt meetings
Date: Thursday, March 12, 2020 12:51:00 PM
Attachments: [signature.asc](#)

As a public communication to the BoS/BoA/SOTF/Admin/DT/Clerk:

I urge the Board of Supervisors, Police Commission, and Board of Appeals to fully implement remote participation in all of their own Brown Act-governed meetings, considering the COVID-19 emergency. The public should be allowed to call in via a conference line for public comment (similar to the SOTF's existing process for hearings), or more modern technologies such as video conference should be deployed.

Especially the most vulnerable should not have to choose between having their voice heard live and staying healthy.

Finally, I urge the Board of Supervisors to consider amending the Sunshine Ordinance after the emergency to require remote participation opportunities for all public meetings and hearings. Not only is remote participation useful in the current emergency, it should be considered a reasonable accommodation at all times for persons unable to attend in person.

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Sincerely,

Anonymous

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#); [BOS-Legislative Aides](#); [BOS-Administrative Aides](#)
Subject: FW: Budget process Ordinance 294-19
Date: Wednesday, March 11, 2020 3:03:14 PM
Attachments: [Controller memo to the BOS Dept Budget Submissions FY21 and FY22 3-2-20.pdf](#)

From: Sandler, Risa (CON) <risa.sandler@sfgov.org>
Sent: Monday, March 2, 2020 3:53 PM
To: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>
Cc: Kirkpatrick, Kelly (MYR) <kelly.kirkpatrick@sfgov.org>; Campbell, Severin (BUD) <severin.campbell@sfgov.org>; Rosenfield, Ben (CON) <ben.rosenfield@sfgov.org>
Subject: Budget process Ordinance 294-19

Dear Ms. Calvillo,

As required by Ordinance 294-19, the Controller shall submit City Departments' proposed budgets to the Board of Supervisors and Mayor each March 1st. The attached memorandum provides access to departments' proposed budgets as outlined.

Please let us know if our office can provide additional information.

Sincerely,
Risa

Risa Sandler
City and County of San Francisco
Controller's Office, Budget and Analysis Division
415.554.5254



OFFICE OF THE CONTROLLER
CITY AND COUNTY OF SAN FRANCISCO

Ben Rosenfield
Controller
Todd Rydstrom
Deputy Controller

MEMORANDUM

TO: Clerk Angela Calvillo, San Francisco Board of Supervisors

FROM: Ben Rosenfield, Controller

DATE: March 2, 2020

SUBJECT: Department Budget Submissions for Fiscal Years 2020-2021 and 2021-2022

In December 2019, the City and County of San Francisco adopted Ordinance 294-19, amending the Administrative Code to modify elements of the City's budget development process. As part of this legislation, the Controller is required to consolidate City Departments' proposed budgets and transmit these to the Board of Supervisors and the Mayor each March 1st.

As required by this legislation, the Controller's Office has consolidated department budget submissions in the following website: <https://sf.gov/topics/budget>, under "view department budgets." All City department budget proposals are located therein.

Please contact Risa Sandler of my staff at 415-554-5254 should you have any questions.

From: [Youthcom. \(BOS\)](#)
To: [Breed, Mayor London \(MYR\)](#); [BOS-Supervisors](#)
Cc: [Calvillo, Angela \(BOS\)](#); [BOS-Legislative Aides](#); [Lam, Jenny \(MYR\)](#); [Marcaida, Michelle \(CHF\)](#); [Kittler, Sophia \(MYR\)](#); [Karunaratne, Kanishka \(MYR\)](#); [Peacock, Rebecca \(MYR\)](#); [Su, Maria \(CHF\)](#); [Corteza, Rebecca \(CHF\)](#); [Kelly, Naomi \(ADM\)](#); [Arntz, John \(REG\)](#); [Pon, Adrienne \(ADM\)](#); [Ginsburg, Phil \(REC\)](#); [Ilightman@sftc.org](#); [Miller, Katherine \(JUV\)](#); [Fletcher, Karen \(ADP\)](#); [Bell, Lauren \(ADP\)](#); [Raju, Manohar \(PDR\)](#); [Morris, Geoffrea \(ADP\)](#); [Miyamoto, Paul \(SHF\)](#); [Scott, William \(POL\)](#); [Raphael, Deborah \(ENV\)](#); [chesa.boudin@sfgov.org](#); [Rahaim, John \(CPC\)](#); [jeff.tumlin@sfmta.com](#); [Colfax, Grant \(DPH\)](#); [Hartley, Kate \(MYR\)](#); [Kahn, Abigail \(DPH\)](#); [Buckley, Jeff \(MYR\)](#); [Truong, Austin \(BOS\)](#); [Estrada, Itzel \(BOS\)](#); [Hosmon, Kiely \(BOS\)](#)
Subject: Youth Commission's Mid-Annual Budget Priorities for Fiscal Years 2020-21 and 2021-22
Date: Wednesday, March 11, 2020 2:18:01 PM
Attachments: [YC Budget & Policy Priority Memo 2020_Mid Year.pdf](#)

YOUTH COMMISSION MEMORANDUM

TO: Honorable Mayor London Breed
Honorable Members, Board of Supervisors

CC: Angela Calvillo, Clerk of the Board of Supervisors
Legislative Aides, Board of Supervisors
Jenny Lam, Mayor's Education Advisor
Michelle Marcaida, Assistant to Mayor's Education Advisor
Sophia Kittler, Mayor's Liaison to the Board of Supervisors
Kanishka Karunaratne, Mayor's Liaison to Boards and Commissions
Rebecca Peacock, Mayor's Government Affairs Team support
Maria Su, Director, Department of Children, Youth, and their Families
Mollie Matull, Chair, DCYF Oversight and Advisory Committee via
Rebecca Corteza, DCYF Executive Assistant
Naomi Kelly, City Administrator
John Arntz, Director of Elections
Adrienne Pon, Director, Office of Civic Engagement & Immigrant Affairs
Phil Ginsburg, General Manager, Recreation and Park Department
Lisa Lightman, Director, SF Collaborative Courts
Katherine Weinstein Miller, Chief Juvenile Probation Officer, SF Juvenile Probation Department
Karen Fletcher, Chief Adult Probation Officer
Lauren Bell, Reentry Division Director
Public Defender Manohar Raju
Geoffrea Morris, Reentry Policy Planner, Reentry Division, Adult Probation Department
Sheriff Paul Miyamoto
Chief William Scott, Chief of Police, San Francisco Police Department
Chesa Boudin, District Attorney, Office of the District Attorney
Deborah Raphael, Executive Director, Department of the Environment
John Rahaim, Planning Director, Planning Department
Jeffrey Tumlin, Director of Transportation, SFMTA
Dr. Grant Colfax, Director, Department of Public Health
Kate Hartley, Director, Mayor's Office of Housing and Community Development
Abigail Stewart-Kahn, Interim Director, Department of Homelessness and Supportive Housing

Jeff Buckley, Mayor's Senior Advisor on Housing

FROM: 2019-2020 Youth Commission

DATE: Wednesday, March 11, 2020

RE: Youth Commission's Mid-Annual Budget Priorities for Fiscal Years 2020-21 and 2021-22

On Wednesday, February 26, 2020, Youth Commissioners presented their mid-annual budget priorities to the Board of Supervisors' Budget and Appropriations committee. This was a follow up to the Youth Commission's [Omnibus Preliminary Budget Priorities Resolution](#) (OPBP Resolution) that was unanimously passed on January 19, 2020.

The Youth Commission's mid-annual budget [memo](#) and [presentation](#) can be viewed in the attached links and documents. Footage from the hearing on Youth Commissioners' budget priorities can also be viewed [here](#).

The YC is focused on obtaining funding for:

1. **Department of Elections:**
 - a. Outreach and internal system reorganization to accommodate registration of 16- and 17-year olds on the voter rolls
2. **Adult Probation Department:**
 - a. Re-entry programs such as Interrupt, predict and Organize for young adults, focusing on employment resources, daycare, mental health and counseling support, housing navigation services, and education support
 - b. Young Adult Court
3. **Department of Children, Youth and their Families:**
 - a. Increase funding for social services, health and mental health care, substance use support, or other wrap-around services
 - b. Increase funding for justice programs that support leadership skill-building and workforce development
4. **Department of Police Accountability:**
 - a. Community visibility and outreach on Know Youth Rights trainings
5. **Department of Homelessness and Supportive Housing:**
 - a. Create and maintain a minimum of 100 units of permanent supportive housing for girl shelters
6. **Juvenile Probation Department:**
 - a. Gender-specific and LGBTQ+ inclusive programming, employment and education resources, mental health counseling, after-detention rehabilitation/healing support, and community programs for youth and families
7. **San Francisco Police Department:**
 - a. Funding for mandatory in-depth youth and TAY rights training
 - b. Community advisory workgroups for Know Your Rights trainings for in-depth community engagement and feedback
8. **Public Defender's Office:**
 - a. Immigration relief programs, reentry programs case management, bail reform initiatives, and services for children of incarcerated parents

9. **Department of Homelessness and Supportive Housing:**

- a. HSH needs to meet SF's 2015 goal of 400 units of permanent supportive housing for TAY exiting homelessness
- b. Fund TAY-specific housing/ programs/services proportional to the size of that population in the homeless population (20%)
- c. Mental health/substance use treatment and counseling programs in supportive housing for TAY
- d. Equip TAY experiencing homelessness with first-aid, and increased support services for food and laundry
- e. Employment training and life-training for TAY exiting homelessness
- f. More accessible drop-in centers with staff trained in youth development and to receive youth from marginalized communities

10. **San Francisco Municipal Transportation Authority:**

- a. Establish a strategy to build an effective, equitable, and sustainable transportation system for San Francisco youth and students
- b. Enroll all SFUSD and CCSF students in Free Muni for Youth
- c. Increase funding for the 29-Sunset Improvements Project

11. **Board of Supervisors:**

- a. Increase Youth Commission budget to include pay rises for YC staff and an expanded community outreach budget

Youth Commissioners would like to thank Chair Fewer, Vice Chair Walton, Supervisor Mandelman, Supervisor Yee, and Supervisor Ronen for their time and support, as well as the countless City staff and community partners who helped to develop and inform these budget priorities. They look forward to working with Mayor Breed, members of the Board, and the City family to achieve these priorities on behalf of young San Franciscans.

Please do not hesitate to contact Youth Commissioners or Youth Commission staff (415) 554-6446 with any questions. Thank you.

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Subject: FW: NOTICE OF OPPORTUNITY TO COMMENT - PETALUMA RIVER BACTERIA TMDL
Date: Wednesday, March 11, 2020 10:32:00 AM
Attachments: [notice_petalumariver.pdf](#)

From: lyris@swrcb18.waterboards.ca.gov <lyris@swrcb18.waterboards.ca.gov>
Sent: Wednesday, March 11, 2020 9:47 AM
To: Calvillo, Angela (BOS) <angela.calvillo@sfgov.org>
Subject: NOTICE OF OPPORTUNITY TO COMMENT - PETALUMA RIVER BACTERIA TMDL

This message is from outside the City email system. Do not open links or attachments from untrusted sources.



This is a message from the California Regional Water Quality Control Board, San Francisco Bay Region (2).

Please see the information below from the State Water Board about the Petaluma River Bacteria TMDL State Board approval process.

Attached is a Notice of Opportunity to Comment on the proposed approval of the San Francisco Bay Regional Water Quality Control Board's (San Francisco Bay Water Board) amendment to the Water Quality Control Plan for the San Francisco Bay Basin to establish a TMDL and an implementation plan for bacteria in the Petaluma River Watershed.

Comment Deadline is April 13, 2020 by 12 noon.

You are currently subscribed to reg2_tmdl_basinplanning as: angela.calvillo@sfgov.org.

To unsubscribe click here: leave-7415077-248079.8183712791a0c9284ba3a3bfeb729995@swrcb18.waterboards.ca.gov

State Water Resources Control Board

NOTICE OF OPPORTUNITY TO COMMENT

PROPOSED APPROVAL OF AN AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR THE SAN FRANCISCO BAY BASIN (BASIN PLAN) TO ESTABLISH A TOTAL MAXIMUM DAILY LOAD (TMDL) FOR BACTERIA IN THE PETALUMA RIVER WATERSHED

NOTICE IS HEREBY GIVEN THAT the State Water Resources Control Board (State Water Board) will accept comments on the proposed approval of the San Francisco Bay Regional Water Quality Control Board's (San Francisco Bay Water Board) amendment to the Water Quality Control Plan for the San Francisco Bay Basin to establish a TMDL and an implementation plan for bacteria in the Petaluma River Watershed. The Basin Plan amendment was adopted by the San Francisco Bay Water Board on November 13, 2019 (Resolution No. R2-2019-0030) and is available for review at: https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/TMDLs/petalumabacterianutrienttmdl.html

A copy of the Basin Plan amendment can also be received by mail by contacting Farhad Ghodrati at (510) 622-2331 or Farhad.Ghodrati@waterboards.ca.gov.

REQUEST NOTICE OF STATE BOARD MEETINGS. The State Water Board will separately publish an agenda for the meeting at which it will consider adopting a resolution approving the Basin Plan amendment. Oral comments at the State Water Board meeting generally will be limited to a summary of the written comments submitted during the written comment period. Persons interested in receiving notice of the meeting at which the State Water Board will consider approving the Basin Plan amendment must subscribe to:

http://www.waterboards.ca.gov/resources/email_subscriptions/reg2_subscribe.shtml and select "ALL Basin Planning/TMDL Notices and Information." The State Water Board encourages use of its electronic mailing list. Persons who require notice by postal mail must submit such request to the San Francisco Bay Water Board contact identified below.

SUBMISSION OF WRITTEN COMMENTS. Persons interested in the Basin Plan amendment are encouraged to submit comments electronically. Comment letters **must be received by 12:00 noon on April 13, 2020**. Comment letters received after that deadline will not be accepted unless the State Water Board determines otherwise.

Send comments to: Jeanine Townsend, Clerk to the State Water Board, by email at commentletters@waterboards.ca.gov (must be no more than 15 megabytes); fax at (916) 341-5620; or mail or hand delivery at:

Jeanine Townsend, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000 (mail)
1001 I Street, 24th Floor, Sacramento, CA 95814 (hand delivery)


Please also indicate in the subject line, "**Comment Letter—Bacteria TMDL for The Petaluma River Watershed.**"

REQUIREMENTS FOR SUBMITTING COMMENTS (23 Cal. Code Regs., § 3779, subd. (f)). The State Water Board may refuse to accept any comments that do not satisfy all of the following requirements:

1. Comments must specifically address the final version of the Basin Plan amendment adopted by the San Francisco Bay Water Board.
2. If the San Francisco Bay Water Board previously responded to a similar or identical comment, the commenter must explain why and in what manner the commenter believes each of the responses provided by the San Francisco Bay Water Board to each comment was inadequate or incorrect.
3. The commenter also must include either a statement that each of the comments was timely raised before the San Francisco Bay Water Board or an explanation of why the commenter was unable to raise the specific comment before the San Francisco Bay Water Board.

Please direct any questions about this notice to Farhad Ghodrati at the San Francisco Bay Water Board, at (510) 622-2331 or Farhad.Ghodrati@waterboards.ca.gov; or Yuri Won, Senior Staff Counsel, at (510) 622-2491 or Yuri.Won@waterboards.ca.gov.

March 10, 2020
Date


Jeanine Townsend
Clerk to the Board

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Subject: FW: CJJC Support of an Eviction Moratorium in San Francisco during the COVID-19 Outbreak
Date: Tuesday, March 10, 2020 3:06:00 PM

From: Leticia Arce <Leticia@cjjc.org>
Sent: Tuesday, March 10, 2020 2:17 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Chris Durazo <chris@cjjc.org>
Subject: CJJC Support of an Eviction Moratorium in San Francisco during the COVID-19 Outbreak

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear San Francisco Board of Supervisors,

We are writing in support of the eviction moratorium proposed by District 5 Supervisor Dean Preston in the wake of the global COVID-19 virus outbreak. Causa Justa :: Just Cause is a grassroots organization that works to build Black and Brown unity to fight the multi-faceted layers of displacement of our most impacted communities. We believe that empowerment and solidarity across working class communities is key to improving the conditions in our neighborhoods here in San Francisco, in the greater Bay Area, as well as on a much larger scale.

At this moment we believe that it is of utmost importance that the City of San Francisco take the necessary steps in responding to and mitigating the effects of the current COVID-19 outbreak in order to immediately protect our most vulnerable communities. The eviction moratorium would immediately contribute to furthering community preparedness by preventing landlords from evicting tenants for non-payment of rent due to wage loss because of the coronavirus or because of government-recommended precautions against coronavirus.

Further displacement of our working class folks could create a disastrous effect on mitigation efforts, response, and treatment to stop the spread and fatal effects of this virus.

As a housing justice organization that provides rights-based services for tenants in the form of a drop-in Tenant Rights clinic space, we are prioritizing efforts to continue to provide the support and empowerment of our communities while altering the way we do so in order to further uplift the collective care for each other and the most vulnerable people within these communities. We hope that these efforts can be further fueled and supported now and in the future throughout our city in the form of this eviction moratorium.

Sincerely,
Leticia Arce

--

Leticia Arce

SF Housing, Land, & Development Lead Organizer

Causa Justa :: Just Cause

415-487-9203 Ext. 211

Full contact information at www.cjjc.org

CONFIDENTIAL NOTICE: This email is for the sole use of the intended recipient(s) and may contain confidential and/or privileged information. Any review, use, disclosure or distribution by persons other than the intended recipient(s) is prohibited. Thank you.

From: [Mchugh, Eileen \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation. \(BOS\)](#)
Subject: 10 communications regarding Item No. 29 on today's Board meeting Agenda
Date: Tuesday, March 10, 2020 2:44:00 PM
Attachments: [Public Comment to Agenda #29.msg](#)
[Please add to File number 200247 Agenda Item 29 Public comment.msg](#)
[Full Pardon for Community Activists Somdeng Danny Thogay and Sakhome Lasahangthong: please add to File number 200247.msg](#)
[Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhome Lasaphangthong and Somdeng Danny Thongsy.msg](#)
[Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhome Lasaphangthong and Somdeng Danny Thongsy.msg](#)
[Full Pardon of Somdeng Danny Thongsy and Sakhome Lasaphangthong.msg](#)
[RE Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhome Lasaphangthong and Somdeng Danny Thongsy.msg](#)
[RE Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhome Lasaphangthong and Somdeng Danny Thongsy.msg](#)
[Re Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhome Lasaphangthong and Somdeng Danny Thongsy.msg](#)
[Stopping deportations to Laos and other countries.msg](#)

Hello,

Please see the 10 attached communications regarding File No. 200247, Item No. 29 on today's Board meeting agenda.

Thank you,

Eileen McHugh
Executive Assistant
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102-4689
Phone: (415) 554-7703 | Fax: (415) 554-5163
eileen.e.mchugh@sfgov.org | www.sfbos.org

From: [Adrian Leong](#)
To: [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)
Subject: Stopping deportations to Laos and other countries
Date: Tuesday, March 10, 2020 10:41:11 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

I am writing to support the resolution to call on Governor Newsome to grant a full pardon to Sakhone Lasaphangthong and Somdeng “Danny” Thongsy. Please add this comment to file number 200247.

San Francisco must stand up as a defender of immigrant rights in this political climate. CPA works with low-wage Chinese immigrants and we know that many undocumented folx work in our city. If you can set the right tone by voting to support this resolution, then more immigrant workers can be confident to speak up for themselves, and no more bosses can bend their workers to their will with the threat of deportation.

I really hope that you will stand with the low-wage immigrants of color. Thank you.

Kindly,
adrian

--

Adrian Leong 梁皓宏 [he/they]
TWC Community Organizer

Have you heard about the unpaid stolen wages at Kome? Support today by signing the [community petition!](#)

[Chinese Progressive Association](#) 華人進步會
1042 Grant Avenue, 5th Floor | San Francisco, CA 94133

From: [Low, Jen \(BOS\)](#)
To: [Miya Sommers](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)
Cc: [Board of Supervisors \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Mullan, Andrew \(BOS\)](#); [Yan, Calvin \(BOS\)](#); [Ho, Tim \(BOS\)](#)
Subject: RE: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy
Date: Tuesday, March 10, 2020 2:30:44 PM

Thank you Miya for your e-mail. On behalf of President Yee, thank you for your letter of support. President Yee will be voting in favor of this Resolution today.

Best,

Jen

From: Miya Sommers <miyajssommers@gmail.com>
Sent: Tuesday, March 10, 2020 1:53 PM
To: Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>
Cc: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>; Yan, Calvin (BOS) <calvin.yan@sfgov.org>; Low, Jen (BOS) <jen.low@sfgov.org>; Ho, Tim (BOS) <tim.h.ho@sfgov.org>
Subject: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Yee, Supervisor Peskin, Supervisor Safai, and Supervisor Stefani,

I'm writing to you to urge your support for agenda item 29 a "Resolution urging the Honorable Gavin Newsom, Governor of California, to grant Sakhone Lasaphangthong and Somdeng "Danny" Thongsy a full pardon to allow them to remain in the United States."

I met Danny in 2016 when we were both working at the Asian Law Caucus, and have since then called him a close friend and more recently meet Sakhone at an event supporting Southeast Asian immigrants. I have seen both Danny and Sakhone's commitment to making their communities thrive through doing direct service work. They are fearless advocates who have turned their lives around, even after experiencing immense trauma and the failure of the United States to ensure support for their refugee families, and are deeply involved with helping the lives of other across the Bay Area, and the country.

In light of Trump's decision to being to target Hmong, Lu- Mien, Khmu, and Lao communities, some of our most vulnerable within Asian American communities, I ask for you to take this important stance and vote yes on this resolution.

Appreciate your time and consideration.

Warmly,

Miya Sommers

Miya Sommers

Pronouns: they/she

miyajsommers@gmail.com

"Another world is not only possible, she is on her way. On a quiet day, I can hear her breathing." -
Arundhati Roy

From: [Low, Jen \(BOS\)](#)
To: [Nikkei Resisters](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Board of Supervisors, \(BOS\)](#)
Cc: [Mar, Gordon \(BOS\)](#); [Yan, Calvin \(BOS\)](#); [Ho, Tim \(BOS\)](#); [Mullan, Andrew \(BOS\)](#)
Subject: RE: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy
Date: Tuesday, March 10, 2020 2:26:23 PM

Thank you for this e-mail. President Yee will be supporting this Resolution.

Jen

From: Nikkei Resisters <nikkeiresisters@gmail.com>
Sent: Tuesday, March 10, 2020 2:01 PM
To: Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Yan, Calvin (BOS) <calvin.yan@sfgov.org>; Ho, Tim (BOS) <tim.h.ho@sfgov.org>; Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>; Low, Jen (BOS) <jen.low@sfgov.org>
Subject: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Yee, Supervisor Peskin, Supervisor Safai, and Supervisor Stefani,

We are Nikkei Resisters, an intergenerational coalition of organizers who use the legacy of WWII atrocities in the U.S and the Pacific.

We remember that over 120,000 members of our Japanese American communities were incarcerated by the United States based on racist and exploitative policies, and are committed to making sure this type of violent action never happens again.

Danny and Sakhone have been wonderful allies to our communities. Danny has helped fold hundreds of cranes and teach many more to participate in our community events remembering our history. We know that Danny and Sakhone are valuable members of our communities, and we urge you to say yes to the resolution so that can remain and to send a powerful message to the Trump administration that they cannot divide our communities.

We thank you in advance for your work in supporting this effort.

In community,

Nikkei Resisters

From: [Nikkei Resisters](#)
To: [Low, Jen \(BOS\)](#)
Cc: [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Yan, Calvin \(BOS\)](#); [Ho, Tim \(BOS\)](#); [Mullan, Andrew \(BOS\)](#)
Subject: Re: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy
Date: Tuesday, March 10, 2020 2:31:40 PM

Wonderful! Thank you!

On Tue, Mar 10, 2020 at 2:26 PM Low, Jen (BOS) <jen.low@sfgov.org> wrote:

Thank you for this e-mail. President Yee will be supporting this Resolution.

Jen

From: Nikkei Resisters <nikkeiresisters@gmail.com>
Sent: Tuesday, March 10, 2020 2:01 PM
To: Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Yan, Calvin (BOS) <calvin.yan@sfgov.org>; Ho, Tim (BOS) <tim.h.ho@sfgov.org>; Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>; Low, Jen (BOS) <jen.low@sfgov.org>
Subject: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Yee, Supervisor Peskin, Supervisor Safai, and Supervisor Stefani,

We are Nikkei Resisters, an intergenerational coalition of organizers who use the legacy of WWII atrocities in the U.S and the Pacific.

We remember that over 120,000 members of our Japanese American communities were incarcerated by the United States based on racist and exploitative policies, and are

committed to making sure this type of violent action never happens again.

Danny and Sakhone have been wonderful allies to our communities. Danny has helped fold hundreds of cranes and teach many more to participate in our community events remembering our history. We know that Danny and Sakhone are valuable members of our communities, and we urge you to say yes to the resolution so that can remain and to send a powerful message to the Trump administration that they cannot divide our communities.

We thank you in advance for your work in supporting this effort.

In community,

Nikkei Resisters

From: [So Young Lee](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#)
Subject: Public Comment to Agenda #29
Date: Tuesday, March 10, 2020 1:22:04 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good Afternoon:

I urge the Board to pass Supervisor Gordon Mar's resolution in support of Danny Thongsy and Sakhone Lasaphanthong this afternoon.

Danny and Sakhone have demonstrated exemplary leadership and commitment in using their experiences as formerly incarcerated to address existing barriers to reentry and to support fellow community members who are recently released from prison. It is absolutely critical for formerly incarcerated people to remain connected to their community to build and maintain a strong network of support for those reentering society. Your support would help them continue this work and stay here with their community and loved ones.

I respectfully ask that the Board passes the resolution to help and strength Danny and Sakhone's pardon campaigns. Please add this email to File number 200247.

Thank you,

So Young Lee
Staff Attorney
Immigrant Rights Program

Asian Americans Advancing Justice – Asian Law Caucus
T (415) 848-7764
F (415) 896-1702
soyoungl@advancingjustice-alc.org
www.advancingjustice-alc.org

From: [Danny Thongsy](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [Mar. Gordon \(BOS\)](#)
Subject: Please add to File number 200247, Agenda Item 29, Public comment
Date: Tuesday, March 10, 2020 1:24:07 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

My name is Somdeng Danny Thongsy. **I am grateful for this resolution and I am in support of it.** I am a Bay Area resident and a community servant. I work at the Justice Reinvestment Coalition as their Campaign Coordinator. The JRC is a table composed of 18 Community Base Organizations whose missions are to prevent mass incarceration by advancing justice reinvestment and progressive criminal justice policies.

I am also a person who is formerly incarcerated and am currently facing deportation to Laos. A country which I have never set foot on, a country that my family fled its government during the secret war. Like many Southeast Asian refugee, my family fled the country for safety to live in a crowded refugee camp until we were admitted into the US.

Upon resettlement we did not have anything except for each other and the trauma of war. We were placed in a low income section of the city where poverty were prevalent, resources were scarce and over policing. I remember as a kid I was often teased and bullied by other kids for not having much and for looking different. When I was 17 years old, my older brother was murdered. I did not know how to cope with the grief of losing my brother nor did I know where to turn for help. This led me to make a horrible choice which resulted in my incarceration. Incarcerated, I sought therapy and found healing, transformation and accountability through spiritual practice. I explored my trauma through self-help workshops and began to truly understand the root causes of my behavior. I vowed to never cause the harm I once caused and made sure that others won't make the same mistake. So I became an advocate in self-help programs, and took on leadership roles by facilitating groups, bible studies and mentoring other prisoners one-on-one. I went back to school and graduated with a college degree in Social Science.

After two decades of incarceration, the California Board of Parole Hearings and Governor Brown, recognized my rehabilitation and that I am deemed. Unfortunately, upon my release from state prison because of my immigration status I was directly transferred over to DHS/ICE for deportation proceedings.

Since being home February 2017, I continued my role to give back and bring healing to the community as being an advocate for criminal justice reform and immigrant rights. I continued to shared of my lived experience and spoke on panels, did community outreach, participated in community gathering, worked with local and state officials in immigration and

pardon cases, and work with elected officials at the national level to advocate against deportation.

I am grateful for Supervisor Gordon Mar and the Board of Supervisors' support to prevent my deportation. It's true that some refugees made mistakes, but we've also paid the price for those mistakes. We've done everything the country has asked of us. I don't deny that what I did was serious. But we, as a society, must resist the urge to treat someone as the sum of past mistakes and instead recognize our common humanity and the possibility of rehabilitation.

In Community,
Danny Thongsy
Pronoun: *He/Him/His*
Campaigner/Coordinator
Justice Reinvestment Coalition of Alameda County
Email: dthongsy@gmail.com
Office: 510-893-1377 Ext.1377



"Budget Your Value"

From: [Laurene Chan](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Mar, Gordon \(BOS\)](#)
Subject: Full Pardon of Somdeng "Danny" Thongsy and Sakhone Lasaphangthong
Date: Tuesday, March 10, 2020 2:03:21 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please add this email to File number 200247.

Dear Board of Supervisors,

I fully support the resolution for FULL PARDON to Somdeng "Danny" Thongsy and Sakhone Lasaphangthong. I especially know of Mr. Lasaphangthong's extraordinary and intentional work in the community through his supervisor Heidi Wong, who is a member of the Presbyterian Church in Chinatown and alumni of Donaldina Cameron House.

FULL PARDON FOR THONGSY AND LASAPHANGTHONG!!

Sincerely,

Laurene Chan

--

Laurene Chan

Director of Youth Ministries

laurene@cameronhouse.org T 415-781-0401 x142

(pronouns: she/her)



From: [Timothy Smith](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [Mar. Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)
Subject: Full Pardon for Community Activists Somdeng "Danny" Thogay and Sakhome Lasahangthong; please add to File number 200247
Date: Tuesday, March 10, 2020 1:38:10 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Ladies and Gentlemen:

I am writing to encourage you to support the full pardon of Danny and Sakhome. They have been rehabilitated, have contributed substantially to making our communities our safe, and should not be deported to Laos.

They are individuals who will make enrich our communities in diversity and compassion with those struggling on the margins.

In God's peace,

Rev. Timothy Smith
Episcopal Church of St. Mary the Virgin

Rev. Deacon Timothy Smith
timinsanfrancisco@gmail.com
Mobile: 415-713-3220

From: [Nikkei Resisters](#)
To: [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Board of Supervisors, \(BOS\)](#)
Cc: [Mar, Gordon \(BOS\)](#); [Yan, Calvin \(BOS\)](#); [Ho, Tim \(BOS\)](#); [Mullan, Andrew \(BOS\)](#); [Low, Jen \(BOS\)](#)
Subject: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy
Date: Tuesday, March 10, 2020 2:00:47 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Yee, Supervisor Peskin, Supervisor Safai, and Supervisor Stefani,

We are Nikkei Resisters, an intergenerational coalition of organizers who use the legacy of WWII atrocities in the U.S and the Pacific.

We remember that over 120,000 members of our Japanese American communities were incarcerated by the United States based on racist and exploitative policies, and are committed to making sure this type of violent action never happens again.

Danny and Sakhone have been wonderful allies to our communities. Danny has helped fold hundreds of cranes and teach many more to participate in our community events remembering our history. We know that Danny and Sakhone are valuable members of our communities, and we urge you to say yes to the resolution so that can remain and to send a powerful message to the Trump administration that they cannot divide our communities.

We thank you in advance for your work in supporting this effort.

In community,

Nikkei Resisters

From: [Miya Sommers](#)
To: [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)
Cc: [Board of Supervisors, \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Mullan, Andrew \(BOS\)](#); [Yan, Calvin \(BOS\)](#); [Low, Jen \(BOS\)](#); [Ho, Tim \(BOS\)](#)
Subject: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy
Date: Tuesday, March 10, 2020 1:52:51 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Yee, Supervisor Peskin, Supervisor Safai, and Supervisor Stefani,

I'm writing to you to urge your support for agenda item 29 a "Resolution urging the Honorable Gavin Newsom, Governor of California, to grant Sakhone Lasaphangthong and Somdeng "Danny" Thongsy a full pardon to allow them to remain in the United States."

I met Danny in 2016 when we were both working at the Asian Law Caucus, and have since then called him a close friend and more recently meet Sakhone at an event supporting Southeast Asian immigrants. I have seen both Danny and Sakhone's commitment to making their communities thrive through doing direct service work. They are fearless advocates who have turned their lives around, even after experiencing immense trauma and the failure of the United States to ensure support for their refugee families, and are deeply involved with helping the lives of other across the Bay Area, and the country.

In light of Trump's decision to being to target Hmong, Iu- Mien, Khmu, and Lao communities, some of our most vulnerable within Asian American communities, I ask for you to take this important stance and vote yes on this resolution.

Appreciate your time and consideration.

Warmly,

Miya Sommers

Miya Sommers

Pronouns: they/she

miyajsommers@gmail.com

"Another world is not only possible, she is on her way. On a quiet day, I can hear her breathing." -Arundhati Roy

From: [Adrian Leong](#)
To: [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)
Subject: Stopping deportations to Laos and other countries
Date: Tuesday, March 10, 2020 10:41:11 AM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

I am writing to support the resolution to call on Governor Newsome to grant a full pardon to Sakhone Lasaphangthong and Somdeng “Danny” Thongsy. Please add this comment to file number 200247.

San Francisco must stand up as a defender of immigrant rights in this political climate. CPA works with low-wage Chinese immigrants and we know that many undocumented folx work in our city. If you can set the right tone by voting to support this resolution, then more immigrant workers can be confident to speak up for themselves, and no more bosses can bend their workers to their will with the threat of deportation.

I really hope that you will stand with the low-wage immigrants of color. Thank you.

Kindly,
adrian

--

Adrian Leong 梁皓宏 [he/they]
TWC Community Organizer

Have you heard about the unpaid stolen wages at Kome? Support today by signing the [community petition!](#)

[Chinese Progressive Association](#) 華人進步會
1042 Grant Avenue, 5th Floor | San Francisco, CA 94133

From: [Low, Jen \(BOS\)](#)
To: [Miya Sommers](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)
Cc: [Board of Supervisors \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Mullan, Andrew \(BOS\)](#); [Yan, Calvin \(BOS\)](#); [Ho, Tim \(BOS\)](#)
Subject: RE: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy
Date: Tuesday, March 10, 2020 2:30:44 PM

Thank you Miya for your e-mail. On behalf of President Yee, thank you for your letter of support. President Yee will be voting in favor of this Resolution today.

Best,

Jen

From: Miya Sommers <miyajssommers@gmail.com>
Sent: Tuesday, March 10, 2020 1:53 PM
To: Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>
Cc: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>; Yan, Calvin (BOS) <calvin.yan@sfgov.org>; Low, Jen (BOS) <jen.low@sfgov.org>; Ho, Tim (BOS) <tim.h.ho@sfgov.org>
Subject: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Yee, Supervisor Peskin, Supervisor Safai, and Supervisor Stefani,

I'm writing to you to urge your support for agenda item 29 a "Resolution urging the Honorable Gavin Newsom, Governor of California, to grant Sakhone Lasaphangthong and Somdeng "Danny" Thongsy a full pardon to allow them to remain in the United States."

I met Danny in 2016 when we were both working at the Asian Law Caucus, and have since then called him a close friend and more recently meet Sakhone at an event supporting Southeast Asian immigrants. I have seen both Danny and Sakhone's commitment to making their communities thrive through doing direct service work. They are fearless advocates who have turned their lives around, even after experiencing immense trauma and the failure of the United States to ensure support for their refugee families, and are deeply involved with helping the lives of other across the Bay Area, and the country.

In light of Trump's decision to being to target Hmong, Lu- Mien, Khmu, and Lao communities, some of our most vulnerable within Asian American communities, I ask for you to take this important stance and vote yes on this resolution.

Appreciate your time and consideration.

Warmly,

Miya Sommers

Miya Sommers

Pronouns: they/she

miyajsommers@gmail.com

"Another world is not only possible, she is on her way. On a quiet day, I can hear her breathing." -
Arundhati Roy

From: [Low, Jen \(BOS\)](#)
To: [Nikkei Resisters](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Board of Supervisors, \(BOS\)](#)
Cc: [Mar, Gordon \(BOS\)](#); [Yan, Calvin \(BOS\)](#); [Ho, Tim \(BOS\)](#); [Mullan, Andrew \(BOS\)](#)
Subject: RE: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy
Date: Tuesday, March 10, 2020 2:26:23 PM

Thank you for this e-mail. President Yee will be supporting this Resolution.

Jen

From: Nikkei Resisters <nikkeiresisters@gmail.com>
Sent: Tuesday, March 10, 2020 2:01 PM
To: Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Yan, Calvin (BOS) <calvin.yan@sfgov.org>; Ho, Tim (BOS) <tim.h.ho@sfgov.org>; Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>; Low, Jen (BOS) <jen.low@sfgov.org>
Subject: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Yee, Supervisor Peskin, Supervisor Safai, and Supervisor Stefani,

We are Nikkei Resisters, an intergenerational coalition of organizers who use the legacy of WWII atrocities in the U.S and the Pacific.

We remember that over 120,000 members of our Japanese American communities were incarcerated by the United States based on racist and exploitative policies, and are committed to making sure this type of violent action never happens again.

Danny and Sakhone have been wonderful allies to our communities. Danny has helped fold hundreds of cranes and teach many more to participate in our community events remembering our history. We know that Danny and Sakhone are valuable members of our communities, and we urge you to say yes to the resolution so that can remain and to send a powerful message to the Trump administration that they cannot divide our communities.

We thank you in advance for your work in supporting this effort.

In community,

Nikkei Resisters

From: [Nikkei Resisters](#)
To: [Low, Jen \(BOS\)](#)
Cc: [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Yan, Calvin \(BOS\)](#); [Ho, Tim \(BOS\)](#); [Mullan, Andrew \(BOS\)](#)
Subject: Re: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy
Date: Tuesday, March 10, 2020 2:31:40 PM

Wonderful! Thank you!

On Tue, Mar 10, 2020 at 2:26 PM Low, Jen (BOS) <jen.low@sfgov.org> wrote:

Thank you for this e-mail. President Yee will be supporting this Resolution.

Jen

From: Nikkei Resisters <nikkeiresisters@gmail.com>
Sent: Tuesday, March 10, 2020 2:01 PM
To: Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Yan, Calvin (BOS) <calvin.yan@sfgov.org>; Ho, Tim (BOS) <tim.h.ho@sfgov.org>; Mullan, Andrew (BOS) <andrew.mullan@sfgov.org>; Low, Jen (BOS) <jen.low@sfgov.org>
Subject: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Yee, Supervisor Peskin, Supervisor Safai, and Supervisor Stefani,

We are Nikkei Resisters, an intergenerational coalition of organizers who use the legacy of WWII atrocities in the U.S and the Pacific.

We remember that over 120,000 members of our Japanese American communities were incarcerated by the United States based on racist and exploitative policies, and are

committed to making sure this type of violent action never happens again.

Danny and Sakhone have been wonderful allies to our communities. Danny has helped fold hundreds of cranes and teach many more to participate in our community events remembering our history. We know that Danny and Sakhone are valuable members of our communities, and we urge you to say yes to the resolution so that can remain and to send a powerful message to the Trump administration that they cannot divide our communities.

We thank you in advance for your work in supporting this effort.

In community,

Nikkei Resisters

From: [So Young Lee](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#)
Subject: Public Comment to Agenda #29
Date: Tuesday, March 10, 2020 1:22:04 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Good Afternoon:

I urge the Board to pass Supervisor Gordon Mar's resolution in support of Danny Thongsy and Sakhone Lasaphanthong this afternoon.

Danny and Sakhone have demonstrated exemplary leadership and commitment in using their experiences as formerly incarcerated to address existing barriers to reentry and to support fellow community members who are recently released from prison. It is absolutely critical for formerly incarcerated people to remain connected to their community to build and maintain a strong network of support for those reentering society. Your support would help them continue this work and stay here with their community and loved ones.

I respectfully ask that the Board passes the resolution to help and strength Danny and Sakhone's pardon campaigns. Please add this email to File number 200247.

Thank you,

So Young Lee
Staff Attorney
Immigrant Rights Program

Asian Americans Advancing Justice – Asian Law Caucus
T (415) 848-7764
F (415) 896-1702
soyoungl@advancingjustice-alc.org
www.advancingjustice-alc.org

From: [Danny Thongsy](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [Mar. Gordon \(BOS\)](#)
Subject: Please add to File number 200247, Agenda Item 29, Public comment
Date: Tuesday, March 10, 2020 1:24:07 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

My name is Somdeng Danny Thongsy. **I am grateful for this resolution and I am in support of it.** I am a Bay Area resident and a community servant. I work at the Justice Reinvestment Coalition as their Campaign Coordinator. The JRC is a table composed of 18 Community Base Organizations whose missions are to prevent mass incarceration by advancing justice reinvestment and progressive criminal justice policies.

I am also a person who is formerly incarcerated and am currently facing deportation to Laos. A country which I have never set foot on, a country that my family fled its government during the secret war. Like many Southeast Asian refugee, my family fled the country for safety to live in a crowded refugee camp until we were admitted into the US.

Upon resettlement we did not have anything except for each other and the trauma of war. We were placed in a low income section of the city where poverty were prevalent, resources were scarce and over policing. I remember as a kid I was often teased and bullied by other kids for not having much and for looking different. When I was 17 years old, my older brother was murdered. I did not know how to cope with the grief of losing my brother nor did I know where to turn for help. This led me to make a horrible choice which resulted in my incarceration. Incarcerated, I sought therapy and found healing, transformation and accountability through spiritual practice. I explored my trauma through self-help workshops and began to truly understand the root causes of my behavior. I vowed to never cause the harm I once caused and made sure that others won't make the same mistake. So I became an advocate in self-help programs, and took on leadership roles by facilitating groups, bible studies and mentoring other prisoners one-on-one. I went back to school and graduated with a college degree in Social Science.

After two decades of incarceration, the California Board of Parole Hearings and Governor Brown, recognized my rehabilitation and that I am deemed. Unfortunately, upon my release from state prison because of my immigration status I was directly transferred over to DHS/ICE for deportation proceedings.

Since being home February 2017, I continued my role to give back and bring healing to the community as being an advocate for criminal justice reform and immigrant rights. I continued to shared of my lived experience and spoke on panels, did community outreach, participated in community gathering, worked with local and state officials in immigration and

pardon cases, and work with elected officials at the national level to advocate against deportation.

I am grateful for Supervisor Gordon Mar and the Board of Supervisors' support to prevent my deportation. It's true that some refugees made mistakes, but we've also paid the price for those mistakes. We've done everything the country has asked of us. I don't deny that what I did was serious. But we, as a society, must resist the urge to treat someone as the sum of past mistakes and instead recognize our common humanity and the possibility of rehabilitation.

In Community,

Danny Thongsy

Pronoun: *He/Him/His*

Campaigner/Coordinator

Justice Reinvestment Coalition of Alameda County

Email: dthongsy@gmail.com

Office: 510-893-1377 Ext.1377



"Budget Your Value"

From: [Laurene Chan](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Mar, Gordon \(BOS\)](#)
Subject: Full Pardon of Somdeng "Danny" Thongsy and Sakhone Lasaphangthong
Date: Tuesday, March 10, 2020 2:03:21 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please add this email to File number 200247.

Dear Board of Supervisors,

I fully support the resolution for FULL PARDON to Somdeng "Danny" Thongsy and Sakhone Lasaphangthong. I especially know of Mr. Lasaphangthong's extraordinary and intentional work in the community through his supervisor Heidi Wong, who is a member of the Presbyterian Church in Chinatown and alumni of Donaldina Cameron House.

FULL PARDON FOR THONGSY AND LASAPHANGTHONG!!

Sincerely,

Laurene Chan

--

Laurene Chan

Director of Youth Ministries

laurene@cameronhouse.org T 415-781-0401 x142

(pronouns: she/her)



From: [Timothy Smith](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [Mar. Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)
Subject: Full Pardon for Community Activists Somdeng "Danny" Thogay and Sakhome Lasahangthong; please add to File number 200247
Date: Tuesday, March 10, 2020 1:38:10 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Ladies and Gentlemen:

I am writing to encourage you to support the full pardon of Danny and Sakhome. They have been rehabilitated, have contributed substantially to making our communities our safe, and should not be deported to Laos.

They are individuals who will make enrich our communities in diversity and compassion with those struggling on the margins.

In God's peace,

Rev. Timothy Smith
Episcopal Church of St. Mary the Virgin

Rev. Deacon Timothy Smith
timinsanfrancisco@gmail.com
Mobile: 415-713-3220

From: [Nikkei Resisters](#)
To: [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Board of Supervisors, \(BOS\)](#)
Cc: [Mar, Gordon \(BOS\)](#); [Yan, Calvin \(BOS\)](#); [Ho, Tim \(BOS\)](#); [Mullan, Andrew \(BOS\)](#); [Low, Jen \(BOS\)](#)
Subject: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy
Date: Tuesday, March 10, 2020 2:00:47 PM

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Dear Supervisor Yee, Supervisor Peskin, Supervisor Safai, and Supervisor Stefani,

We are Nikkei Resisters, an intergenerational coalition of organizers who use the legacy of WWII atrocities in the U.S and the Pacific.

We remember that over 120,000 members of our Japanese American communities were incarcerated by the United States based on racist and exploitative policies, and are committed to making sure this type of violent action never happens again.

Danny and Sakhone have been wonderful allies to our communities. Danny has helped fold hundreds of cranes and teach many more to participate in our community events remembering our history. We know that Danny and Sakhone are valuable members of our communities, and we urge you to say yes to the resolution so that can remain and to send a powerful message to the Trump administration that they cannot divide our communities.

We thank you in advance for your work in supporting this effort.

In community,

Nikkei Resisters

From: [Miya Sommers](#)
To: [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)
Cc: [Board of Supervisors, \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Mullan, Andrew \(BOS\)](#); [Yan, Calvin \(BOS\)](#); [Low, Jen \(BOS\)](#); [Ho, Tim \(BOS\)](#)
Subject: Agenda Item 29 - Urging your support for Resolution to Grant Pardon for Sakhone Lasaphangthong and Somdeng Danny Thongsy
Date: Tuesday, March 10, 2020 1:52:51 PM

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisor Yee, Supervisor Peskin, Supervisor Safai, and Supervisor Stefani,

I'm writing to you to urge your support for agenda item 29 a "Resolution urging the Honorable Gavin Newsom, Governor of California, to grant Sakhone Lasaphangthong and Somdeng "Danny" Thongsy a full pardon to allow them to remain in the United States."

I met Danny in 2016 when we were both working at the Asian Law Caucus, and have since then called him a close friend and more recently meet Sakhone at an event supporting Southeast Asian immigrants. I have seen both Danny and Sakhone's commitment to making their communities thrive through doing direct service work. They are fearless advocates who have turned their lives around, even after experiencing immense trauma and the failure of the United States to ensure support for their refugee families, and are deeply involved with helping the lives of other across the Bay Area, and the country.

In light of Trump's decision to being to target Hmong, Iu- Mien, Khmu, and Lao communities, some of our most vulnerable within Asian American communities, I ask for you to take this important stance and vote yes on this resolution.

Appreciate your time and consideration.

Warmly,

Miya Sommers

Miya Sommers

Pronouns: they/she

miyajsommers@gmail.com

"Another world is not only possible, she is on her way. On a quiet day, I can hear her breathing." -Arundhati Roy

From: [Board of Supervisors, \(BOS\)](#)
To: [Board of Supervisors, \(BOS\)](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: 23 communications regarding Item No. 29 on today's Board meeting Agenda
Date: Tuesday, March 10, 2020 1:14:00 PM
Attachments: [Add to File number 200247.msg](#)
[please support the resolution requesting pardons for community leaders Somdeng Danny Thongsy and Sakhone Lasaphangthong.msg](#)
[Public Comment for Agenda item 29 - BOS meeting 31020.msg](#)
[Comment on file # 200247 - supporting Item 29 re Danny and Sakhone.msg](#)
[Agenda Item 29 Please support Supervisor Mar's Pardon Resolution \(add to File #200247\).msg](#)
[Pardoning of Somdeng Thongsy and Sakhone Lasaphangthong.msg](#)
[In Support Of Pardons for Danny Sakhone and Condemning Deportations to Laos.msg](#)
[Pardon Danny and Sakhone!.msg](#)
[Comment on file number 200247 - Support Danny and Sakhone.msg](#)
[Comment in support of Danny Thongsy and Sakhone Lasaphangthong.msg](#)
[I Support the resolution calling for pardons for Danny and Sakhone!! .msg](#)
[Public Comment \(please add to File No. 200247\).msg](#)
[public comment on resolution for Danny Thongsy and Sakhone Lasaphangthong \(file number 200247\).msg](#)
[In support of the resolution urging the pardon of Sakhone Lasaphangthong and Somdeng Danny Thongsy.msg](#)
[Please add to file number 200247 - Please Keep Families Together.msg](#)
[Public comment - add to File number 200247.msg](#)
[please support Supervisor Mar's resolution to stop deportations .msg](#)
[For File #200247 Support Resolution to Pardon Sakhone Lasaphangthong .msg](#)
[Support Letter Urging Pardon of Sakhone Danny.msg](#)
[Add to File number 200247..msg](#)
[Please add my public comment to file number #200247.msg](#)
[Public Comment File Number 200247.msg](#)
[Pardon Danny and Sakhone.msg](#)

Hello,

Please see the 23 attached communications regarding File No. 200247, Item No. 29 on today's Board meeting agenda.

Thank you,

Eileen McHugh
Executive Assistant
Board of Supervisors
1 Dr. Carlton B. Goodlett Place, City Hall, Room 244
San Francisco, CA 94102-4689

eileen.e.mchugh@sfgov.org | www.sfbos.org

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: 3/9/20 Meeting Agenda Item 29
Date: Monday, March 9, 2020 4:18:00 PM

-----Original Message-----

From: Joyce Xi <joycexi11@gmail.com>
Sent: Monday, March 9, 2020 12:28 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Quan, Daisy (BOS) <daisy.quan@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>
Subject: 3/9/20 Meeting Agenda Item 29

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello,

I am writing to submit a comment for Agenda #29 on tomorrow's BOS full board meeting, and ask that this email be added to File number 200247. I support the resolution introduced by Supervisor Gordon Mar.

Friends and colleagues had planned on being there to support the resolution for governor's pardons for community members Somdeng Danny Thongsy and Sakhone Lasaphangthong who are currently facing deportation to Laos, but won't be present due to COVID-19 guidance. The Trump administration's recent negotiations with Laos to increase deportations have created fear for Danny and Sakhone, as well as other community members. Their families were refugees escaping war in Laos, also the most bombed country per capita due to US intervention during the Vietnam War era. I believe they deserve to stay here and not be separated from their families, and a pardon is their main hope for this. That's why I support the resolution.

Danny is a close friend of mine, and we used to work together at the Asian Law Caucus. We just celebrated our birthdays together since they are a day apart. He is a kind, giving, and wonderful person and has done a lot to transform his life after making poor decisions as a youth facing the trauma of growing up poor and escaping war. Today, he is giving back to community, assisting others facing deportation, those coming home from prison, and local youth, and spreading positivity in the Bay Area and beyond. Sakhone is another valued community member I have met through the Asian Prisoner Support Committee. Similarly, he has transformed his life and has been doing a lot of positive work in the community such as assisting those who are unhoused and mentoring others. We need both of them here-- it would be a shame if they were sent to Laos, where they have never been and don't have ties. Thank you for any support for both of their pardons and this resolution!

Best,
Joyce Xi

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: added to File number 200247
Date: Tuesday, March 10, 2020 9:35:00 AM

From: Saporiti, Julian <julian_saporiti@brown.edu>
Sent: Monday, March 9, 2020 7:06 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: added to File number 200247

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

My name is Julian Saporiti. A musician and PhD candidate at Brown University. I met Danny at a concert I performed in 2018 and the University of San Francisco. I sing about immigrants and refugees. My mother is a refugee from Southeast Asia who for a long time lived in San Francisco after she had to flee Vietnam. She was lucky as she has never faced deportation. But she, like you and myself, have made mistakes in life. Perhaps not "criminal" but like us all, she has made missteps, learned from them and made herself into someone I view as a model American.

I view Danny no differently. I personally do not believe a person who commits a crime and reforms themselves, which is an incredible act of bravery and humanity within itself, should be treated with less respect and dignity than anyone else. To think that Danny and Sakhone could be sent to Laos, a country they do not know, deported from their home, where they has made themselves into a good men and become a role models for many "Americans" such as myself, it is hard to consider. I hope you will also see that in this particular situation, these people should remain here where he can continue to do good and be a strong part of the fabric of your city.

My mom did not return to Vietnam until 2013, forty five years after she left. When she did, it was not her home. That part of the world has faced so much terror and trauma that it is amazing that more of us in that refugee population haven't made bigger missteps. For those of us who have, especially those of us who have reformed ourselves, I would hope that "crime" and reformation would be met with kindness and respect and understanding. My mom had no close family in Vietnam and the country had fundamentally changed. America was her home. America is Danny's home. It is Sakhone's home. As their neighbor, as a historian who has examined immigration for years, as a person who believes in opportunity, forgiveness and kindness, I urge you to pardon both Danny and **Sakhone**.

This should be added to File number 200247 and will appear 29th on tomorrow's docket.

Sincerely,
Julian Saporiti

--

Julian L. Saporiti

nonoboyproject.com

PhD Candidate in American Studies, Brown University

MA in Ethnomusicology, Brown University

Lecturer, University of Wyoming & Colorado College

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: added to File number 200247
Date: Tuesday, March 10, 2020 9:36:00 AM

From: Sami Lamont <samilamont@gmail.com>
Sent: Monday, March 9, 2020 9:12 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Mar, Gordon (BOS) <gordon.mar@sfgov.org>
Subject: added to File number 200247

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

I am writing to our of concern for Sakhone Lasaphangthong and Somdeng “Danny” Thongsy. I urge you to request that Governor Gavin Newsom Pardon Danny to allow him to stay in the US.

Deporting Danny to Laos would mean separating him from his family and dropping him into a country he has never set foot in. It is inhumane, and completely contradicts the resolution the Board passed on April 2nd. Additionally, deporting Danny would be a huge of leadership to loss to his own community. I hope you decide to support immigrants and pass this resolution to support Danny.

Sincerely,
Samantha Lamont

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: Agenda Item 29 for next BOS mtg
Date: Monday, March 9, 2020 6:28:00 PM
Attachments: [Sakhone and Somdeng Resolution.doc](#)

From: Jenny Tighe <jenny.tighe@gmail.com>
Sent: Monday, March 9, 2020 5:25 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Agenda Item 29 for next BOS mtg

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Dear San Francisco Board of Supervisors,

The Trump Administration is getting ready to deport Hmong, Lu-Mien, Khmu, Lao refugee communities by pressuring their countries to accept deportees. Last week, Supervisor Mar's office introduced a resolution condemning this decision, and highlighted two stories, Danny's and Sakhone's. Each person needs a pardon from the Governor to find relief from deportation.

Will your office make sure that community leaders like Danny and Sakhone can remain with their loved ones here? Please vote yes on the resolution. These two individuals are dedicated members of their community and the Bay Area would feel this loss.

Please add this email to "File number 200247."

Thanks,
Jenny Tighe

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: File number 200247
Date: Monday, March 9, 2020 4:14:00 PM

From: Katie Dixon <katie@prisonerswithchildren.org>
Sent: Monday, March 9, 2020 2:55 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: File number 200247

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I would like to show support for Danny Thongsy, for a full pardon.

I've known Danny for two years now, and This is a person who exemplifies what it means to navigate through each and every system designed to crush him.

Danny is a pillar in the community.
As the coordinator for our JRC table, he leads by example.

Please support a resolution for Danny.

KD

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Subject: FW: File number 200247
Date: Friday, March 13, 2020 6:42:00 PM

From: Claudia Leung <claudiajleung@gmail.com>
Sent: Thursday, March 12, 2020 1:14 PM
To: Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>
Cc: Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: File number 200247

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear San Francisco Board of Supervisors,

Please add this comment to File number 200247.

Today, please vote on a resolution in support of the pardons for community leaders, Somdeng “Danny” Thongsy and Sakhone Lasaphangthong.

Both of these people are rehabilitated members of our communities and have made incredible contributions to keeping our communities safe!

A pardon from the Governor is the key strategy to stop their deportation to Laos.

Thank you!

Claudia Leung

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: File number 200247: Pardons for Danny and Sakhone
Date: Monday, March 9, 2020 4:11:00 PM

From: Kathy Huynh <kathyhuynh87@gmail.com>
Sent: Monday, March 9, 2020 3:59 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: File number 200247: Pardons for Danny and Sakhone

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors:

I am writing to you as a Licensed Clinical Social Worker from a community health care clinic who has had personal interactions and received support from Danny and Sakhone at my workplace. Danny and Sakhone are embodiments of how transformations happen and people who truly care and want to give back to their communities. I am asking for all of you to grant pardons for their deportation orders to Laos and add this email to file number 200247.

Thank you for your time, and I'm looking forward to their relief,
Kathy Huynh

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: In Support of Danny & Sakhone
Date: Tuesday, March 10, 2020 9:36:00 AM

From: Teo Saragi <teofanny.saragi@gmail.com>
Sent: Monday, March 9, 2020 8:11 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: In Support of Danny & Sakhone

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the San Francisco Board of Supervisors:

I'm writing to express my support of the resolution to support pardons for Danny and Sakhone, both of whom are facing deportation to Laos. Danny and Sakhone are both refugees of war who grew up in the U.S. and contribute to their local community.

Please pass the resolution so we can keep Danny and Sakhone home with family and community. Please also add my email to File Number 200247.

Thank you so much!

Best,

Teo

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: Please add this email to File number 200247
Date: Monday, March 9, 2020 4:17:00 PM

From: Joyce Nakamura <nakamurajoyce@yahoo.com>
Sent: Monday, March 9, 2020 1:35 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Quan, Daisy (BOS) <daisy.quan@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; ahsha.sfai@sfgov.org; ccatherine.stefani@sfgov.org
Subject: Please add this email to File number 200247

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Dear Board:

I have been resident of the city of San Francisco for over 35 years and have lived in District 3 for 30 of those years.

I am writing to urge your support for file number 200247, the resolution requesting that Governor Newsom pardon Sakhone Lasaphangthong and Somdeng "Danny" Thongsy so that they can remain in the U.S. with their families and community.

Barring a change in the unjust U.S. immigration system which is likely not to happen in the immediate future, a pardon is the only way that can prevent the deportation of Sakhone, Danny and many others who may face this situation. My heart is heavy for Phillip Clay, a Korean American adoptee who was deported back to Korea in 2012 away from his wife and children and who committed suicide in a country he had no ties with.

Sakhone and Danny have paid their debt to society by serving most of their lives in prison. To their credit, they are very important members of the Asian Pacific Islander American community, working for better treatment and lives for community members. I've had the pleasure of meeting and working with these two individuals through their community work and appreciate their commitment to make a better life for their families and community. They belong in their home, the United States of America to continue making contributions to our society.

Thank you for your consideration.

Joyce Nakamura
1469 Clay Street
San Francisco, CA 94109

nakamurajoyce@yahoo.com

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: Please add this email to File number 200247
Date: Monday, March 9, 2020 6:30:00 PM

From: Joyce Nakamura <nakamurajoyce@yahoo.com>
Sent: Monday, March 9, 2020 1:39 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Quan, Daisy (BOS) <daisy.quan@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>
Subject: Re: Please add this email to File number 200247

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Resending because of bounce back for Safai and Stefani email addresses.

On Monday, March 9, 2020, 01:34:37 PM PDT, Joyce Nakamura <nakamurajoyce@yahoo.com> wrote:

Dear Board:

I have been resident of the city of San Francisco for over 35 years and have lived in District 3 for 30 of those years.

I am writing to urge your support for file number 200247, the resolution requesting that Governor Newsom pardon Sakhone Lasaphangthong and Somdeng "Danny" Thongsy so that they can remain in the U.S. with their families and community.

Barring a change in the unjust U.S. immigration system which is likely not to happen in the immediate future, a pardon is the only way that can prevent the deportation of Sakhone, Danny and many others who may face this situation. My heart is heavy for Phillip Clay, a Korean American adoptee who was deported back to Korea in 2012 away from his wife and children and who committed suicide in a country he had no ties with.

Sakhone and Danny have paid their debt to society by serving most of their lives in prison. To their credit, they are very important members of the Asian Pacific Islander American community, working for better treatment and lives for community members. I've had the pleasure of meeting and working with these two individuals through their community work and appreciate their commitment to make a better life for their families and community. They belong in their home, the United States of America to continue making contributions to our society.

Thank you for your consideration.

Joyce Nakamura
1469 Clay Street
San Francisco, CA 94109
nakamurajoyce@yahoo.com

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Subject: FW: Please add to File Number 200247
Date: Tuesday, March 10, 2020 6:11:00 PM

From: Janie Chen <janiechen@berkeley.edu>
Sent: Tuesday, March 10, 2020 5:53 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Please add to File Number 200247

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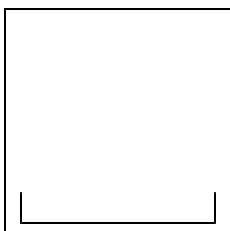
Dear Board of Supervisors,

My name is Janie, a UC Berkeley student and member of the Asian Prisoner Support Committee. I am emailing you about item #29 on your Board of Supervisors meeting. I am urging you to pass a resolution to support pardons for Danny and Sakhone, both of whom are facing deportation to Laos. Sakhone and Danny were one of the first guys I met when I started interning at the Asian Prisoner Support Committee. Danny and Sakhone share similar stories, of a refugee child who succumbed to social economic disparity after resettlement and later embarked on the path of redemption. While incarcerated, they matured immensely. They committed themselves to making positive social change in their communities and have achieved notable accomplishments of social and professional growth. They have done incredible work with the Asian Prisoner Support Committee. Although they were released, they are at risk of being deported and ripped from their communities. Their only path to obtain relief from deportation and remain in the US with their families and communities is to receive a pardon from the Governor. Therefore, I am emailing you to express my strong support for Somdeng "Danny" Thongsy and Sakhone Lasaphangthong.

Thank you for your time and I hope you consider to keep Danny and Sakhone home with family and community.

Best,
Janie Chen

--

	<p>Janie Chen Sociology and Ethnic Studies B.A UC Berkeley 2021 510-328-0663 bCal: janiechen@berkeley.edu</p>
---	--

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: public comment - [Urging a Full Pardon of Sakhone Lasaphangthong and Somdeng "Danny" Thongsy]
Date: Friday, March 13, 2020 6:41:00 PM

From: KC Ho <kc@cpasf.org>
Sent: Friday, March 13, 2020 12:50 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Quan, Daisy (BOS) <daisy.quan@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>
Subject: public comment - [Urging a Full Pardon of Sakhone Lasaphangthong and Somdeng "Danny" Thongsy]

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Hi

Please add this email to file number 200247.

I am submitting written comment to support this resolution. Southeast Asian communities have long faced violence both in southeast asian countries, and again in the US due to US imperialism, systemic racism, capitalism, and classism. Danny is a dear friend and community member who works tirelessly to fight for civil rights for asian americans, people in prisons, immigrants, and refugees. President Trump's agitations and blatant racism continues the US's long history of violence against marginalized communities, and now threatens deportations against people like Danny and Sakhone. Please support this resolution and ask Governor Newsom to pardon Danny and Sakhone, and to take a stand against the federal government's xenophobic racist violent policies.

Thank you!

--

KC Ho 何嘉程

TWC Community Organizer

pronouns: she, they

[Chinese Progressive Association](#) 華人進步會

1042 Grant Avenue, 5th Floor | San Francisco, CA 94133

(415) 391-6986 x 132

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: Public Comment for Agenda Item 29 (File number 200247)
Date: Monday, March 9, 2020 4:16:00 PM

From: Casey Tran <caseyt@advancingjustice-alc.org>
Sent: Monday, March 9, 2020 1:39 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Quan, Daisy (BOS) <daisy.quan@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>
Subject: Public Comment for Agenda Item 29 (File number 200247)

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Dear San Francisco Board of Supervisors,

My name is Casey Tran and I am a friend and former colleague of Danny Thongsy. I am writing in support of Danny who faces deportation to Laos, a country that he has never set foot in and has no familial ties to. In fact, Danny was born in a refugee camp in Thailand during the Vietnam War, the same war that forced my parents to flee to America to seek safety. This is a deeply personal issue to me and I urge the Board of Supervisors to pass a resolution in support of Danny and Sakhone Lasaphangthong.

I remember the moment that I met Danny at Asian Law Caucus (ALC). He was wearing his Yuri Kochiyama t-shirt and was eager to learn and give back to his community. During his time at ALC, Danny supported other individuals and families impacted by incarceration and deportations and advocated for policies to uplift our communities. He has led actions in front of the Immigration and Customs Enforcement (ICE) building here in downtown San Francisco and lobbied for the CA Values Act in Sacramento. Danny is a tireless advocate for immigrants and refugees, and always puts the well-being of others first. He is continuing to empower his community through his work at Justice Reinvestment Coalition of Alameda County.

Outside of work, I have known Danny as a good friend. We have bonded together over our love of poetry and delicious food. I can always count on Danny to have my back.

Danny is not the same kid he was when he committed his crime. He has grown into a thoughtful, caring, and honest man. He deserves a second chance and should not be punished twice for the mistake he made when he was a youth. If Danny were to be deported, it would be a huge loss for his

family, friends, and community. Both Danny and Sakhone deserve to stay with their community in California.

San Francisco has the opportunity to resist the Trump Administration's inhumane immigration policies. I ask the Board of Supervisors to pass this resolution and stand in solidarity with Southeast Asian and immigrant communities. **Please add this email to File number 200247.**

Thank you for your consideration,

Casey Tran

pronouns: she/her

Development Coordinator

Asian Americans Advancing Justice - Asian Law Caucus

T (415) 848-7701 | caseyt@advancingjustice-alc.org

www.advancingjustice-alc.org

[Make a donation to Advancing Justice - ALC today.](#)

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: Public Comment in Support of Danny Thongsy and Sakhone Lasaphangthong
Date: Monday, March 9, 2020 4:14:00 PM

From: Julia Z. Marks <juliazmarks@gmail.com>
Sent: Monday, March 9, 2020 3:03 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Quan, Daisy (BOS) <daisy.quan@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>
Subject: Public Comment in Support of Danny Thongsy and Sakhone Lasaphangthong

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

I am writing to strongly urge you to pass the resolution in support of Danny Thongsy and Sakhone Lasaphangthong and condemning deportations to Laos. Mr. Thongsy and Mr. **Lasaphangthong** are valued members of our community and should not be deported. I know Mr. Thongsy through my work at Asian Law Caucus and know of Mr. Lasaphangthong through my colleagues and friends. It would be unjust to force Mr. Thongsy and Mr. Lasaphangthong from their home here in California. We must all stand together to fight their deportation; your support for this resolution will help in that fight.

Please add this email to file no. 200247.

Thank you for your consideration.

Best Regards,
Julia Marks

--

Julia Z. Marks
juliazmarks@gmail.com

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: Public Comment to Support Resolution (File # 200247 Urging Gov. Newsom to Grant Pardons)
Date: Tuesday, March 10, 2020 9:36:00 AM

From: Nicole Wong <nicolew@advancingjustice-alc.org>
Sent: Monday, March 9, 2020 10:43 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Quan, Daisy (BOS) <daisy.quan@sfgov.org>
Subject: Public Comment to Support Resolution (File # 200247 Urging Gov. Newsom to Grant Pardons)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear San Francisco Board of Supervisors,

My name is Nicole Wong. I was born and raised in San Francisco. I lived in Districts 1 and 2, and went to school in Districts 1, 2, and 4 until I was 18 and currently work in San Francisco Chinatown at a civil rights nonprofit that advocates on behalf of our Asian American and immigrant communities.

I write urging you to support resolution # 200247 (please add this email to file #200247). This resolution asks Governor Newsom to grant full pardons to two beloved community members Sakhone Lasaphangthong and Somdeng "Danny" Thongsy.

Danny was just concluding his Yuri Kochiyama fellowship when I joined Asian Law Caucus. Danny is a compassionate, committed, and inspiring community leader that has truly applied his experiences navigating the criminal justice system to his advocacy work on behalf of other incarcerated Southeast Asian community members.

I remember the first time I met Sakhone - at last year's Free SF anniversary celebration, not long after he had been released from prison. Since then, he has exhibited a fierce dedication to serving the Oakland Chinatown community.

Both Danny and Sakhone's stories are shaped by similar histories and systems of oppression. Both were displaced from Laos at a young age due to the war, experienced childhood trauma, and got caught up in the criminal justice system before age 25. Both also spent years in prison focused on rehabilitation and personal growth, leaving prison ready to serve their communities. Both face imminent deportation to Laos, a country that Danny has never set foot in and Sakhone fled at a

young age.

A pardon is the only way that we can keep Danny and Sakhone home. Please give them the opportunity to stay with their family, friends, and community here in the Bay Area. We need leaders like Danny and Sakhone who know how important it is to change unjust systems because they themselves have lived through them, all the while growing warrior hearts that are tireless, selfless, and transcendently loving.

I urge you to please vote in support of this resolution tonight.

Thank you,

--

Nicole Wong 王雅斯

Community Advocate - Voting Rights

she/her/hers

Asian Americans Advancing Justice – Asian Law Caucus

D (415) 848-7715

nicolew@advancingjustice-alc.org

www.advancingjustice-alc.org

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: Requesting your attention Tuesday to the petition to Governor Gavin Newson for a full pardon for Sakhone Lasaphangthong and Somdeng "Danny" Thongsy
Date: Monday, March 9, 2020 6:16:00 PM

From: Martha Larsen <marthalarsen1118@gmail.com>
Sent: Monday, March 9, 2020 5:54 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>
Subject: Requesting your attention Tuesday to the petition to Governor Gavin Newson for a full pardon for Sakhone Lasaphangthong and Somdeng "Danny" Thongsy

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors:

Please add this email to File #200247.

You have received documents concerning the petition to Governor Gavin Newson for a full pardon for Sakhone Lasaphangthong and Somdeng "Danny" Thongsy. Southeast Asians have been terribly harmed by USA wars in their countries. Then when refugees of people from Laos, Vietnam, and Cambodia came to this country they were badly treated and had great difficulty integrating into this country because of racism and general lack of acceptance. But now most younger refugees from Laos do not know the language or customs of their country of origin. They would not be well accepted in their country of origin and could expect violence and even death.

Sakhone Lasaphangthong was born in war-torn Laos, was separated from his family at an early age and sent to a refugee camp in Thailand before being sent to the California. So, this young boy who was traumatized by the aftermath of the war in Laos, grew up toughing it out in a rough neighborhood. Communités of color were targets of strict crime policies which resulted in many being incarcerated. Thus, Lasaphangthong wound up in the criminal justice system at age 22 for second degree murder. He served 20 years of a 30-year sentence before being granted parole. Lasaphangthong transformed his life, devoting his time to attaining three associate degrees and convincing some 300 other prisoners to continue their educations. Following his release, he made enormous contributions to his community and

society working with other Asian prisoners and the homeless in San Francisco and Oakland. He is now facing imminent deportation to Laos, which is now an alien country to him and being again punished for a situation of war and deprivation for which he was not responsible as a child.

Somdeng “Danny” Thongsy was born in a refugee camp in Thailand after his family fled the war in Laos and later resettled in Stockton, California. Here as a child, growing up in a rough neighborhood with gangs, he experienced the violent death of his brother. He was incarcerated as a minor at the age of 17 for second degree murder.

During his 20-year incarceration, Thongsy transformed his life. He had a clean disciplinary record, graduated with a high school and college degree, joined and facilitated numerous self-help programs, mentored others to make positive choices, found supportive spirituality and religious studies and advocated for youth in the criminal justice system.

When he was released, Thongsy made numerous positive contributions to his community and society, beginning with a fellowship at Asian Law Caucus (ALC), engaging in community outreach for Asian prisoners, being active in his church community and interfaith organizations, volunteering in youth programs, attending leadership workshops and conferences, and promoting community justice and safety as a Campaigner/Coordinator at the Justice Reinvestment Coalition of Alameda County.

Thongsy is facing imminent deportation to Laos, a country where he has never lived.

Pardon is one of the only ways to prevent deportation, and would give Lasaphangthong and Thongsy the chance to remain in the United States and remain as contributing members of society.

On April 2, 2019, the San Francisco Board of Supervisors unanimously passed File No. 190320, which is a resolution respectfully urging the Trump Administration to stop the massive deportation of rehabilitated formerly incarcerated Southeast Asian nationals; now, therefore, be it

The City and County of San Francisco supports an immigration system that keeps families together and does not determine a person’s value by their immigration status or whether they have been incarcerated. The City and County of San Francisco condemns the deportation of Southeast Asian refugees in the United States, especially ethnic minorities, and does not support the removal of Lasaphangthong and Thongsy from the U.S.

I ask that the San Francisco Board of Supervisors request that Governor Gavin Newsom pardon Sakhone Lasaphangthong and Somdeng “Danny” Thongsy so they can remain in their homes in the United States and continue to improve our community.

I also request that the San Francisco Board of Supervisors direct the Clerk of the Board to

transmit copies to Federal and State Representatives in San Francisco with a request to take all action necessary to achieve the objectives of the resolution you were given and will meet about on Tuesday, March 10th.

Sincerely,
Martha Larsen
828 30th Ave.
San Francisco, CA 94121

Give us bread, but give us roses too. [Slogan of women woolen mill workers -Bread and Roses Strike, Lawrence , MA 1912.]

But when the melancholy fit shall fall. . . Then glut they sorrow on a morning rose. - John Keats.

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: Somdeng "Danny" Thongsy and Sakhone Lasaphangthong
Date: Tuesday, March 10, 2020 9:35:00 AM

From: Joan Marie O'Donnell <JO'Donnell@mercywmw.org>
Sent: Monday, March 9, 2020 7:20 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Somdeng "Danny" Thongsy and Sakhone Lasaphangthong

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Members of the Board of Supervisors,
As a member of the Interfaith Movement for Human Integrity and as a Sister of Mercy of the Americas, I urge your support of the resolution that will grant pardon to Somdeng Thongsy and Sakhone Lasaphangthong who have shown themselves to be outstanding contributing members to our society and to keeping our communities safe. Without your help and the pardon of our Gov. Gavin Newsom they risk deportation to their country of Laos and to the risk of their lives.

Thank you for your support and for all you do for those seeking to live a dignified life and to be of service to others.

Sister Joan Marie O'Donnell
Sister of Mercy

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: Support for Resolution in Support of Pardons for Danny & Sakhone
Date: Monday, March 9, 2020 6:26:00 PM

From: May Lim <limxmay@berkeley.edu>
Sent: Monday, March 9, 2020 4:36 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Subject: Support for Resolution in Support of Pardons for Danny & Sakhone

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Supervisors,

Please add my following comment to File number 200247:

I strongly urge you to vote YES tomorrow on the resolution supporting pardons for Danny and Sakhone, two community members who are integral to the API community in the Bay Area.

I met Sakhone through our mutual involvement at Asian Prisoner Support Committee (APSC), a non-profit in Oakland that assists current and formerly incarcerated folks with re-entry, education, jobs, legal aid, advocacy, basic needs, and so much more. Very soon after he was released from prison (in the Spring of 2019), Sakhone accepted an invitation from me to speak as a panelist for an event I was hosting at my school, UC Berkeley's Goldman School of Public Policy, where I am a Master of Public Policy student. The event was part of a week-long symposium of events focused on race & policy. Sakhone shared his story with students and community members, and he and the other panelists discussed criminal justice policy in the context of race. Sakhone's story and contributions, as well as his genuinely kind and positive demeanor, was extremely moving to us all. Even after all the hardships he had faced, he continued to persevere and encouraged us to continue in our education in order to live the youth he wished he could have lived.

After this initial meeting, I continued keeping up with Sakhone at APSC meetings, where I saw he was thriving and doing so much good in our community. He has been an Oakland Chinatown Ambassador for quite a while, keeping our community safe, clean, and civically active. He spoke again as a panelist at our school this last Fall of 2019, with other formerly incarcerated panelists, once again sharing about their stories and the intersections of race, gender, class, and status when it came to the criminal justice system. He again moved the audience greatly, and people were extremely touched and thankful for the gift he gave us in being so vulnerable and authentic in sharing his story and words of advice.

I have never met someone who is so positive, so kind, and so willing to help no matter what.

Sakhone has served his full sentence and deserves to stay in the only country he truly knows. He is a vital part and asset of our community, and his contributions are invaluable.

He now faces deportation at the hands of Trump's order, but you have the power to help prevent that. Please vote YES!

Sincerely,
May

May Lim

Master of Public Policy Candidate 2020

Goldman School of Public Policy

Huichin Ohlone Land - University of California, Berkeley

[509.270.8600](tel:509.270.8600) | limxmay@berkeley.edu

From: [Board of Supervisors, \(BOS\)](#)
To: [BOS-Supervisors](#)
Cc: [BOS Legislation, \(BOS\)](#)
Subject: FW: Support for Resolution, File number 200247
Date: Monday, March 9, 2020 4:12:00 PM

From: Galatea King <gking@im4humanintegrity.org>
Sent: Monday, March 9, 2020 3:54 PM
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>
Cc: Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>
Subject: Support for Resolution, File number 200247

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear SF Board of Supervisors,

Please add my email to File number 200247.

I'm writing in support of the resolution for a full pardon of Sakhone Lasaphangthong and Somdeng "Danny" Thongsy. Both community members have shown exemplary rehabilitation and are active members of our Bay Area community.

I work with a statewide organization, Interfaith Movement for Human Integrity, and we have been working with people of faith throughout the Bay Area, including San Francisco for many years. We organize a San Francisco Interfaith Coalition on Immigration that involves members of over a dozen faith communities in San Francisco working for immigrant justice.

I personally have gotten to know both Danny and Sakhone with their work in the community. Danny, as an Asian Law Caucus Fellow, participated in our program to share his faith journey with congregations throughout the Bay Area. Currently with the Justice Reinvestment Coalition, he continues to be a lead organizer in our community. As an Ambassador in Chinatown - where our office is located - I've gotten to witness Sakhone's critical work with unsheltered neighbors in Oakland, building trust, and getting them into transitional housing.

Both Danny and Sakhone make our communities safer. A pardon for Governor Newsom is the key strategy to prevent their deportation back to Laos!

Thank you for your leadership, BOS Gordon Mar, on this resolution! I hope the rest of the BOS will support this too!

Peace,

Gala

~~~~~

Gala King || she/her/hers

Regional Organizer, Northern California

Interfaith Movement for Human Integrity

310 8th St. Suite 310

Oakland, CA 94607

510.759.4196

[gking@im4humanintegrity.org](mailto:gking@im4humanintegrity.org)

[www.im4humanintegrity.org](http://www.im4humanintegrity.org)

**From:** [Board of Supervisors. \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [BOS Legislation. \(BOS\)](#)  
**Subject:** FW: Support of resolution In support of Danny Thongsy and Sakhone Lasaphangthong and condemning their deportations to Laos  
**Date:** Monday, March 9, 2020 4:12:00 PM

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**From:** Roni Chahal <rondeep.chahal@gmail.com>  
**Sent:** Monday, March 9, 2020 3:54 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Cc:** Quan, Daisy (BOS) <daisy.quan@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Mandelman, Rafael (BOS) <rafael.mandelman@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>  
**Subject:** Support of resolution In support of Danny Thongsy and Sakhone Lasaphangthong and condemning their deportations to Laos

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Please add this email to File number 200247

Hi SF Board of Supervisors,

I lived in SF for 11 years and even voted for several of you. I find the idea that we are going to deport people who have known nothing but America since 2 and 7 years old sad and troubling.

I'd urge you to pass the resolution in support of Danny Thongsy and Sakhone Lasaphangthong. Danny and Sakhone have been part of our community fabric - giving back in key ways.

We may not love everything that everyone in our community does - but when people pay their dues - shouldn't that be enough? How can it be fair for some to receive an additional punishment years later of being ripping from their homes?

Thank you for your time.

Regards,

--

- Roni

**From:** [Jose Bernal](#)  
**To:** [Yee, Norman \(BOS\)](#)  
**Cc:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** Support Letter Urging Pardon of Sakhone & Danny  
**Date:** Tuesday, March 10, 2020 11:51:39 AM  
**Attachments:** [Letter of Support.Danny+Sakhone Signed.pdf](#)  
[PastedGraphic-1.tiff](#)

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello Board President Norman Yee,

Please see attached letter of support for resolution to be voted today, resolution file [#200247, Urging a Full Pardon of Sakhone Lasaphangthong and Somdeng “Danny” Thongsy](#)

Please do not hesitate to contact me if you have any questions or concerns.

Thank you greatly,

--

Jose Bernal (pronouns: he/him)  
Organizing Manager, [Ella Baker Center for Human Rights](#)  
1419 34th Ave, Suite 202 | Oakland, CA 94601 | 510.428.3939 ext:248

*Click [HERE](#) to become a member of the Ella Baker Center and organize with us to win jobs not jails, books not bars, and healthcare not handcuffs.*



**From:** [Jenny Zhao](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** public comment on resolution for Danny Thongsy and Sakhone Lasaphangthong (file number 200247)  
**Date:** Tuesday, March 10, 2020 10:32:03 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I'm writing in support of the resolution urging pardons of Danny Thongsy and Sakhone Lasaphangthong and condemning deportations to Laos. Please add my email to file number 200247.

I am a staff attorney at Asians American Advancing Justice - Asian Law Caucus and have known Danny for over three years. He was our office's inaugural Yuri Kochiyama fellow and has been a tireless advocate for policies that embrace the humanity of people impacted by incarceration and deportation. He is a kind, generous, and loyal friend and colleague and it would be unthinkable for him to be deported to Laos. At a time when the Trump administration is increasing its pressure on Laos to cooperate with U.S. deportations, our support for our community members Danny and Sakhone is more critical than ever.

**Jenny Zhao**

*Litigation Staff Attorney  
Immigrant Rights Program*

---

**Asian Americans Advancing Justice – Asian Law Caucus**

T (415) 848-7710

[jennyz@advancingjustice-alc.org](mailto:jennyz@advancingjustice-alc.org)

[www.advancingjustice-alc.org](http://www.advancingjustice-alc.org)



**From:** [Wei Lee](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Mar, Gordon \(BOS\)](#); [Quan, Daisy \(BOS\)](#); [Fewer, Sandra \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** Public Comment for Agenda item 29 - BOS meeting 3/10/20  
**Date:** Monday, March 9, 2020 11:16:36 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please add this email to the File number 200247

Dear Board President Yee and Members of the Board,

My name is Wei Lee, a San Francisco resident living in District 11. I have formerly worked at the Asian Law Caucus as the program coordinator for ASPIRE , the first pan-Asian undocumented group in the country. Now, I work as a peer counselor for Richmond Area Multi-Services (RAMS). I am writing this email to urge your support to pass the resolution in support of Danny and Sakhone gubernatorial pardon as well as condemning deportations of community members to Laos.

I have met Danny 4 years ago when we both worked at the Asian Law Caucus. I was impressed by his humility and commitment to serve others. He used his experiences to demystify common stereotypes about immigrants with criminal convictions and shed a light on their struggles that led them to this path. Danny is one of the most committed individuals I have known supporting diverse causes and community members. Danny's story is a reflection of the humane side we often forget when society fails to provide the necessary resources for people like him to succeed. Now, you have the power and influence to support him by joining his fight to stay with his community, friends and loved ones.

As a formerly undocumented immigrant youth who was at risk of deportation, I understand the uncertainty that Danny and Sakhone are feeling. Not knowing when ICE will come for you is a terrible sensation, nonetheless, Danny and Sakhone are always showing up for others. They can be found in the frontlines in rallies, community gatherings, and court hearings supporting others facing deportations.

Passing this resolution will be a crucial step as Danny and Sakhone are seeking a pardon from Governor Newson, which will help halt their deportation orders, give them peace of mind and allow them to continue to contribute to our communities. I hope the full board can continue to show up for immigrant communities by supporting both these resilient refugees by passing this resolution.

Sincerely,  
Wei

**From:** [Sophie Pham](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** Public Comment: File Number 200247  
**Date:** Tuesday, March 10, 2020 1:09:30 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

I would like my email to be added to File Number 200247. I support the resolution calling for pardons for Danny and Sakhone because I believe deportations should be stopped, and families should stop being separated. Danny and Sakhone should not have to face retributions like this, which will cause impacts on them and everyone around them. Please, please, pardon Danny and Sakhone.

Thank you,  
Sophie P.

**From:** [Brenda Guzman](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** Public Comment (please add to File No. 200247)  
**Date:** Tuesday, March 10, 2020 10:27:37 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

I am writing to express support for Supervisor Gordon Mar's resolution in support of Danny Thongsy and Sakhone Lasaphangthong.

I am currently a second-year law student at UC Hastings, College of the Law and have been externing with the legal and civil rights organization, Asian Law Caucus (ALC). I met Danny and Sakhone as a result of my work with ALC.

Both Danny and Sakhone have inspired me and affirmed my desire to use my law degree to serve vulnerable communities. They are both incredible public speakers who eloquently share their experiences growing up as refugees. Following their releases, both Danny and Sakhone became community activists. Their resolve to not only improve themselves but also improve their entire communities makes me want to be a better member of my own community.

Thus, I hope you too will support Danny and Sakhone. Thank you for your time and attention.

Sincerely,  
Brenda Guzman

---

**Brenda Guzman**

UC Hastings, College of the Law

J.D. Candidate | Class of 2021

[bguzman@uchastings.edu](mailto:bguzman@uchastings.edu)

[brendag@advancingjustice-alc.org](mailto:brendag@advancingjustice-alc.org)

**From:** [Carolyn Nguyen](#)  
**To:** [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Board of Supervisors, \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** Public comment - add to File number 200247  
**Date:** Tuesday, March 10, 2020 11:24:00 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To whom this may concern:

I am writing a public comment in support of the resolution to urge for a full pardon of Danny Thongsy and Sakhone Lasaphangthong. The deportation orders of Southeast Asians living in the US has been unreasonable and is deplorable. It is completely irresponsible to send Danny, Sakhone, and others back to lands they have never known, specifically because they were pushed out due to a war that the US encouraged and exacerbated in Southeast Asia. Danny and Sakhone were raised in America with limited resources and support, and like many others, have often had to resort with building community with those who relied on crime to survive. Since then, they have been accountable for their actions, have transformed their lives, and now dedicate their work to advocate and organize for our communities. I am hoping that pardoning Sakhone and Danny can set a precedent for the many other deportation cases that deserve a pardon as well, and I urge the Board of Supervisors to continue to advocate for this urgent cause.

Coming from a family of Vietnamese refugees myself, I know firsthand the deep trauma that war creates, and how that harms our community in so many different ways. The last thing we need is to be sent back to a country and further isolated from each other. We need further allyship and advocacy from the greater community, and continued resources to support us mentally, emotionally, and physically.

Please add this email to file number 200247.

Thank you,

Carolyn

Carolyn Nguyen  
*she/her pronouns*  
Youth Organizer | Chinese Progressive Association  
(510) 842-5076

Chinese Progressive Association  
1042 Grant Ave 5th Floor  
San Francisco, CA 94133  
(415) 391-6986

**From:** [julie litwin](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Mar, Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** please support the resolution requesting pardons for community leaders, Somdeng "Danny" Thongsy and Sakhone Lasaphangthong  
**Date:** Monday, March 9, 2020 11:13:50 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

**Please add this comment to File number 200247**

To the San Francisco Board of Supervisors:

I am writing in support the resolution in support of the pardons for community leaders, Somdeng "Danny" Thongsy and Sakhone Lasaphangthong.

I have gotten to know Danny through my synagogue's interfaith work on immigration justice issues and have heard him tell his story of trauma and transformation. I have been deeply impressed by Danny's passion for justice, his devotion to keeping families and communities together and his belief in the possibility of healing for those who have experienced many kinds of trauma. I have heard him speak eloquently about his work on behalf of others who are threatened with deportation to countries they have never known. I have also met Sakhone and learned about his past and all that he has done to rehabilitate and contribute to our community.

I am deeply troubled by the fact that our country contributed to the conditions in Laos that initially caused Danny and Sakhone's families to flee and then failed to provide them with needed support when they arrived in this country. Now these two individuals, and many more in similar circumstances, are being punished by our country yet again and threatened with deportation to Laos, far from all they've known and from family and community. These are good people who made mistakes many years ago but who are now leaders in the community.

Danny and Sakhone have gone through the arduous process of proving to the parole board that they are no longer a danger to society and should be released to the community.

There is absolutely no reason for them to be deported. A pardon by Governor Newsom is the sole avenue to prevent their deportation. Please let Governor Newsom know that you, as elected city officials, want Sakhone and and Danny to be released and to be returned to our community.

Thank you!

Julie Litwin  
jblitwin@yahoo.com  
510-655-1803

**From:** [Michelle Foy](#)  
**To:** [Board of Supervisors, \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Cc:** [Mar, Gordon \(BOS\)](#); [Quan, Daisy \(BOS\)](#)  
**Subject:** please support Supervisor Mar's resolution to stop deportations  
**Date:** Tuesday, March 10, 2020 11:40:10 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello,

My name is Michelle Foy and I live in District 8 in San Francisco.

I am writing to urge you to support Supervisor Mar's resolution urging Gavin Newsom, Governor of California, to grant Sakhone Lasaphangthong and Somdeng "Danny" Thongsy a full pardon to allow them to remain in the United States. We must do all that we can to keep families together, to challenge the Federal deportation machine that disrupts families and communities and causes generations of harm.

Please add the email to File number 200247.

Thank you very much, Michelle Foy  
3868 23rd St.  
San Francisco, CA 94114

**From:** [Tiffany Monica Louie](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** Please add to file number 200247 - Please Keep Families Together  
**Date:** Tuesday, March 10, 2020 10:40:44 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

I am writing to urge your support on Supervisor Mar's resolution to support pardons for Somdeng Danny Thongsy and Sakhone Lasaphangthong, both who are facing deportation to Laos. Their families fled the war and resettled in CA when they were young. Because of past convictions, they're now facing the prospect of deportation. Given Trump's recent negotiations with Laos, there is a lot more concern that they and others could be at risk, and a pardon is the main way to prevent them from being deportable.

In light of the latest attempts of the Trump administration to increase deportations to Laos, for refugees who fled war years ago and have grown up in the US, I am appreciative of the support for this resolution led by Supervisor Mar and co-sponsored by Supervisors Fewer, Walton, Haney, Preston, Ronen.

Let's keep Danny and Sakhone home with family and community.

In community,  
Tiffany

**From:** [Ny Nourn](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** Please add my public comment to file number #200247  
**Date:** Tuesday, March 10, 2020 12:49:19 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello Board of Supervisors,

My name is Ny and I work as a Community Advocate with Asian Americans Advancing Justice - Asian Law Caucus, and I am also a San Francisco resident. I am submitting my support for file No. 200247, a resolution urging the Honorable Gavin Newsom, Governor of California, to grant Sakhone Lasaphangthong and Somdeng “Danny” Thongsy a full pardon to allow them to remain in the United States.

First, I would like to thank you again for unanimously passing file No. 190320, on April 2, 2019, a resolution respectfully urging the Trump Administration to stop the massive deportation of rehabilitated formerly incarcerated Southeast Asian nationals. Your bold leadership set precedence and as a model for other counties to adopt similar resolutions.

I strongly support resolution #200247, because I believe that as a community we are to uplift one another, especially in a time of need and urgency in which Sakhone and Somdeng need our support. Since I've known Sakhone and Somdeng, I understand the shared struggles of what it means to have the stigma of being a formerly incarcerated person, the label that society sees a person not by who they are today but by their worst past deed. And to be punished further with the threat of deportation of the deed in which they have already served time for is a form of extreme punishment. Somdeng and Sakhone are more than my friends, they are my fellow Asian Prisoner Support Committee members, my brothers, and my movement leaders who shouldn't be stripped of their humanity after surviving prison and ICE cages.

San Francisco and Oakland are both better with Somdeng and Sakhone as permanent residents and we must stand by them, to uplift their humanity, and to pass this resolution in urging Governor Newsom to grant a full pardon so that they can remain in the United States.

Thank you so much for your time and I respectfully urge you to vote "yes" on this resolution.

In community,

Ny

**Ny Nourn**

(Pronouns: she/her/hers)

*Community Advocate - Immigrant Rights Program*

**Asian Americans Advancing Justice – Asian Law Caucus**



Tel: (415) 896-1701 ext: 130

[nyn@advancingjustice-alc.org](mailto:nyn@advancingjustice-alc.org)

[www.advancingjustice-alc.org](http://www.advancingjustice-alc.org)

**From:** [David Crosson](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Mar. Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** Pardoning of Somdeng Thongsy and Sakhone Lasaphangthong  
**Date:** Tuesday, March 10, 2020 9:19:36 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Re: File number 200247

As a member of the Justice Ministries at the Episcopal Church of St. Mary the Virgin, San Francisco, and as a resident of San Francisco, I urgently request your support for the resolution upon which you will vote at 2:00 p.m. this afternoon requesting pardon for Somdeng Thongsy and Sakhone Lasaphangthong. The argument for their pardon is incontrovertible, as clearly stated within the resolution. If you are unwilling to do the right thing, do the humane thing, and request full pardon for these people, **then our claim to be a sanctuary city is nothing but a fraud, a false claim that does nothing more than encourage our self-regard at the expense of others.** Please, please, support this resolution.

David Crosson  
225 Lake St., SF  
408-316-0478

**From:** [Hannah Lee](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** Pardon Danny and Sakhone  
**Date:** Tuesday, March 10, 2020 1:10:30 PM

---

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello,

I am writing a public comment in support of pardoning Danny and Sakhone. Please consider the ways that deportation hurts families and communities. It is evident that both Danny and Sakhone have learned from their previous actions and have been working hard to improve the lives of those in their community through education.

Please add this email to file number 200247.

Thanks,

--

Hannah Lee  
Operations and Administrative Assistant  
Chinese Progressive Association 華人進步會  
1042 Grant Avenue, 5th Floor | San Francisco, CA 94133  
Office: 415.391.6986 ext 136  
Mobile: 415.939.8212

**From:** [Menninga-Fong 翁Alizarin 寶心](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** Pardon Danny and Sakhone!  
**Date:** Tuesday, March 10, 2020 9:54:18 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To Gordon Mar's office and the Board of Supervisors,

Please add this email to file number 200247.

It is absolutely outrageous to deport Danny Thongsy and Sakhone Lasaphangthong to Laos, a country where they have no support or connections and where they face potential violence and death. These people are my community members and could be my family. They are loved and supported here in California, and it would be wrong to do anything but **PARDON THESE PEOPLE**. Please do what is right and set a precedent for all the other wrongful threats of deportation to Laos that our community faces.

Many thanks,  
Alizarin Menninga-Fong

**From:** [Don Misumi](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#); [Mar, Gordon \(BOS\)](#)  
**Subject:** In support of the resolution urging the pardon of Sakhone Lasaphangthong and Somdeng "Danny" Thongsy  
**Date:** Tuesday, March 10, 2020 10:32:42 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please add this email to File number 200247

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I am writing to you to express my strong support for the resolution urging Gavin Newsom to grant Sakhone Lasaphangthong and Somdeng "Danny" Thongsy full pardons so that they can remain in this country without fear of deportation.

I am a lifelong resident of San Francisco and have been active in the Japanese community and the Richmond District neighborhood where I grew up. The experience of my family having been incarcerated during WWII, despite being loyal US citizens and the repercussions that they faced trying to rebuild their lives has left me with a deep sensitivity to social justice issues. When I heard about the struggles these young men have faced, I was outraged. They have been victimized by a US imperialism that drove their families from their homeland only to be criminalized in this country. Despite this, they have survived, turned their lives around and have in fact helped others do the same. That the US is now trying to deport them is the ultimate in villainy. They are owed reparation, not deportation. For the sake of humanity, do the right thing and pass this resolution.

Don Misumi

**From:** [Nancy Truong](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** In Support Of Pardons for Danny, Sakhone, and Condemning Deportations to Laos  
**Date:** Tuesday, March 10, 2020 9:32:06 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors,

This is a written comment in support of the resolution to pardon Sakhone Lasaphangthong and Somdeng “Danny” Thongsy, as well as condemn the deportations to Laos. Please add to file number 200247.

As a child born in Vietnam with parents who lived through the wars in Southeast Asia, I have experienced how war and trauma affects a person. I was lucky enough to be raised in a nurturing environment, have access to education, and resources that have helped me to become the person I am today. Because of racism, systemic inequality, poverty, and many other barriers, not everyone is able to have access to those things.

Danny and Sakhone have done their time and have transformed themselves and their trauma. They are community leaders and have been an integral part of the community for Asian Pacific Islanders who are currently or formerly incarcerated, as well as the larger movement of grassroots organizations in the Bay Area. I believe in keeping families and communities together. I believe that Danny and Sakhone should be able to stay here, in their community that they have spent time building over the past years, and should be able to be seen through what they bring to our community, rather than through their past wrongs. I urge all supervisors to support this resolution.

Best,  
Nancy

**From:** [Sacha Maniar](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** I Support the resolution calling for pardons for Danny and Sakhone!!  
**Date:** Tuesday, March 10, 2020 10:20:44 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Hello Board of Supervisors,

I am a firm supporter of the resolution calling for pardons for Danny Thongsy and Sakhone. Danny is a member of the community and does a lot of work here in San Francisco and the Bay Area as a whole. His home is not (and has never been) in Laos. They both deserve to continue live here, where they have strong ties and roots. Please support them and pass the resolution!!!

--

Sacha Maniar  
**CUNY School of Law**, Class of 2021  
*RPCV Nepal 2016*  
*UC San Diego 2013*  
[sachamaniar@gmail.com](mailto:sachamaniar@gmail.com)

**From:** [Heidi Wong](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Mar. Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** For File #200247: Support Resolution to Pardon Sakhone Lasaphangthong  
**Date:** Tuesday, March 10, 2020 11:47:07 AM  
**Attachments:** [Outlook-c2vqso0l.png](#)

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

**Please add this message to File #200247.**

Dear SF Board of Supervisors~

My name is Heidi Wong and I am a third-generation member of the Presbyterian Church in Chinatown, San Francisco as well as a second-generation participant and former Board President of Donaldina Cameron House, San Francisco. Thank you for your years of support for these two institutions and the Chinatown community at-large.

I am asking for your support on today's resolution requesting the Governor's full pardon of Sakhone Lasaphangthong, a resident of San Francisco.

I am Sakhone's direct supervisor at Family Bridges, Inc., a nonprofit agency located in Oakland Chinatown, CA. I first met Sakhone in February 2019, when he began volunteering for our Community Health Home Program as our primary street outreach worker. Since October 2019, Sakhone has been employed with Family Bridges, and after 3 months, I promoted him to be our full-time Program Outreach and Housing Navigation Manager. In this capacity, he supervises two employees and manages our outreach and housing navigation subcontract provided at a new site that opened late January 2020 -- the Oak Street Community Cabins, a City of Oakland program that provides 38-emergency shelter beds to the unhoused in the Oakland Chinatown/Jack London area. On the first day of opening, Sakhone moved in an unprecedented 20 unhoused, most of whom he had been outreaching to for the past year, resulting in 100% occupancy at that time. Within the next two weeks and upon the delivery of the additional cabins, he outreached to and spearheaded the move-in for the additional 18 unhoused. Sakhone is committed to the success of the cabin residents and is onsite 6 days a week.

Sakhone is a crucial member of our team. Through establishing trusting relationships with individuals in need, Sakhone makes meaningful positive impacts and is changing the trajectory of many lives, particularly the unhoused. He instills hope and encourages individuals to envision a healthier pathway for themselves; a pathway that they deserve and can achieve. The success of our Community Health Home Program generally, and the Oak Street



Community Cabins specifically, is reliant upon Sakhone's leadership and direct interactions with our clients and cabin residents.

Please support today's resolution requesting Governor Gavin Newsom's full pardon of Sakhone Lasaphangthong so he can remain in his home in the United States and continue improving our community.

**Thank you** for your consideration and support.

Sincerely,



~Heidi Wong.

Program Director

Community Health Home Program

**From:** [Karissa Tom](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** Comment on file number 200247 - Support Danny and Sakhone  
**Date:** Tuesday, March 10, 2020 10:07:57 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To whom it may concern,

I'm writing to express my support for the resolution supporting pardons Danny Thongsy and Sakhone Lasaphangthong. Danny and Sakhone are invaluable community members who advocate for a more just criminal justice system despite and because of, their own experiences with incarceration. They deserve to stay with their families and loved ones here in the US, as opposed to being deported to a country they don't know.

As a life-long San Franciscan, I am heartened by Supervisors Mar, Lee-Fewer, Walton, Haney, Preston, and Ronen's co-sponsorship for this resolution and I hope the rest of the Board will join them in supporting this resolution. Voting for this resolution is immeasurably helpful in our continued appeal to Governor Newsom to pardon Danny and prevent this unjust deportation.

I would like this comment to be added to File number 200247.

Thank you.

In Solidarity,  
Karissa Tom  
District 3 resident

**From:** [Ener Chiu](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** Comment on file # 200247 - supporting Item 29 re: Danny and Sakhone  
**Date:** Tuesday, March 10, 2020 12:01:54 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear San Francisco Supervisors:

Please support the resolution calling for pardons for Danny and Sakhone. I work with Sakhone here in Oakland Chinatown, and I see his positive influence on our community every day. His compassionate work with homeless populations in Oakland has made our community safer and built bridges between our housed and unhoused neighbors.

Thank you for your time,  
Ener Chiu

**From:** [Anton Kovalyov](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Quan, Daisy \(BOS\)](#); [Mar, Gordon \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** Comment in support of Danny Thongsy and Sakhone Lasaphangthong  
**Date:** Tuesday, March 10, 2020 10:14:09 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I'd like to request that the comment below is added to File number 200247.

I urge the San Francisco Board of Supervisors to support a resolution support of Danny Thongsy and Sakhone Lasaphangthong and condemning deportations to Laos. The city of San Francisco is proudly a sanctuary city, and so is the State of California. Deporting anyone to a country they haven't been to since they were five is, simply put, cruel. I urge the Board to look within, for their moral and ethical values, and support this resolution. Thank you!

Anton Kovalyov

**From:** [Meghan Schwartz](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Mar, Gordon \(BOS\)](#); [Fewer, Sandra \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** Agenda Item 29: Please support Supervisor Mar's Pardon Resolution (add to File #200247)  
**Date:** Tuesday, March 10, 2020 9:14:34 AM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please add to File number 200247 for BOS meeting 3/10 Agenda Item 29 (resolution calling for pardons)

Dear Supervisors,

We are writing on behalf of our friend and valued community member, Somdeng "Danny" Thongsy, to urge you to support Supervisor Mar's resolution (agenda item 29 on 3/10) calling on Governor Newsom to grant Danny and his fellow community member, Sakhone, a pardon. A pardon is the only means by which Danny and Sakhone can avoid imminent deportation to Laos, a country neither of them knows. (Please add my letter to File number 200247.)

Both Danny and Sakhone's families settled in California as refugees from war-torn Laos when they were very young children. Both men experienced the trauma of being refugees and became entangled in the criminal justice system as teenagers and young adults. Both men paid their debt to society with 20 years in prison and both were granted parole after bettering themselves and their fellow inmates through education and community programs. Upon their releases, both men have dedicated their lives to continuously serving their communities and improving the lives of others. They have become tireless advocates and supported others in finding help even as they faced their own hardships. Due to their immigration statuses, both Danny and Sakhone face imminent deportation to Laos, a country they do not know. The only means of rectifying this unjust situation and keeping Danny and Sakhone in the community that truly loves, values and needs them is to grant them pardons. These are exactly the type of community members we need who set a great example for others facing difficult choices and supporting our communities in fighting for justice. Beyond that, it is the right thing to do. We can't allow politics to tear our communities apart and strip us of compassion and forgiveness for our neighbors.

We have had the pleasure of getting to know Danny over the past couple of years. We have worked side by side with him at The Quest for Democracy Lobby Day in Sacramento in 2018 and 2019, as well as on the Audit the Sheriff Campaign in Alameda County. Danny always thinks of others before himself and is reluctant to ask for help for his own situation. We have seen him work tirelessly for his community, advocate for criminal justice reform, particularly for young people, and show up whenever he is asked. There is never a meeting too late, an

event too far or a public figure too intimidating for Danny to take part in advocating for justice. What truly stands out about Danny is his great humility and kindness. He approaches everyone with an open heart and listening ears. We need more people like Danny in our community. Danny has been a particularly strong mentor to my 10-year-old daughter, Lila, by including her in advocacy work, showing interest in her, and even completing an interview for her class project. In short, Danny's absence would leave a huge hole in our hearts and the lives of so many in the San Francisco Bay Area.

Please support our community's fight for justice and set an example for all those seeking sanctuary in California by calling for Governor Newsom to do the right thing by pardoning Danny and Sakhone. Thanks for all of your work.

Sincerely,  
Meghan and Lila Schwartz  
12 Hillcrest Ct.  
Berkeley, CA  
978-239-7926  
[Meghan.schwartz@stanfordalumni.org](mailto:Meghan.schwartz@stanfordalumni.org)

**From:** [Annie Souvannavong](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Subject:** Add to File number 200247  
**Date:** Monday, March 9, 2020 11:04:44 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Please add my vote to "File number 200247". This is item number 29 for tomorrow's Board of Supervisors meeting.

I stand with Refugees who deserve second chances.

Thank you! #stand4danny #leavesakhonealone #pardonrefugees

Annie Souvannavong

--

Annie Souvannavong  
Phone: [\(408\) 771-1280](tel:4087711280)  
CA License # OD35343

**From:** [Nghiep Lam](#)  
**To:** [Board of Supervisors, \(BOS\)](#)  
**Cc:** [Mar, Gordon \(BOS\)](#); [Fewer, Sandra \(BOS\)](#); [Yee, Norman \(BOS\)](#); [Peskin, Aaron \(BOS\)](#); [Mandelman, Rafael \(BOS\)](#); [Safai, Ahsha \(BOS\)](#); [Stefani, Catherine \(BOS\)](#)  
**Subject:** Add to File number 200247.  
**Date:** Tuesday, March 10, 2020 12:36:46 PM

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This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Greetings,

My name is Nghiep. I'm the Reentry Coordinator for the organization Asian Prisoner Support Committee. Our organization has been around for 15 years. We provide Reentry Services to current and formerly incarcerated individuals. I have been working as the Reentry Coordinator for the past four years and have been doing advocacy work for the past 15 years.

**I am writing in support of Somdeng "Danny" Thongsy and Sakhone Lasaphangthong.** I have known Danny and Sakhone and for years and witnessed their amazing community advocacy. They stood up to defend the deportation of our Cambodian and Vietnamese communities. They push hard to find housing and employment for our houseless and jobless communities. Their deportation would be a huge loss for our community.

**I am opposing the deportation of people from Laos and other countries.** Each person deported is separating families. We are not deporting illegal aliens. These are contributing members of society. They paid taxes like every Americans. They contribute to the development of communities and cities. Who will do their work once they are gone? Immigrants are the backbone to the growth of America and its economy.

I am asking you to pass this resolution to Stop Laos deportation.

All the best,

**Nghiep "Ke" Lam | Reentry Coordinator** (*Pronouns: He/Him/His*)  
Asian Prisoner Support Committee (APSC)  
[416 8th St., Oakland, CA. 94607](#)

[ke@asianprisonersupport.org](mailto:ke@asianprisonersupport.org)

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**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Subject:** FW: CPUC - Verizon Wireless - City of San Francisco-SF MARINA 004 - A-414143  
**Date:** Tuesday, March 10, 2020 1:16:00 PM  
**Attachments:** [CPUC\\_456.pdf](#)

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**From:** CPUC Team <westareacpuc@verizonwireless.com>  
**Sent:** Tuesday, March 10, 2020 10:48 AM  
**To:** GO159Areports@cpuc.ca.gov  
**Cc:** westareacpuc@verizonwireless.com; CPC.Wireless <CPC.Wireless@sfgov.org>; Administrator, City (ADM) <city.administrator@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** CPUC - Verizon Wireless - City of San Francisco-SF MARINA 004 - A-414143

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

This is to provide your agency with notice according to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California ("CPUC") see attachment.  
This notice is being provided pursuant to Section IV.C.2.

Mar 10, 2020

Consumer Protection and Enforcement Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
GO159Areports@cpuc.ca.gov

RE: Notification Letter for      SF MARINA 004 - A  
                                                 SF MARINA 028 - A

SAN FRANCISCO, CA /GTE Mobilnet California LP

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This is to provide the Commission with notice according to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California ( "CPUC") for the project described in Attachment A.

A copy of this notification letter is also being provided to the appropriate local government agency for its information. Should there be any questions regarding this project, or if you disagree with any of the information contained herein, please contact the representative below.

Verizon Wireless

Ann Goldstein  
Coordinator RE & Compliance - West Territory  
1515 Woodfield Road, #1400  
Schaumburg, IL 60173  
WestAreaCPUC@VerizonWireless.com

| JURISDICTION          | PLANNING MANAGER       | CITY MANAGER                 | CITY CLERK                     | DIRECTOR OF SCHOOL BOARD | COUNTY        |
|-----------------------|------------------------|------------------------------|--------------------------------|--------------------------|---------------|
| City of San Francisco | CPC.Wireless@sfgov.org | city.administrator@sfgov.org | Board.of.Supervisors@sfgov.org |                          | San Francisco |

| VZW Legal Entity           |                 | Site Name         |                   | Site Address                         |                  | Tower Design              | Size of Building or NA |
|----------------------------|-----------------|-------------------|-------------------|--------------------------------------|------------------|---------------------------|------------------------|
| GTE Mobilnet California LP |                 | SF MARINA 004 - A |                   | 95 Casa Way, San Francisco , CA94123 |                  | Public Lighting Structure | N/A                    |
| Site Latitude              | Site Longitude  | PS Location Code  | Tower Appearance  | Tower Height (in feet)               | Type of Approval | Approval Issue Date       |                        |
| 37°48'21.19"N              | 122°26'22.711"W | 414143            | Antenna Rad 30.10 | 32                                   | Zoning           | 04/02/2019                |                        |

Project Description: Installation of a Verizon facility on an existing light pole.

| VZW Legal Entity           |                 | Site Name         |                  | Site Address                              |                  | Tower Design              | Size of Building or NA |
|----------------------------|-----------------|-------------------|------------------|-------------------------------------------|------------------|---------------------------|------------------------|
| GTE Mobilnet California LP |                 | SF MARINA 028 - A |                  | 155 Alhambra St., SAN FRANCISCO , CA94123 |                  | Public Lighting Structure | N/A                    |
| Site Latitude              | Site Longitude  | PS Location Code  | Tower Appearance | Tower Height (in feet)                    | Type of Approval | Approval Issue Date       |                        |
| 37°48'6.97"N               | 122°26'19.561"W | 414163            | Antenna Rad 30.8 | 31.11                                     | Zoning           | 06/14/2019                |                        |

Project Description: Installation of a Verizon facility on an existing light pole.



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Subject:** FW: CPUC - Verizon Wireless - City of San Francisco-SF HAIGHT ASHBURY 014 - A-420874  
**Date:** Tuesday, March 10, 2020 1:16:00 PM  
**Attachments:** [CPUC\\_455.pdf](#)

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**From:** CPUC Team <westareacpuc@verizonwireless.com>  
**Sent:** Tuesday, March 10, 2020 10:46 AM  
**To:** GO159Areports@cpuc.ca.gov  
**Cc:** westareacpuc@verizonwireless.com; CPC.Wireless <CPC.Wireless@sfgov.org>; Administrator, City (ADM) <city.administrator@sfgov.org>; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** CPUC - Verizon Wireless - City of San Francisco-SF HAIGHT ASHBURY 014 - A-420874

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

This is to provide your agency with notice according to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California ("CPUC") see attachment.  
This notice is being provided pursuant to Section IV.C.2.

Mar 10, 2020

Consumer Protection and Enforcement Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102  
GO159Areports@cpuc.ca.gov

RE: Notification Letter for SF HAIGHT ASHBURY 014 - A  
San Francisco, CA /GTE Mobilnet California LP

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This is to provide the Commission with notice according to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California ( "CPUC") for the project described in Attachment A.

A copy of this notification letter is also being provided to the appropriate local government agency for its information. Should there be any questions regarding this project, or if you disagree with any of the information contained herein, please contact the representative below.

Verizon Wireless

Ann Goldstein  
Coordinator RE & Compliance - West Territory  
1515 Woodfield Road, #1400  
Schaumburg, IL 60173  
WestAreaCPUC@VerizonWireless.com

| JURISDICTION          | PLANNING MANAGER       | CITY MANAGER                 | CITY CLERK                     | DIRECTOR OF SCHOOL BOARD | COUNTY        |
|-----------------------|------------------------|------------------------------|--------------------------------|--------------------------|---------------|
| City of San Francisco | CPC.Wireless@sfgov.org | city.administrator@sfgov.org | Board.of.Supervisors@sfgov.org |                          | San Francisco |

| VZW Legal Entity           |                | Site Name                 |                  | Site Address                         |                  | Tower Design        | Size of Building or NA |
|----------------------------|----------------|---------------------------|------------------|--------------------------------------|------------------|---------------------|------------------------|
| GTE Mobilnet California LP |                | SF HAIGHT ASHBURY 014 - A |                  | 698 Page St, San Francisco , CA94117 |                  | Utility pole/tower  | N/A                    |
| Site Latitude              | Site Longitude | PS Location Code          | Tower Appearance | Tower Height (in feet)               | Type of Approval | Approval Issue Date |                        |
| 37°46'22.83"N              | 122°25'56.04"W | 420874                    | Antenna Rad 42'  | 46.4                                 | Permitting       | 01/14/2019          |                        |

Project Description: • Install (1) (N) 48"x14.6" canister antenna on (N) 50' replacement Utility Pole (42'-0" above ground level. 8'-0' underground embedment)

• Install (2) (N) RRU units on (N) Utility Pole

• Install (1) (N) Utility disconnect switch on (N) Utility Pole

• Install (1) (N) Meter on (N) Utility Pole

• Install (N) Ground rods and buss bar

• Install (#) (N) Conduits for power, Telco and Coax

• Install (N) Handhole at ground level.

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Subject:** FW: Oppose: Lyft bicycle station on 23rd Avenue at Clement Street  
**Date:** Monday, March 9, 2020 6:34:00 PM  
**Attachments:** [Coordination Agreement signed.pdf](#)  
[Bay Area Bike Share Program Agreement signed.pdf](#)  
[May-27-MTC-Board-Motivate-Contract-Terms.pdf](#)

---

**From:** Sue Vaughan <selizabethvaughan@gmail.com>

**Sent:** Friday, March 6, 2020 8:48 AM

**To:** Stonehill, Laura (MTA) <Laura.Stonehill@sfmta.com>; Sustainable.Streets@sfmta.com; Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; MTABoard <MTABoard@sfmta.com>; CAC <cac@sfmta.com>; district1@acgov.org; alfredo.pedroza@countyofnapa.org; jbruins@losaltosca.gov; dconnolly@marincounty.org; dave.cortese@bos.sccgov.org; ucmayor@unioncity.org; dgiacopini@mtc.ca.gov; dist5@bos.cccounty.us; ahalsted@aol.com; nickj@getsfmoving.com; blumacjazz@aol.com; GPapan@ci.millbrae.ca.us; david.rabbitt@sonoma-county.org; officeofthemayor@oaklandnet.com; wslocum@smcgov.org; JPSpering@solanocounty.com; James.L.Stracner@hud.gov; Tony\_Tavares@dot.ca.gov; aworth@cityoforinda.org; Breed, Mayor London (MYR) <mayorlondonbreed@sfgov.org>

**Subject:** Oppose: Lyft bicycle station on 23rd Avenue at Clement Street

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

### To Whom It May Concern:

I oppose the installment of a Bay Wheels/Lyft bicycle station on 23rd Avenue at Clement Street for the following reasons:

1. To my knowledge, no EIR was completed by the Metropolitan Transportation Commission when it negotiated the original 9-county Bay Area contract to install these bicycle stations. Thus, we don't know:
  - the carbon footprint of the Bay Wheels system, including the greenhouse gas emissions from the need for trucks to pick up & redistribute the bicycles and the need to recharge the batteries; and,
  - the impact to local transportation systems from the loss of passengers.
2. We don't know the impact to municipal budgets from the loss of parking meter revenue;
3. Lyft (and its "competitor" Uber) is a parasitic enterprise that seeks to syphon patrons & revenue from public mass transit and/or attach itself to public transit agencies through the provision of apps and other products, and revenue-sharing agreements. Neither corporation can survive financially unless it succeeds in cannibalizing significant portions of public transit agencies. This will be to the detriment of elderly, disabled, and low-income patrons of public mass transit globally.



We have one decade to lower our greenhouse gas emissions by close to 50 percent to avert environmental catastrophe. We need to closely examine these neo-public-private partnerships for their greenhouse gas emissions & impacts to public transit agencies and demand greater transparency and public oversight and regulation - or we need to dispense with them; and,

4. I am concerned about the process by which Motivate negotiated this contract, with a regional agency at a remove from more directly elected or appointed decision makers and the general public. Less democracy is good for corporate bottom lines but not for solving global existential crises such as the climate crisis.

Attached are the Motivate contract(s) with the MTC & participating cities from 2015.

Note: Nick Josefowitz was appointed to the MTC in 2017 and has been an investor in Lyft according to his Form 700s.

Susan Vaughan  
District 1  
San Francisco

BAY AREA BIKE SHARE PROGRAM AGREEMENT

between

METROPOLITAN TRANSPORTATION COMMISSION

and

BAY AREA MOTIVATE, LLC

December 31, 2015

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## BAY AREA BIKE SHARE PROGRAM AGREEMENT

THIS BAY AREA BIKE SHARE PROGRAM AGREEMENT (this “Agreement”), has been executed and delivered as of December 31, 2015 (the “Effective Date”) by and between the METROPOLITAN TRANSPORTATION COMMISSION, an agency of the State of California established pursuant California Government Code § 66500 et seq., having an office at 101 Eighth Street, Oakland, California (“MTC”), and BAY AREA MOTIVATE, LLC, a Delaware limited liability company, having any office at 5202 Third Avenue, Brooklyn, New York 11220 (“Operator”).

### WITNESSETH:

WHEREAS, self-service bicycle sharing programs are revolutionizing the way residents commute and tourists travel within cities in Europe and North America, and a regional self-service bicycle sharing program with public access has been determined by MTC and the Participating Cities (as defined below) to be a desirable and valuable mode of alternative public transportation for the San Francisco Bay Area; and

WHEREAS, a bike sharing program will provide a 24-hour transportation network that complements existing transit and transportation options, increases multi-modal travel options in the region and encourages bicycle use as a healthy, environmentally friendly and congestion-reducing transportation option; and

WHEREAS, MTC authorized its Executive Director to negotiate an agreement with Operator to design, build, operate, maintain and market a network of publicly available bicycles in a bike share system within the cities of Berkeley, Emeryville, Oakland, San Francisco and San Jose (subject to Section 2.16, each a “Participating City”, and collectively, the “Participating Cities”);

WHEREAS, accordingly, MTC and Operator have negotiated this Agreement for the design, build, operation, maintenance and marketing of a network of publicly available bicycles in a bike share program in the Participating Cities;

WHEREAS, this Agreement also addresses the continuation of the pilot bike share program established in 2013 in San Francisco, Redwood City, Palo Alto, Mountain View and San Jose (the “Pilot Program”; the foregoing cities being the “Pilot Cities”) pursuant to Bike Share Program Agreement dated February 6, 2013 (as amended, the “AD Agreement”) between Alta Bicycle Share, Inc. and The Bay Area Air Quality Management District (the “Air District”);

WHEREAS, concurrently with the execution and delivery of this Agreement, Operator, the cities of Emeryville, San Francisco and San Jose, and MTC are executing a Coordination Agreement (“Coordination Agreement”) that sets forth certain rights, liabilities, and responsibilities of each party thereto with respect to the Program, and defines the organizational, management, and operational structure for the successful development of the Program.

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Agreement, and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

## SECTION 1

### DEFINED TERMS

For purposes of this Agreement and the Appendices and Exhibits, the following terms, phrases, words, and their derivatives shall have the meanings set forth in this Section.

- 1.1 “AAA” has the meaning given such term in Section 23.1.2.
- 1.2 “AD Agreement” has the meaning given such term in the Recitals.
- 1.3 “AD Equipment” shall mean bike share equipment paid for by the Air District or Pilot Cities under the AD Agreement.
- 1.4 “Adjustment” shall mean permanent or temporary changes to a Station’s size or configuration, and changes to Street Treatments and Street Markings as necessitated by such, without changes to the Station location.
- 1.5 “Advertising” shall mean any printed matter, including, but not limited to, words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual messages or information for the sale or the use of a product or service, but in no event shall it include any textual information that is required to be posted on any Equipment by any federal, state or local law, rule or regulation, or by this Agreement.
- 1.6 “Advertising Restrictions” has the meaning given such term in Section 7.2.
- 1.7 “Agents” has the meaning given such term in Section 17.1.
- 1.8 “Agreed Completion Dates” shall mean, collectively, the Agreed Phase I Completion Date, the Agreed Phase II Completion Date, the Agreed Phase III Completion Date, the Agreed Phase IV Completion Date and the Agreed Phase V Completion Date.
- 1.9 “Agreed Phase I Completion Date” has the meaning given such term in Section 3.4.1.
- 1.10 “Agreed Phase II Completion Date” has the meaning given such term in Section 3.4.2.
- 1.11 “Agreed Phase III Completion Date” has the meaning given such term in Section 3.4.3.
- 1.12 “Agreed Phase IV Completion Date” has the meaning given such term in Section 3.4.4.
- 1.13 “Agreed Phase V Completion Date” has the meaning given such term in Section 3.4.5.
- 1.14 “Agreed Phase I Site Permit Submission Date” has the meaning given such term in Section 3.4.1.
- 1.15 “Agreed Phase II Site Permit Submission Date” has the meaning given such term in Section 3.4.2.

- 1.16 “Agreed Phase III Site Permit Submission Date” has the meaning given such term in Section 3.4.3.
- 1.17 “Agreed Phase IV Site Permit Submission Date” has the meaning given such term in Section 3.4.4.
- 1.18 “Agreed Phase V Site Permit Submission Date” has the meaning given such term in Section 3.4.5.
- 1.19 “Agreed Site Permit Submission Dates” shall mean, collectively, the Agreed Phase I Site Permit Submission Date, the Agreed Phase II Site Permit Submission Date, the Agreed Phase III Site Permit Submission Date, the Agreed Phase IV Site Permit Submission Date and the Agreed Phase V Site Permit Submission Date.
- 1.20 “Agreement” has the meaning given such term in the Preamble, together with all Appendices and Exhibits, and all amendments or modifications hereof or thereof.
- 1.21 “Air District” has the meaning given such term in the Recitals.
- 1.22 “Alcohol Advertising” shall mean Advertising or Sponsorship, the purpose or effect of which is (i) to identify a brand of an alcohol product, a trademark of an alcohol product or a trade name associated exclusively with an alcohol product, or (ii) to promote the use or sale of an alcohol product.
- 1.23 “Annual Member” shall mean a user having an Annual Membership.
- 1.24 “Annual Membership” has the meaning given such term in Section 9.2.1.
- 1.25 “Annual Membership Fee” has the meaning given such term in Section 9.2.1.
- 1.26 “Annual Membership Fee Cap” has the meaning given such term in Section 9.2.1.
- 1.27 “Applicable Interest Rate” in effect at any date shall mean the prime rate as most recently published in the Eastern edition of the Wall Street Journal on or prior to such date plus 3%.
- 1.28 “Assessment Period” has the meaning given such term in Section 2.6.2(b).
- 1.29 “Back-end Software” designates all Software components of the central application provided by Operator’s Software vendor and stored on the servers of such vendor, used for operation of such vendor’s equipment, and accessible online from a remote location using the Hosted Infrastructure.
- 1.30 “Bankruptcy Code” means the Bankruptcy Reform Act of 1978, as amended (Title 11 (U.S.C.)).
- 1.31 “Berkeley Effective Date” has the meaning given such term in Section 2.16.
- 1.32 “Bicycle” shall mean a vehicle with pedals and with 2 wheels held in a frame and aligned one behind the other and steered with a steering wheel as further described in Appendix D. “Bicycle” shall not include motorized vehicles, including scooters or mopeds. For the avoidance of doubt, electric assisted bicycles constitute Bicycles and do not constitute motorized vehicles.

- 1.33                “Bicycle Availability” shall mean conformance with the required Bicycle Fleet Level.
- 1.34                “Bicycle Fleet Level” shall mean the number of Bicycles that are operational, on-the-street and available for public use.
- 1.35                “Bicycle Maintenance” shall mean, at a minimum, that the following checks are performed on a Bicycle, with deficient elements repaired or replaced as necessary:
- 1.35.1              Check tire pressure, and add air as may be needed, to recommended Pounds per Square Inch measurement;
- 1.35.2              Check tightness of handlebars, headset bearings, and full handlebar range of motion (left to right);
- 1.35.3              Check tightness of seat, seat post quick-release, and see that seat post moves freely in full range of motion (up and down);
- 1.35.4              Check brake function (front and rear);
- 1.35.5              Check grips for wear and brake levers for tightness and damage;
- 1.35.6              Check bell for tightness and correct function;
- 1.35.7              Check handlebar covers for damage and instruction stickers;
- 1.35.8              Check front basket for tightness and damage, and check bungee cord for wear;
- 1.35.9              Check for correct gears and shifter function through all 5 gears;
- 1.35.10             Check fenders (front and rear) for damage, and clean outside of fenders;
- 1.35.11             Check tires (front and rear) for damage or wear;
- 1.35.12             Check wheels (front and rear) for trueness, broken or bent spokes and hub or axle tightness;
- 1.35.13             Check LED lights (front and rear) for function;
- 1.35.14             Check reflectors on wheels, seat and basket, to ensure they are present, clean, and undamaged;
- 1.35.15             Check pedals and cranks for tightness;
- 1.35.16             Lubricate and clean chain and check chain tensioner for correct function;
- 1.35.17             Check kickstand for correct function; and
- 1.35.18             Take brief test ride to ensure overall correct function of Bicycle.



- 1.36 “Bikeshare Holdings” shall mean Bikeshare Holdings LLC, a Delaware limited liability company, the sole member of Operator, and its successors.
- 1.37 “Claims” has the meaning given such term in Section 16.1.
- 1.38 “Cluster” shall mean, with respect to any Station, the Stations located within one-third of a mile from such Station, unless fewer than 3 other Stations are located within one-third of a mile from such Station, in which case such Station’s Cluster shall mean the 3 other Stations located closest to such Station.
- 1.39 “Cluster Outage” shall mean an instance when either:
- 1.39.1 There are no empty, Operable Docks available at any of the Stations in a Cluster;
- 1.39.2 There are no Bicycles available for use at any of the Stations in a Cluster. (Bicycles Wrenched in Docks are not considered as available for use.)
- 1.40 “Computer Hardware” electronic component that provides information or controls a mechanical device and that is controlled by local or remote software.
- 1.41 “Contract Year” has the meaning given such term in Section 8.1.1.
- 1.42 “Coordination Agreement” has the meaning given such term in the Recitals.
- 1.43 “CPI” shall mean the Consumer Price Index for the Consolidated Metropolitan Statistical Area covering San Francisco-Oakland-San Jose, as measured by the Consumer Price Index for All Urban Consumers, as published from time to time by the Bureau of Labor Statistics, U.S. Department of Labor.
- 1.44 “CPI Adjustment” shall mean, with respect to a specific cost, that such cost is subject to annual adjustment each January 1 based on changes in the CPI from the Effective Date to the date of adjustment.
- 1.45 “Deactivation” shall mean, at a minimum, shut-down of Kiosk (or display of messaging on Kiosk screen indicating that Station is out of service) removal of all Bicycles present, installation of physical barriers on all Docks that prevent docking of Bicycles, and designation of the Station as “Out of Service” on the Program website, app, and all other real-time data sources. A Deactivation event is not over until the Station has been reactivated.
- 1.46 “Default” has the meaning given such term in Section 18.1.
- 1.47 “De-Installation” shall mean, at a minimum, (i) the temporary or permanent full removal of the Station and its associated Street Treatments, and, (ii) the designation of the Station as “Out of Service” on, or removal of the Station from, the Program website, app, and all other real-time data sources.
- 1.48 “Designated Representative” has the meaning given such term in Section 25.1.
- 1.49 “Discovery” shall mean any Operator employee gaining actual knowledge by personal observation of such employee or by Notification of any defect in the Equipment or Program.

- 1.50 “Dispute Resolution Process” has the meaning given such term in Section 23.1.
- 1.51 “Docks” shall mean the locking mechanisms contained on a Station that are designed to receive a Bicycle for locked storage.
- 1.52 “Electing City” shall mean a Peninsula Pilot City or other Eligible City that elects, in accordance with Section 3.2, to participate in the Program.
- 1.53 “Effective Date” has the meaning given such term in the Preamble.
- 1.54 “Eligible City” shall mean any city located in the MTC Area.
- 1.55 “Equipment” shall include Stations, Kiosks, Docks and Bicycles, either individually or in any combination thereof.
- 1.56 “Escrow Agreement” means an escrow agreement to be executed among the vendor of the Software, Operator, and a nationally reputable company that provides escrow deposit services with respect to software and technology, as escrow agent, for the deposit, storage and release of the proprietary source code of Vendor for all of Vendor’s software made available to Operator to operate the Equipment, which agreement shall be in form acceptable to the parties thereto and in form reasonably acceptable to MTC.
- 1.57 “Event of Force Majeure” shall mean a delay, suspension or interruption due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the Party claiming an Event of Force Majeure, provided in each case that such Party has taken and continues to take all reasonable actions to avoid or mitigate such delay, suspension or interruption and provided that such Party notifies the other Party to this Agreement in writing of the occurrence of such delay, suspension or interruption within 5 business days, or if not reasonably practicable, as soon thereafter as reasonably practicable, of the date upon which the Party claiming an Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an “Event of Force Majeure” unless such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the Party claiming Event of Force Majeure has taken and continues to take all reasonable steps to pursue such decision. The financial incapacity of Operator shall not constitute an Event of Force Majeure.
- 1.58 “Executive Director” shall mean the Executive Director of MTC, or any successor in function to the Executive Director.
- 1.59 “Firearms Advertising” shall mean Advertising or Sponsorship, the purpose or effect of which is (i) to identify a brand of firearms or ammunition, a trademark of a firearm or ammunition or a manufacturer of firearms or ammunition, or a trade name associated exclusively with a firearms or ammunition, or (ii) to promote the use or sale of firearms or ammunition.
- 1.60 “Functional Specifications” shall mean the specifications set forth in Appendix D, subject to Section 6.7.

1.61 “Hacking” shall mean unauthorized and intentional access to the Computer Hardware for the Program and/or Software.

1.62 “Hosted Infrastructure” means the hosting of the Back-end Software and associated network access designed and controlled by Operator’s Software vendor, which renders the Back-end Software accessible to Operator and its end users;

1.63 “Indemnified Party” and “Indemnified Parties” have the meaning given such terms in Section 16.1.

1.64 “Infill” shall mean the placement of additional Stations within the Program Area in order to address unmet demand or community request.

1.65 “Initial Meeting Date” has the meaning given such term in Section 23.1.1.

1.66 “Initial Ride Period” has the meaning given such term in Section 9.2.3.

1.67 “Initial Term” has the meaning given such term in Section 2.2.

1.68 “Installation Scheduling Permits” shall mean permits required for the scheduling of the installation of Station-related Equipment at Sites proposed for Stations for which a Site Permit has been issued as a check for conflicts with other activities at the same location. The “temporary occupancy permit” issued by the San Francisco Department of Public Works is an example of an Installation Scheduling Permit.

1.69 “Institutional Lender” shall mean any savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), an insurance company organized and existing under the laws of the United States or any state thereof, a religious, educational or eleemosynary institution, a federal, state or municipal employee’s welfare, benefit, pension or retirement fund, any governmental agency or entity insured by a governmental agency, a credit union, trust or endowment fund, or any combination or syndicate of Institutional Lenders or other lenders that is led by an agent that qualifies as an Institutional Lender (in which case such combination or syndicate shall, for purposes of this Agreement, constitute a single Institutional Lender); provided, that each of the above entities (or, in the case of any such combination or syndicate, the agent) shall qualify as an Institutional Lender only if it (a) is subject to service of process within the State of California and (b) has a net worth of not less than \$50,000,000 and net assets of not less than \$250,000,000. A wholly-owned subsidiary of any of Person that qualifies as an Institutional Lender is also an Institutional Lender.

1.70 “Key Performance Indicators” (or “KPIs”) has the meaning given such term in Appendix A.

1.71 “Kiosk” shall mean the payment terminal that provides Bicycle rental instructions, contains payment equipment (e.g., a credit card device), and includes all other physical means necessary for the rental of Bicycles.

1.72 “KPI Contest Notice” has the meaning given such term in Section 2.6.3(b).

1.73 “KPI Change Request” has the meaning given such term in 2.6.2(a).

- 1.74 “KPI Failure Notice” has the meaning given such term in 2.6.3 (a).
- 1.75 “KPI LD Payment Date” has the meaning given such term in Section 2.6.3(b).
- 1.76 “Liabilities” has the meaning given such term in Section 16.1.
- 1.77 “Membership Fee” has the meaning given such term in Section 9.1.
- 1.78 “MTC” has the meaning given such term in the Preamble, together with any successor thereto.
- 1.79 “MTC Area” means the 9 counties in the San Francisco Bay Area within MTC’s jurisdiction.
- 1.80 “MTC/Participating City Property” shall mean the trademarks, logos, servicemarks, and other intellectual property rights of MTC and/or the Participating Cities.
- 1.81 “Notification” shall mean all information provided by MTC, a Participating City or the general public to Operator about a specific defect or problem concerning the Program, Equipment or operations of the Program by written document, email to Operator’s public information email address for the Program, or telephone call to Operator’s call-in center for the Program.
- 1.82 “Oakland Effective Date” has the meaning given such term in Section 2.16.
- 1.83 “Operable Dock” shall mean a Dock that can both rent and receive bicycles from all Program users and is not physically obstructed in a manner that would prevent such use.
- 1.84 “Operable Station” shall mean a Station at which at least 90 percent of all installed Docks are Operable Docks from which an Annual Member can check out and return a Bicycle.
- 1.85 “Operator” has the meaning given such term in the Preamble.
- 1.86 “Operator Property” has the meaning given such term in Section 10.3.
- 1.87 “Operator Basic Function Software” shall mean software and other intellectual property developed by Operator that is integral to the basic function of the Program (such as mobile apps that allow for the unlocking of Bicycles). As of the Effective Date, no Operator Basic Function Software has been developed.
- 1.88 “Operator Non-Basic Function Software” shall mean software and other intellectual property developed by Operator that enhances the functionality of the Program but is not necessary for the basic function of the Program (such as the Program website or mobile apps that allow users to identify nearby Stations with available Bicycles or available Docks).
- 1.89 “Participating City” and “Participating Cities” have the meaning given such terms in the Preamble.
- 1.90 “Participating City Delay” has the meaning given such term in Section 4.2.

- 1.91 “Parties” shall mean MTC and Operator, and “Party” shall mean one of them, as the context requires. The term “parties” shall mean, collectively, Operator, MTC and the Participating Cities.
- 1.92 “Payment Breach” has the meaning given such term in Section 15.3.1.
- 1.93 “Peak Hours” has the meaning given such term in Section 2.6.2(b).
- 1.94 “Peninsula Pilot Cities” shall mean the cities of Mountain View, Palo Alto and Redwood City.
- 1.95 “PII” has the meaning given such term in Section 2.15.
- 1.96 “Person” shall mean any human being or any association, firm, partnership, joint venture, corporation, limited liability company, governmental entity or other legally recognized entity, whether for profit or not for profit.
- 1.97 “Pilot Cities” has the meaning given such term in the Recitals.
- 1.98 “Phase” shall mean any one of Phase I, Phase II, Phase III, Phase IV and Phase V, as the context requires, and Phases shall mean, collectively, Phase I, Phase II, Phase III, Phase IV and Phase V.
- 1.99 “Phase I” has the meaning given such term in Section 3.4.1.
- 1.100 “Phase II” has the meaning given such term in Section 3.4.2.
- 1.101 “Phase III” has the meaning given such term in Section 3.4.3.
- 1.102 “Phase IV” has the meaning given such term in Section 3.4.4.
- 1.103 “Phase V” has the meaning given such term in Section 3.4.5.
- 1.104 “Phase I Stations” has the meaning given such term in Section 3.4.1.
- 1.105 “Phase II Stations” has the meaning given such term in Section 3.4.2.
- 1.106 “Phase III Stations” has the meaning given such term in Section 3.4.3.
- 1.107 “Phase IV Stations” has the meaning given such term in Section 3.4.4.
- 1.108 “Phase V Stations” has the meaning given such term in Section 3.4.5.
- 1.109 “PPI” shall mean the Producer Price Index for the United States, as measured by the Producer Price Index for final demand, as published from time to time by the Bureau of Labor Statistics, U.S. Department of Labor.
- 1.110 “PPI Adjustment” shall mean, with respect to a specific cost, that such cost is subject to annual adjustment each January 1 based on changes in the PPI from the Effective Date to the date of adjustment.

- 1.111 “Program” shall mean Equipment, Sites, website, Backend Software and Computer Hardware and the Services.
- 1.112 “Program Area” shall mean the entire area of all Participating Cities.
- 1.113 “Program Fleet” shall mean the total number of Bicycles required to serve the Program Area as specified in Section 3.
- 1.114 “Program Name” has the meaning given such term in Section 10.2.
- 1.115 “Program Property” shall mean (a) the Equipment, and (b) all relevant licenses and rights to the Equipment and the Software (excluding Operator Non-Basic Function Software).
- 1.116 “Program Property Assignment Conditions” shall mean the following: (a) Operator and the purchaser of the Program Property have agreed on the purchase price for the Program Property, which shall be based on the fair market value of the Program Property as an installed system at the time of the purchase, (b) such purchaser has paid Operator the agreed upon purchase price for the Program Property, and (c) such purchaser and Operator have entered into a license agreement with respect to the Operator Basic Function Software, which license agreement shall (i) strictly prohibit use of the Operator Basic Function Software for any other purpose other than the operation of the Program during such purchaser’s tenure as operator of the Program, (ii) strictly prohibit the sale, lease, license, sublicense or other transfer of such software, (iii) strictly prohibit any attempt to derive the source code of such software, (iv) strictly prohibit the development of any derivative software based on such software, and (v) contain such other customary terms and provisions intended to govern the licensing and use of proprietary software by a competitor of the licensor to prevent, or limit the risk of, unauthorized use or infringement of such software by such licensee or any third party, and such other customary terms and provisions intended to protect the licensor from the licensee or any third party obtaining proprietary information for use by such licensee or any third party other than the use specifically authorized in such license agreement.
- 1.117 “Prohibited Advertising” shall mean outdoor advertising that is prohibited by local laws, regulations or ordinances of the Participating City.
- 1.118 “Property Damage Breach” has the meaning given such term in Section 15.3.2.
- 1.119 “Rebalancing” shall mean actions taken by Operator to prevent or rectify Cluster Outages, subject, however, to Section 2.6.2(b).
- 1.120 “Recognized Lender” shall mean the holder of a Recognized Loan.
- 1.121 “Recognized Loan” shall mean any loan that is held by an Institutional Lender.
- 1.122 “Regular Annual Member” has the meaning given such term in Section 9.2.1.
- 1.123 “Regular Annual Membership” has the meaning given such term in Section 9.2.1.
- 1.124 “Renewal Term” has the meaning given such term in Section 2.4.
- 1.125 “Renewal Condition” has the meaning given such term in Section 2.4.

- 1.126 “Replacement Agreement” has the meaning given such term in Section 19.4.
- 1.127 “Revenue Sharing Credit Period” has the meaning given such term in Section 8.2.4.
- 1.128 “Ridership Revenue” has the meaning given such term in Section 8.1.2.
- 1.129 “Ridership Revenue Hurdle” has the meaning given such term in Section 8.1.3.
- 1.130 “Scheduled Phase I Completion Date” has the meaning given such term in Section 3.4.1.
- 1.131 “Scheduled Phase II Completion Date” has the meaning given such term in Section 3.4.2.
- 1.132 “Scheduled Phase III Completion Date” has the meaning given such term in Section 3.4.3.
- 1.133 “Scheduled Phase IV Completion Date” has the meaning given such term in Section 3.4.4.
- 1.134 “Scheduled Phase V Completion Date” has the meaning given such term in Section 3.4.5.
- 1.135 “Scheduled Phase V Plus 90 Days Date” has the meaning given such term in Section 8.2.4.
- 1.136 “Scheduled Phase Completion Date” shall mean any of the Scheduled Phase I Completion Date, the Scheduled Phase II Completion Date, the Scheduled Phase III Completion Date, the Scheduled Phase IV Completion Date or the Scheduled Phase V Completion Date, as the context requires.
- 1.137 “Security Fund” has the meaning given such term in Section 15.1.
- 1.138 “Self-Help Situation” has the meaning given such term in Section 15.3.3.
- 1.139 “Services” shall mean the installation, operation and maintenance of the Stations and the acquisition, placement, maintenance and rental to users of the Bicycles.
- 1.140 “Site” shall mean a designated area on publicly or privately owned real property, which area contains a Station that conforms to the Siting Criteria.
- 1.141 “Site Permits” shall mean permits for installation of Station-related Equipment at Sites proposed for Stations (other than Installation Scheduling Permits or Special Traffic Permits).
- 1.142 “Siting Criteria” has the meaning given such term in the Coordination Agreement.
- 1.143 “Software” shall means the software and the Equipment it runs on required to operate the Equipment.
- 1.144 “Special Traffic Permit” shall mean a permit required if installation of Station-related Equipment will interfere with pedestrian, bicycle, transit or vehicular traffic in a material respect. The Special Traffic Permit issued by the San Francisco Municipal Transportation Authority (SFMTA) in accordance with SFMTA’s Regulations for Working in San Francisco Streets is an example of a Special Traffic Permit.
- 1.145 “Sponsor” means a Person contributing payments for the Program in exchange for acknowledgment of its contribution.

- 1.146 “Sponsor Property” has the meaning given such term in Section 10.2.
- 1.147 “Sponsorship” shall mean an arrangement pursuant to which, in connection with a payment or payments that will be used to help defray the costs of installing or operating the Program, the Person contributing such payment or payments is acknowledged by the Parties for such contribution.
- 1.148 “Sponsorship Revenue” has the meaning given such term in Section 8.1.4.
- 1.149 “Sponsorship Revenue Hurdle” has the meaning given such term in Section 8.1.5.
- 1.150 “State” shall mean the State of California.
- 1.151 “Station” shall mean a Kiosk (subject to Section 6.5), map module, a variable number of Docks and, when applicable, Street Treatment(s) and Street Markings, designed in accordance with the Functional Specifications set forth in Appendix D.
- 1.152 “Station Cleaning” shall mean, at a minimum that the following tasks are performed by Operator at a Station:
- 1.152.1 Removal of litter at the Station; and
- 1.152.2 As needed power washing of the Docks and Street Treatments comprising a Station and the pavement area on which a Station is situated.
- 1.153 “Street Marking(s)” shall mean thermoplastic paint markings and/or striping on the pavement for the express purpose of demarcating a Station.
- 1.154 “Street Treatments” shall mean the three-dimensional objects used to demarcate the Station, and protect it from adjacent parking and moving traffic. Such objects may include, but are not limited to, delineators and wheel stops.
- 1.155 “Street Treatment Requirements” shall mean a Participating City’s requirements with respect to Street Treatments as set forth in the Siting Criteria for such Participating City.
- 1.156 “Term” has the meaning given such term in Section 2.2.
- 1.157 “Title Sponsor” shall mean Operator’s system-wide Sponsor for the entire Program.
- 1.158 “Tobacco Advertising” shall mean Advertising or Sponsorship that bears a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product (any substance that contains tobacco, including, but not limited to, cigarettes, cigars, pipe tobacco and chewing tobacco), a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.
- 1.159 “Trips” shall mean the use of a Bicycle from one Station to another Station or back to the initial Station.
- 1.160 “Vendor” shall mean the company selected by Operator to provide the Software (other than the Operator Software).



1.161 “Wayfinding Elements” shall mean the maps posted on every Station, showing the location of each Station.

1.162 “Wrench” shall mean the action of locking a Bicycle in a Dock such that it cannot be released by Program users pending action by Operator.

## SECTION 2

### SCOPE OF SERVICES

2.1 General Requirements. Operator shall (a) provide the Services in conformance with the terms of this Agreement, (b) provide all of the Equipment and Software required to operate the Program, (c) procure all of the relevant licenses and rights to use the Equipment and Software to operate the Program, (d) procure all licenses and permits from applicable governmental agencies that are required to provide the Services from all applicable governmental agencies, and (e) comply with all applicable laws, rules and regulations of the United States, the State and the Participating Cities.

2.2 Initial Term. The term (the “Term”) of this Agreement shall commence on the Effective Date and shall end on the last day of the calendar month in which the 10<sup>th</sup> anniversary of the earlier of (a) the date that Phase I is completed, and (b) the Agreed Phase I Completion Date occurs (the “Initial Term”), subject to Section 2.3.

2.3 Reduction of Initial Term. If Operator does not complete 75% of Phase I, Phase II, Phase III, or Phase IV by the Agreed Phase I Completion Date, the Agreed Phase II Completion Date, the Agreed Phase III Completion Date, the Agreed Phase IV Completion Date, respectively, or 100% of Phase V by the Agreed Phase V Completion Date, then MTC shall have the right, by notice to Operator given with 60 days of the respective missed Completion Date, to reduce the Initial Term by 5 years, subject to the rights of the Recognized Lender set forth in Section 19.5. In addition, if on the 4<sup>th</sup> anniversary of the earlier of (a) the date that Phase I is completed, and (b) the Agreed Phase I Completion Date, a Default exists under Section 18.1.5, then MTC shall have the right, by notice to Operator given with 60 days of such 4<sup>th</sup> anniversary, to reduce the Initial Term by 5 years, subject to the rights of the Recognized Lender set forth in Section 19.5. Any amounts due pursuant to Section 8.2 shall be due within 120 days after expiration of the Term as reduced pursuant to this Section 2.3.

2.4 Renewal Term. If the Initial Term has not been reduced pursuant to Section 2.3 and Operator is in substantial compliance with the terms of this Agreement one year prior to the expiration of the then current Term (the “Renewal Condition”), then, upon mutual agreement of the Parties, the Term may be extended for 2 5-year renewals terms (each a “Renewal Term”) on substantially equivalent terms applicable to the Initial Term. Subject to Operator’s satisfaction of the Renewal Condition and the mutual agreement of the Parties to extend the Term, MTC and Operator shall engage in good faith negotiations on a mutually acceptable agreement for each Renewal Term commencing one year prior to the expiration of the then current Term with the goal of the Parties entering into an agreement for the respective Renewal Terms prior to the commencement of each Renewal Term. Until such agreement is entered into for the initial Renewal Term, this Agreement shall govern the relationship between the Parties, and until such agreement is entered into for the second Renewal Term, the agreement for the initial Renewal Term shall govern the relationship between the Parties.

2.5 Non-Renewal. Notwithstanding anything to the contrary contained in Section 2.4, Operator has the right not to renew the Term for either Renewal Term by notice given to MTC not later than 6 months prior to the expiration of the then current Term. If Operator gives MTC a non-renewal notice in accordance with the preceding sentence, then this Agreement shall end upon the expiration of the then current Term.

2.6 Services.

2.6.1 Subject to Events of Force Majeure, following completion of Phase I, Operator shall operate the Program so that it is fully operational at all Stations, consistent with the Key Performance Indicators as set forth in Appendix A, 24 hours per day, seven days per week, every day of each year, during the Term.

2.6.2 Adjustments to KPIs.

(a) KPIs in General. Notwithstanding anything to the contrary, if at any time and from time to time either Party in good faith believes that the KPIs should be updated, including by amending, supplementing or replacing them, (a) on account of technological developments incorporated into the Program by Operator, or (b) because the Party seeking changes believes the KPIs are ineffective, or not as effective as the KPIs could be, in strengthening the Program, the customer experience, and Operator's performance, then the Party seeking changes to the KPIs shall submit proposed changes to the KPIs together with an explanation of how the proposed changes would address the deficiencies in the then existing KPIs ("KPI Change Request"). Within 10 business days thereafter, the other Party shall either accept the KPI Change Request in writing, or reject the KPI Change Request along with the reasons for the rejection. In the case of such rejection, at the request of the Party submitting the KPI Change Request, the matter will be referred to discussion in accordance with Section 23.1.1, except the matter will not be subject to mediation in accordance with Section 23.1.2. If the matter is not resolved within 30 business days of the KPI Change Request, the KPIs shall not be changed pursuant to the KPI Change Request. In lieu of rejecting or accepting a proposed KPI change, the Parties may agree to test trials to test proposed changes and then defer any decision until the conclusion of the trial period.

(b) Rebalancing. It is the objective of Operator to maximize the utility of the Program and the customer experience at all times, but particularly during the hours between 6:00 AM and 10:00 PM ("Peak Hours"), in a cost effective manner. Maximizing utility requires that Operator take affirmative steps to address severe imbalances in the demand for and supply of available Bicycles and empty Operable Docks during Peak Hours, which imbalances typically arise from patterns in demand and usage in which Bicycles typically travel in one direction. Operator's objective is to minimize instances, and minimize the duration of those instances, in a cost effective manner, when the demand for an empty Operable Dock or an available Bicycle at a Station is not met by the available supply at that Station. Achieving this objective is a multistep and collaborative process requiring the involvement, cooperation and flexibility on the part of Operator, MTC and the Participating Cities. To achieve this objective, during the period commencing upon the completion of Phase I and ending 6 months after the completion of Phase V (the "Assessment Period"), the parties will (i) observe demand and use patterns as the Program is being implemented to identify the times and locations that a shortage of empty Operable Docks and/or a shortage of available Bicycles arises and the extent of the shortages at those time and locations; and (ii) assess alternative approaches to alleviating outages, including, by way of example, by (A) enlarging existing Stations or adding new Stations in areas in which there is a shortage, (B) finding and utilizing storage areas located near Stations that experience Bicycle shortages so that additional Bicycles can be

deployed quickly, (C) prioritizing Stations by demand and time of demand so that Operator may, at any particular time, focus more attention on those Stations with the highest demand at that time and less attention on those Stations with weaker demand at that time and have greater flexibility to address those Stations with weaker demand, and (D) identifying the optimal time of day for Operator to transport Bicycles from areas in which there is a shortage of empty Operable Docks to areas in which there is a shortage of Bicycles, which optimality will take into account when it is most efficient for Operator to transport the Bicycles in order to meet the anticipated demand at the transferee Stations. As the parties are developing approaches to alleviating outages during the Assessment Period, the parties shall also reformulate a commercially reasonable KPI for Rebalancing. While Operator will strive to reduce and eliminate Cluster Outages at all times commencing on the completion of a Phase, liquidated damages for the Rebalancing KPI will not be assessed for any Phase until 6 months after the completion of such Phase. The Rebalancing KPI will be refined and reformulated during the Assessment Period, and the KPI, as refined and reformulated, will be fully implemented and effective immediately after the end of the Assessment Period. The parties recognize that as patterns of use and demand, as well as levels of use and demand, change from and after the Assessment Period, different outages may arise, which will also need to be addressed in the manner set forth above.

2.6.3 Subject to Events of Force Majeure, if Operator fails to comply with the KPIs, Operator shall be required to pay MTC liquidated damages as calculated in Appendix A, provided that the maximum aggregate liquidated damages payable by Operator in any calendar year for failure to comply with the KPIs is 4% of Ridership Revenue for such calendar year.

- (a) MTC is entitled to liquidated damages for failure of Operator to comply with the KPIs by notice (a “KPI Failure Notice”) given to Operator (i) not more frequently than once per quarter, and (ii) not later than 120 days after the occurrence of the related failure, except with respect to the failure to comply with a KPI that is measured on an annual basis, for which the KPI Failure Notice shall be given by March 31 of the following calendar year. Each KPI Failure Notice shall provide specific and detailed information about the failure to comply and the amount of the liquidated damages due in connection therewith.
- (b) Prior to the later of (a) 30 days after Operator’s receipt of a KPI Failure Notice and (b) the end of the calendar quarter in which such KPI Failure Notice is given (the later of (a) and (b) being the “KPI LD Payment Date”), Operator shall either pay the full amount of liquidated damages set forth in the KPI Failure Notice or 50% of such amount along with a notification to MTC that Operator seeks to contest, in good faith, the assessment of the liquidated damages (a “KPI Contest Notice”). The KPI Contest Notice shall provide specific and detailed information that rebuts or challenges the information contained in the corresponding KPI Failure Notice. After a KPI Contest Notice is given, any disputes relating to the subject matter of the KPI Failure Notice and the KPI Contest Notice shall be resolved in accordance with the Dispute Resolution Process.
- (c) If Operator does not timely give a KPI Contest Notice in response to a KPI Failure Notice, then interest on the liquidated damages set forth in the KPI

Failure Notice shall accrue at the Applicable Interest Rate in effect from time to time commencing on the KPI LD Payment Date. If Operator does timely give a KPI Contest Notice in response to a KPI Failure Notice and the Dispute Resolution Process results in Operator being required to pay liquidated damages, then Operator shall make such payment within 30 days following the date that the liquidated damages dispute is resolved in accordance with the Dispute Resolution Process, and interest on the liquidated damages shall accrue at the Applicable Interest Rate in effect from time to time commencing on such 30<sup>th</sup> date.

2.7 [INTENTIONALLY OMITTED]

2.8 Ownership of Equipment. Except as provided in Sections 3.2 and 3.3, all Equipment shall at all times be the property of Operator, subject to the lien thereon by any Recognized Lender.

2.9 Costs of Program.

- 2.9.1 Except as otherwise provided, each party shall bear its own costs in connection with the Program, if such costs are applicable, including, but not limited to, costs incurred in connection with: negotiating this Agreement and the Coordination Agreement and preparing the Siting Criteria; Site selection; the review required for issuance of Site Permits, Installation Scheduling Permits, Special Traffic Permits and other permits; Equipment installation; exercising enforcement, inspection and audit rights; prosecuting or defending claims arising from the Program, and marketing, to the extent that MTC and/or the Participating Cities choose to undertake marketing.
- 2.9.2 Except as otherwise provided in Section 2.9.3, MTC and the Participating Cities shall not be obligated to pay or bear any of the costs associated with or expenses incurred for the Equipment, Software, or Services.
- 2.9.3 Each Participating City may elect, if additional incremental dedicated capital and operating funds becomes available for the Program, to expand the Program within its borders by adding Stations, Docks and Bicycles, provided that such Participating City shall be responsible for securing funds to pay for the cost of purchasing, installing, maintaining and operating the Equipment required for such expansion as set forth in Appendix A of the Coordination Agreement.
- 2.9.4 Operator shall reimburse a Participating City for any other work performed by such Participating City under this Agreement in furtherance of the Program, provided that prior to performing such work such Participating City shall notify Operator that such work will be performed at the expense of Operator, such Participating City provides an itemized invoice for any such work, and Operator is billed for the actual cost incurred by such Participating City without a markup or premium. Operator shall pay for such work within 30 days following receipt of the itemized invoice therefor. In connection with the installation of a Station, such other work may include, but is not limited to, (i) any necessary changes to signs, parking meters and curb paint, and (ii) installation of any striping, delineators or parking blocks outside the perimeter of a Station if the foregoing items are not installed by Operator.

2.10 Use of Data. All data generated by the Program will be owned by Operator. Operator will grant MTC and the Participating Cities a non-exclusive, royalty-free, irrevocable, perpetual license to use all data generated by the Program, other than personally-identifiable information that can identify individual users, their addresses, their credit card information and other personal information about users, for non-commercial purposes and on a real-time basis; and MTC and each of the Participating Cities shall have the right to grant to others a sublicense to use all such data for non-commercial purposes.

2.11 [INTENTIONALLY OMITTED]

2.12 [INTENTIONALLY OMITTED]

2.13 No Discrimination. Operator shall not discriminate in the implementation of the Program or in the provision of Services on the basis of race, creed, color, national origin, sex, age, marital status, or real or perceived sexual orientation.

2.14 Accessibility. In implementing and operating the Program, Operator shall comply with all applicable requirements of the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973 and all other applicable federal, state and local requirements relating to persons with disabilities, including any rules or regulations promulgated thereunder. Such compliance shall extend to the location and design of Equipment as well as the Program's website and any mobile application for the Program.

2.15 Personally Identifiable Information ("PII"). All PII obtained or maintained by Operator in connection with this Agreement shall be protected by Operator from unauthorized use and disclosure. This includes, but is not limited to, the secure transport, transmission and storage of PII used or acquired in the performance of this Agreement. Operator agrees to properly secure and maintain any computer systems (hardware and software applications) or electronic media that it will use in the performance of this Agreement. This includes ensuring all security patches, upgrades, and anti-virus updates are applied as appropriate to secure PII that may be used, transmitted, or stored on such systems in the performance of this Agreement. Operator agrees to comply with the information handling and confidentiality requirements outlined in the California Information Practices Act (Civil Code sections 1798 et.seq.). In addition, Operator warrants and certifies that in the performance of this Agreement, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California relating to the handling and confidentiality of PII and, as provided in Section 16, agrees to indemnify MTC against any loss, cost, damage or liability by reason of Operator's violation of this provision.

2.16 Notwithstanding anything to the contrary contained herein or in the Coordination Agreement, as of the Effective Date, (a) the City of Berkeley and the City of Oakland have not completed the approval processes necessary for such cities to execute the Coordination Agreement and for the Coordination Agreement to be effective as to such cities, (b) neither such city is a Participating City, and (c) the Coordination Agreement and this Agreement do not apply to such cities. Upon completion by each such city of its approval processes, including the adoption by each such city of a franchise ordinance as referenced in Sections 29.1 and 32.4 of the Coordination Agreement, and the execution by each such city of the Coordination Agreement, the Coordination Agreement shall thereupon be effective as to such city, each such city shall thereupon be a Participating City under this Agreement and Coordination Agreement, which agreements shall thereupon apply to such city, and the Program Area shall thereupon be expanded to encompass the entirety of such city (the date thereof, as to Berkeley, being the "Berkeley Effective Date," and, as to Oakland, being the "Oakland Effective Date"). If either or both of such cities does not approve the execution of the Coordination Agreement, then the Parties shall make appropriate

amendments to this Agreement and the Coordination Agreement to reflect the removal of such city or cities, as applicable, from the Program. In addition, the Parties are anticipating that the Berkeley Effective Date will occur in February, 2016 and the Oakland Effective Date will occur in March, 2016. If either such date does not occur until after March 31, 2016, then the Parties shall amend Sections 3.4 and 4.2 to make appropriate adjustments to the timing of the Program.

### SECTION 3

#### PROGRAM AREA AND EXPANSION; PROGRAM SIZE; PROGRAM TIMING

3.1 Program Area. As of the Effective Date, the Program Area encompasses the entirety of the cities of Emeryville, San Francisco and San Jose. The Program Area shall also encompass the entirety of the City of Berkeley as of the Berkeley Effective Date and the entirety of the City of Oakland as of the Oakland Effective Date.

3.2 Program Area Expansion. Following expiration of the Pilot Program, each of the Peninsula Pilot Cities may elect, by notice to Operator, to continue the bike share program in such Peninsula Pilot City, provided that the Peninsula Pilot Cities shall be responsible for paying the cost of upgrading, purchasing, installing, maintaining and operating the Equipment in accordance with the schedule applicable to the Peninsula Pilot Cities set forth in Appendix B. Following the completion of Phase V, the other Eligible Cities may elect, by notice to Operator, to develop a bike share program in the Eligible Cities, provided that the other Eligible Cities shall be responsible for paying the cost of purchasing, installing, maintaining and operating the Equipment in accordance with the schedule applicable to the other Eligible Cities set forth in Appendix B. Operator shall be required to maintain the Equipment purchased by an Electing City in a state of good repair throughout the Term, and at the end of the Term, Operator shall return such Equipment to the Electing City in good working order but subject to reasonable wear and tear from use and subject to loss and damage caused directly by users. Each Electing City shall enter into with Operator a separate service agreement to establish the number of Stations, Docks and Bicycles for such city, and the schedule for installation of the Equipment for such city, which agreement will also address, among other matters, (i) Siting Criteria, the Site selection process, Street Treatment Requirements, the protocols and procedures for the submission and review of applications and the issuance of permits and approvals, and the Electing City's requirements with respect to each of the foregoing, (ii) De-installations, Adjustments and Deactivations, and (iii) advertising and sponsorship.

3.3 Program Size. The Program Fleet for Phases I through V is 7,000 to 7,055, allocated among the Participating Cities as follows:

- 3.3.1 4,500 in San Francisco;
- 3.3.2 1,000 in San Jose;
- 3.3.3 1,400 in East Bay, as follows:
  - (a) 850 in Oakland
  - (b) 100 in Emeryville
  - (c) 400 in Berkeley

(d) 50 to be determined based on additional system planning analysis;

3.3.4 If Palo Alto elects to participate in the Program, 37 Bicycles will be distributed to Palo Alto; if Mountain View elects to participate in the Program, 59 Bicycles will be distributed to Mountain View; and if Redwood City elects to participate in the Program, 59 Bicycles will be distributed to Redwood City; if the sum of the Bicycles to be distributed to the Peninsula Pilot Cities that elect to participate in the Program is less than 100, then Operator will distribute in San Francisco, San Jose and East Bay an additional number of Bicycles equal to the difference between 100 and such sum; and if none of the Peninsula Pilot Cities elect to participate in the Program, then Operator will distribute an additional 100 Bicycles in San Francisco, San Jose and East Bay.

3.3.5 The minimum number of Stations in the Participating Cities is 500.

3.4 Program Timing. The schedule for Operator to obtain Site Permits and to install the Equipment is as follows:

3.4.1 Phase I. Operator shall submit to the Participating Cities complete applications for Site Permits for Stations containing 25% of the total Bicycles for San Jose, East Bay and San Francisco (the "Phase I Stations") by the date that is 5 months after the Effective Date, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase I Site Permit Submission Date"). Operator shall not be obligated to commence installation of fully functional and operational Bicycles and related Equipment at such Sites until the date that is 5 months after the issuance by the Participating Cities of Site Permits for 75% of the Phase I Stations and shall complete such installation for all such Sites by the date that is 5 months after the issuance by the Participating Cities of Site Permits for the remainder of such Stations, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the "Agreed Phase I Completion Date"; the installation of the percentage of total Bicycles and related Equipment as required by this paragraph being "Phase I"). Any AD Equipment that is acquired by Operator will count toward the Bicycles and related Equipment required for Phase I. Based on the schedule set forth in this paragraph, the objective of the Parties is for Operator to complete Phase I by the date that is 10 months after the Effective Date (such date being the "Scheduled Phase I Completion Date"). Notwithstanding anything to the contrary contained in this Agreement, if Operator fails to submit to the Participating Cities complete applications for Site Permits for 75% of the Phase I Stations by the date that is 30 days after the Agreed Phase I Site Permit Submission Date, or if Operator fails to place a purchase order, taking into account AD Equipment to be used by Operator, for 75% of the Phase I Bicycles and 75% of the Phase I Stations, by the date that is 30 days after the issuance by the Participating Cities of Site Permits for 75% of the Phase I Stations, then as the sole remedy of MTC and the Participating Cities under this Agreement for such failures, MTC shall have the right to terminate this Agreement upon 10 days' notice to Operator without any further right of Operator or any Recognized Lender to remedy such failure. Operator shall provide evidence of such purchase order reasonably promptly following a request by MTC.

- 3.4.2 Phase II. Operator shall submit to the Participating Cities complete applications for Site Permits for Stations containing an additional 15% of the total Bicycles for San Jose, East Bay and San Francisco (the “Phase II Stations”) by the date that is 9 months after the Effective Date, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the “Agreed Phase II Site Permit Submission Date”). Operator shall not be obligated to commence installation of fully functional and operational Bicycles and related Equipment at such Sites until the date that is 5 months after the issuance by the Participating Cities of Site Permits for 75% of the Phase II Stations and shall complete such installation for all such Sites by the date that is 5 months after the issuance by the Participating Cities of Site Permits for the remainder of such Stations, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the “Agreed Phase II Completion Date”; the installation of the percentage of total Bicycles and related Equipment as required by this paragraph being “Phase II”). Based on the schedule set forth in this paragraph, the objective of the Parties is for Operator to complete Phase II by the date that is 14 months after the Effective Date (such date being the “Scheduled Phase II Completion Date”).
- 3.4.3 Phase III. Operator shall submit to the Participating Cities complete applications for Site Permits for Stations containing the remaining 60% of the total Bicycles for East Bay (the “Phase III Stations”) by the date that is 12 months after the Effective Date, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the “Agreed Phase III Site Permit Submission Date”). Operator shall not be obligated to commence installation of fully functional and operational Bicycles and related Equipment at such Sites until the date that is 5 months after the issuance by the Participating Cities of Site Permits for 75% of the Phase III Stations and shall complete such installation for all such Sites by the date that is 5 months after the issuance by the Participating Cities of Site Permits for the remainder of such Stations, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the “Agreed Phase III Completion Date”; the installation of the percentage of total Bicycles and related Equipment as required by this paragraph being “Phase III”). Based on the schedule set forth in this paragraph, the objective of the Parties is for Operator to complete Phase III by the date that is 17 months after the Effective (such date being the “Scheduled Phase III Completion Date”).
- 3.4.4 Phase IV. Operator shall submit to the Participating Cities complete applications for Site Permits for Stations containing an additional 30% of the total Bicycles for San Jose and San Francisco (the “Phase IV Stations”) by the date that is 16 months after the Effective Date, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the “Agreed Phase IV Site Permit Submission Date”). Operator shall not be obligated to commence installation of fully functional and operational Bicycles and related Equipment at such Sites until the date that is 5 months after the issuance by the Participating Cities of Site Permits for 75% of the Phase IV Stations and shall complete such installation for all such Sites by the date that is 5 months after the issuance by the Participating Cities of



Site Permits for the remainder of such Stations, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the “Agreed Phase IV Completion Date”; the installation of the percentage of total Bicycles and related Equipment as required by this paragraph being “Phase IV”). Based on the schedule set forth in this paragraph, the objective of the Parties is for Operator to complete Phase IV by the date that is 20 months after the Effective Date (such date being the “Scheduled Phase IV Completion Date”).

- 3.4.5 Phase V. Operator shall submit to the Participating Cities complete applications for Site Permits for Stations containing 30% of the total Bicycles for San Jose and San Francisco (the “Phase V Stations”) by the date that is 22 months after the Effective Date, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the “Agreed Phase V Site Permit Submission Date”). Operator shall not be obligated to commence installation of fully functional and operational Bicycles and related Equipment at such Sites until the date that is 5 months after the issuance by the Participating Cities of Site Permits for 75% of the Phase V Stations and shall complete such installation for all such Sites by the date that is 5 months after the issuance by the Participating Cities of Site Permits for the remainder of such Stations, such date being subject to extension by Events of Force Majeure or by Participating City Delay (such date, as it may be so extended, being the “Agreed Phase V Completion Date”; the installation of the percentage of total Bicycles and related Equipment as required by this paragraph being “Phase V”). Based on the schedule set forth in this paragraph, the objective of the Parties is for Operator to complete Phase V by the date that is 26 months after the Effective Date (such date being the “Scheduled Phase V Completion Date”).

3.5 Failure to Achieve Completion of any Phase. Notwithstanding anything to the contrary in this Agreement, for the avoidance of doubt, the sole remedy of MTC and the Participating Cities against Operator under this Agreement for Operator’s failure to complete Phases I, II, III, IV or V by the Agreed Phase I Completion Date, the Agreed Phase II Completion Date, the Agreed Phase III Completion Date, the Agreed Phase IV Completion Date, and the Agreed Phase V Completion Date, respectively, is to reduce the Initial Term pursuant to Section 2.3, subject to the rights of the Recognized Lender.

3.6 Pilot Program. Attachment A sets forth the terms and conditions pursuant to which MTC and Operator have agreed that Operator will continue operation of the Pilot Program.

## SECTION 4

### SITING

4.1 General. The Coordination Agreement, together with the Siting Criteria, sets forth, among other matters, (a) the Siting Criteria and the Site selection process for determination and approval of locations of the Stations in each Participating City, and (b) the protocols and procedures for the submission materials by Operator to each Participating City for, and the issuance by the Participating City of, Site Plan approvals and permits to install the Equipment at each Station.

4.2 Delays in Approval: The following constitute delay (“Participating City Delay”) for which Operator is entitled to an extension in the Agreed Site Permit Submission Dates and the Agreed Completion Dates:

- 4.2.1 Identification of Sites. If, notwithstanding fulfillment of Operator’s obligations under the Coordination Agreement regarding community engagement, field work and outreach, Operator fails to identify, by a date that is not less than 2 months prior to the Agreed Site Permit Submission Date for a Phase, 75% of the Sites required for such Phase, such Sites being both viable and acceptable to the Participating Cities and the applicable communities, or Operator fails to identify, by a date that is not less than 1 month prior to such Agreed Site Permit Submission Date, the remaining 25% of the Sites required for such Phase, such Sites being both viable and acceptable to the Participating Cities and the applicable communities, then such Agreed Site Permit Submission Date shall be extended by any reasonably necessary additional period required by Operator to identify a sufficient number of viable and acceptable Sites for such Phase.
- 4.2.2 Issuance of Site Permits. If Operator timely submits complete applications for the Site Permits for any Phase by the applicable Agreed Site Permit Submission Date but the Participating Cities fail to issue Site Permits for 75% of the Stations by the date that is 3 months prior to the Scheduled Phase Completion Date for such Phase other than on account of errors or omissions by Operator or valid reasons for denial, then such failure shall constitute Participating City Delay and Operator shall have the right to delay submission of applications for Site Permits for the next following Phase until a reasonable period after the Participating Cities issue Site Permits for 75% of the Stations for such Phase.
- 4.2.3 Installation Scheduling Permits. If the period of time for the Participating Cities to issue Installation Scheduling Permits exceeds, on average, 7 days after final submission of the required materials by Operator, or if more than 25% of the Installation Scheduling Permits are issued 14 days or longer after final submission of the required materials, other than on account of errors or omissions by Operator or valid reasons for denial, then the Agreed Completion Dates shall be extended to reflect any reasonably necessary additional period required by Operator to complete the Phases.

## SECTION 5

### RESERVED

## SECTION 6

### IMPROVEMENTS, MAINTENANCE, REPAIR AND OPERATION

6.1 Operator shall establish and maintain during the Term prompt and efficient procedures for handling complaints from the public for which Operator receives a Notification. Such procedures shall be consistent with all applicable laws, rules and regulations and the provisions of this Section. Such

procedures shall be set forth in writing and copies thereof shall be maintained at Operator's office and shall be available to the public and the Participating Cities upon request.

6.2 Operator will operate a primary call center that will answer calls in person 24 hours per day, 7 days per week. Operator shall conspicuously post a notice on each Station and each bicycle advising the general public that they may direct their complaints and comments to Operator's call center. Such call center shall have a full-time availability to handle calls in English, Spanish and Cantonese, whether by in-house staff or by utilization of a translation service.

6.3 Operator shall maintain written, accurate and complete records of all complaints, and those records shall be available to MTC through appropriate Software or, at MTC's reasonable advance request, in written form. Such records shall indicate: (i) the specific Equipment, including its identifying number and location at a specific point in time, for which the complaint was made; (ii) the type of complaint; (iii) the date and time of complaint; (iv) if the complaint is in written form (non-electronic) and the information is available, the name, address, and telephone number of the Person filing the complaint; (v) Operator's action to address the complaint; and (vi) to the extent applicable, the date of resolution of the complaint. All such records shall be retained by Operator throughout the Term. Within 7 business days following a request by MTC, Operator shall provide MTC with records of complaints by location or time period, and statistical reports by type of complaint, location of complaint, Station or Bicycle, and time of complaint.

6.4 Following the Effective Date, MTC may, at its option, request that Operator provide it with a full inventory of Bicycles, including numbers and dates of lease or purchase.

6.5 Operator may, without incurring any liquidated damages or causing a default hereunder, (a) shut down the Program or reduce the number of Bicycles and Stations deployed and/or operating in the Program Area for weather-related or other emergencies for the duration of the emergency in its reasonable discretion, (b) reduce the number of Bicycles and Stations deployed and/or operative in the Program Areas as needed to implement upgrades to the Functional Specifications, and (c) phase-out Kiosks when they have become obsolete on account of the availability and usage of mobile phone apps.

6.6 Operator shall incorporate Wayfinding Elements on each Station as directed and approved by MTC with input from the Participating Cities.

6.7 Nothing in this Agreement shall limit Operator's right to upgrade the Functional Specifications.

## SECTION 7

### ADVERTISING AND SPONSORSHIP

7.1 Operator is responsible for identifying Sponsors and developing branding for the Program tied to the Sponsors. In no event shall any Sponsor of Operator produce or sell alcohol products, tobacco products, firearms, other products banned by the Participating Cities or products otherwise deemed offensive to the general public. MTC, in consultation with the Participating Cities, shall provide written approval to Operator prior to Operator entering into a Sponsorship agreement with the Title Sponsor, which approval shall not to be unreasonably withheld or delayed. If MTC declines to give consent or

approval referred to hereunder, it will so advise Operator and provide Operator an opportunity to discuss with MTC and an opportunity to attempt to meet MTC's objections.

7.2 Operator shall not install, or permit to be installed, on any Equipment, any Tobacco Advertising, Alcohol Advertising, Firearms Advertising or other Prohibited Advertising. Advertising on any Equipment, including electronic media, shall be consistent with guidelines adopted by each Participating City for outdoor advertising as set forth in this Agreement. Operator shall not place any Advertising or Sponsorship acknowledgment matter that is indecent, in obvious bad taste, or demonstrates a lack of respect for public morals or conduct. (The prohibitions and restrictions in this Section 7 and in Section 29 of the Coordination Agreement are referred to collectively as the "Advertising Restrictions".)

7.3 Operator shall comply with all applicable laws, rules and regulations in force as of the Effective Date and which may hereafter be adopted, to the extent not grandfathered under the law, with respect to Advertising and Sponsorship.

7.4 Neither MTC nor any Participating City shall have any liability or obligation with regard to any Advertising or Sponsorship that survives the termination or expiration of this Agreement, except MTC and the Participating Cities, at no cost to MTC or the Participating Cities, shall cooperate with the Recognized Lender to keep the Sponsorship agreement in effect while a replacement operator is being pursued and will continue to cooperate if a replacement operator is selected.

## SECTION 8

### REVENUE SHARING

#### 8.1 Definitions.

- 8.1.1 "Contract Year" shall mean (a) the period commencing on the Agreed Phase I Completion Date and ending on December 31 of the calendar year in which the Agreed Phase I Completion Date falls, which period shall constitute Contract Year 1, and (b) each subsequent calendar year during the Term, the first of which is Contract Year 2
- 8.1.2 "Ridership Revenue" shall mean all revenues to the extent actually collected by Operator as determined on a GAAP basis as Program membership or user payments (including but not limited to annual, weekly and daily membership payments), and any other Program revenue generated through Bicycle ridership, net of sales taxes or other taxes imposed by law that Operator is obligated to collect and net of credit card fees netted out of amounts due to Operator by the credit company prior to payment to Operator and other billing related charges treated by the party imposing such charges in a similar manner.
- 8.1.3 "Ridership Revenue Hurdle" shall mean \$18,000,000 per calendar year, subject to CPI Adjustment. The Ridership Revenue Hurdle shall be prorated for any Contract Year that is not 365 days.
- 8.1.4 "Sponsorship Revenue" shall mean all revenues to the extent actually collected by Operator as determined on a GAAP basis as a result of Program advertising and sponsorships, including without limitation revenue generated in connection with (a)

naming rights related to the Program and (b) Sponsorship or Advertising placements on Bicycles, Stations, Equipment, website, mobile applications or other physical or web-based materials, net of sales taxes or other taxes imposed by law that Operator is obligated to collect and net of credit card fees and other billing related charges.

- 8.1.5 “Sponsorship Revenue Hurdle” shall mean \$7,000,000 per calendar year, subject to CPI Adjustment. The Sponsorship Revenue Hurdle shall be prorated for any Contract Year that is not 365 days.

8.2 Within 120 days following the end of each Contract Year during the Term, Operator shall:

- 8.2.1 Deliver to the MTC a schedule, certified by a senior officer of Operator, setting forth the Ridership Revenue and the Sponsorship Revenue for such Contract Year; and

- 8.2.2 Pay to MTC an amount equal to 5% of the excess of Ridership Revenue for such Contract Year over the Ridership Revenue Hurdle for such Contract Year, subject to Section 8.2.4.

- 8.2.3 Pay to MTC an amount equal to 5% of the excess of Sponsorship Revenue for such Contract Year over the Sponsorship Revenue Hurdle for such Contract Year, including all Sponsorship Revenue for the period between the Effective Date and Contract Year 1, provided that Operator may defer payment of any amount owed for Sponsorship Revenue for Contract Years 1 through 5 during the Term until Contract Years 6 through 10 during the Term, subject to Section 8.2.4. Operator shall pay any amounts so deferred in equal monthly instalments during Contract Years 6 through 10 during the Term. If the Term is reduced pursuant to Section 2.3, then Operator shall pay the amounts so deferred within 120 days following the expiration of this Agreement.

- 8.2.4 Notwithstanding anything to the contrary herein, if Participating City Delay results in an insufficient number of Site approvals for Operator to accommodate 500 Stations (being the minimum number of Stations identified in Section 3.4) by the Scheduled Phase V Completion Date plus 90 days (the “Scheduled Phase V Plus 90 Days Date”), then in lieu of MTC’s share of Ridership Revenue and Sponsorship Revenue being determined in accordance with the 5% amount set forth in Sections 8.2.2 and 8.2.3, such percentage shall be reduced to the product of 5% and a fraction whose numerator is the number of Stations for which a Site approval has been issued by such date and whose denominator is 500, and such reduced amount shall apply retroactively and prospectively until Site approvals for an aggregate of 500 Stations have been issued. Any amounts theretofore paid by Operator to MTC under this Section 8.2 in excess of such amount due to MTC shall be credited against amounts thereafter payable to MTC under this Section 8.2. Notwithstanding the foregoing, if at any time during the period commencing on the Scheduled Phase V Plus 90 Days Date and ending on the date on which Site approvals for an aggregate of 500 Stations have been issued (such period being the “Revenue Sharing Credit Period”) the Ridership Revenue or the Sponsorship Revenue is less than the Ridership Revenue Hurdle or the Sponsorship Revenue Hurdle, respectively, then Operator shall be entitled to a credit against amounts thereafter payable to MTC under this Section 8.2 equal to the sum of (a) the product of (i) the amount by which the Ridership Revenue Hurdle for such period exceeds the

Ridership Revenues during such period, and (ii) the amount by which the percentage above has been reduced from 5% in accordance with the reduction set forth on the first sentence of this paragraph, and (b) the product of (i) the amount by which the Sponsorship Revenue Hurdle for such period exceeds the Sponsorship Revenues during such period, and (ii) the amount by which the percentage above has been reduced from 5% in accordance with the reduction set forth on the first sentence of this paragraph. If the Revenue Sharing Credit Period is less than one year, then the calculations in the preceding sentence shall be pro-rated based on the duration of the Revenue Sharing Credit Period. If the Revenue Sharing Credit Period is longer than one year, then the calculations for any fractional period shall be similarly pro-rated. Any amount not paid to MTC when due under Section 8.2 shall accrue interest on the overdue amount at the Applicable Interest Rate in effect from time to time.

8.3 No acceptance of any payment due pursuant to Sections 8.2 shall be construed as an accord that the payment is the correct amount, nor shall such acceptance of payment be construed as a release of any claim that MTC may have for further or additional sums payable under this Agreement.

## SECTION 9

### PRICE SCHEDULES.

9.1 Operator agrees that the amount and terms of the fees it charges users of the Program shall be consistent with the provisions of this Section. Membership Fees and Initial Ride Periods shall be consistent with Section 9.2, the Annual Membership Fee for users eligible for the affordability subscription specified in Section 9.3.1 shall be as described in said Section 9.3.1, the maximum Bicycle usage charge shall be consistent with Section 9.5 and the fees for damaged, lost, stolen or otherwise unreturned Bicycles shall be consistent with Section 9.6 initially charged by Operator shall be consistent with this Section. A “Membership Fee” is an amount that entitles the purchaser of the membership (a “member”, for the period of such purchased membership) to check out (as defined below) one or more Bicycle(s) at a time, for the length of time described below, provided that the member shall be charged a usage fee associated with the time period the Bicycle is checked out beyond the Initial Ride Period. A Bicycle is “checked out” for the period from the time it is removed from a Dock to the time it is returned to a Dock. A member may check out and return a Bicycle from or to any Dock at any Station in the Program, for an unlimited number of times, at any time during the period of the member’s membership, with the usage fee applicable to each such checkout and return sequence being calculated separately (so, for example, a Regular Annual Member may, within the member’s membership period, check out a Bicycle and return it within the first 30 minutes after checkout, and then subsequently check out a Bicycle and return that Bicycle within the first 30 minutes after that checkout, without incurring any usage fee for either checkout period).

9.2 Membership Fees, New Ridership Programs/Arrangements, and Initial Ride Periods:

9.2.1 Operator shall offer an annual membership (“Annual Membership”) for a fee (the “Annual Membership Fee”) in an amount not to exceed the Annual Membership Fee Cap in effect from time to time. The Annual Membership Fee Cap shall be \$149 for a one-year period, subject to increase on the first anniversary of the Effective Date and on each subsequent anniversary of the Effective Date by a percentage amount equal to the CPI increase for the trailing 4 calendar quarters preceding each such anniversary

plus 2% (so, for example, if the CPI increase were 1% for the trailing four calendar quarters preceding a particular anniversary of the date hereof, the applicable permitted percentage increase in the Annual Membership Fee Cap as of that anniversary would be 3%). An Annual Member whose Annual Membership Fee is subject to the Annual Membership Fee Cap is sometimes referred to as a “Regular Annual Member” and the corresponding Annual Membership is the “Regular Annual Membership.” The period of an Annual Membership shall run from the day the annual membership is activated until the first anniversary of the date on which the Annual Membership had been activated (but a membership purchased on February 29 shall expire on March 1 of the following year);

9.2.2 Annual Memberships may be paid in 12 equal monthly instalments at a price not greater than 120% of the Annual Membership Fee;

9.2.3 All memberships will include a free period of usage (the “Initial Ride Period”), which is the length of time at the beginning of each individual Trip to which additional usage fees will not be applied. For Regular Annual Memberships and affordability memberships, the Initial Ride Period is 30 Minutes. Usage fees will be applied to all Trips that exceed the Initial Ride Period; and

9.2.4 For monthly, weekly and daily memberships, and for usage of the Program by non-members, Operator will determine the applicable fees, usage fees, and periods of use for members beyond the Initial Ride Period in its sole discretion.

9.2.5 Nothing in the foregoing shall limit the right of Operator to offer premium memberships featuring an Initial Rider Period longer than 30 minutes for an Annual Membership Fee greater than \$149.

### 9.3 Affordability Option:

9.3.1 Notwithstanding the permitted rate for a Regular Annual Membership set forth in Section 9.2.1 (as adjusted pursuant to Section 9.11), Operator shall charge those eligible for an “affordability subscription” no more than \$60 per annum (excluding sales tax) as the Annual Membership Fee, or \$5.00 per month for a 12-month membership. Such rate is subject to annual CPI increase on the first anniversary of the Effective Date and on each subsequent anniversary of the Effective Date for the trailing 4 calendar quarters preceding each such anniversary plus 2%.

9.3.2 Members of households enrolled in the Utility Lifeline Programs (also known as California Alternative Rates for Energy (CARE)) available in the MTC Area are eligible for affordability memberships. At least 30 days prior to the completion of Phase I, Operator shall propose, for MTC’s review and approval, procedures for verifying enrollment in CARE. In San Francisco, those who meet Muni Lifeline income requirements as determined by the City of San Francisco’s Human Services Agency are also eligible for the affordability membership. Upon mutual agreement of the Parties, eligibility may expand to include other categories of persons so long as the eligibility is determined by third parties.

9.3.3 Members enrolling through the affordability program shall be entitled to the same rights and privileges as Regular Annual Members.

9.3.4 The usage fees for affordability members shall not exceed the rate charged to Regular Annual Members.

9.4 The checkout period for the purposes of calculating usage fees shall always commence with the time a Bicycle is actually removed from a Dock, and it shall not be based on the time of insertion of a payment or identification card.

9.5 The maximum Bicycle usage charge initially charged with respect to any member shall be \$100 per 24 hour period, not including charges for damaged, lost, stolen or otherwise unreturned Bicycles.

9.6 Fees for damaged, lost, stolen or otherwise unreturned Bicycles initially charged shall be (i) \$1,200, if not returned, or (ii) if returned, the sum of all direct costs of the repair, including all labor and parts, as determined by Operator in its reasonable discretion, plus a 10% administrative fee; provided, however, that the fees charged to affordability members for unreturned or damaged Bicycles shall be not more than 33% of the fees set forth in the preceding clauses (i) and (ii). Operator shall waive such fees for an any member who is not at fault for the unreturned or damaged Bicycle.

9.7 Operator shall at all times post on all Stations and on Operator's website a complete and up-to-date fee description that sets forth each and every current membership and usage fee offered by Operator, the methods of purchasing memberships and paying fees, available discounts on such fees, the applicability and terms of such discounts and, to the extent applicable, how to apply for or qualify for such discounts, and fees associated with damaged, lost, stolen or otherwise unreturned Bicycles. Operator shall furnish written copies of such material to the public upon request.

9.8 Operator shall accept credit card and debit card payments online and at all Stations but in the case of debit cards only those that have a Visa or Mastercard logo on them. Operator may employ such other methods of payment as it may determine.

9.9 All required state sales and use taxes with respect to membership and usage fees shall be collected and paid by Operator, as required by applicable law.

9.10 Operator shall be permitted to create Program pricing discount programs, which may be targeted in connection with marketing and outreach efforts, and in connection with Sponsorship or Advertising programs, to expand or enable Program use among different communities or for other lawful purposes.

9.11 At any time and from time to time, Operator shall have the right:

9.11.1 To adjust the amount of the Annual Membership Fee specified in Section 9.2.1 downwards at any time and upwards on each anniversary of the Effective Date by an amount not to exceed the Annual Membership Fee Cap then in effect;

9.11.2 To adjust the amount of the maximum Bicycle usage charge specified in Section 9.5 and the fees for damaged, lost, stolen or otherwise unreturned Bicycles specified in Section 9.6 downwards at any time and upwards on each anniversary of the Effective



Date by a percentage amount equal to the CPI increase for the trailing 4 calendar quarters preceding each such anniversary plus 2% (so, for example, if the CPI increase were 1% for the trailing 4 calendar quarters preceding a particular anniversary of the date hereof, the applicable permitted percentage increase in the Annual Membership Fee Cap as of that anniversary would be 3%);

9.11.3 Any upwards adjustment permitted under this Section 9.11 and not made as of any anniversary date may be made at any time after such anniversary date without derogation of Operator's right to make any other upwards adjustments permitted under this Section 9.11;

9.11.4 To adjust in its sole discretion all other fees, time periods and charges specified hereunder other than those fees, time periods and charges specified in Section 9.2.1 and Section 9.3; and

9.11.5 To adjust upward the duration of the Initial Ride Period.

9.12 MTC shall have the right to review and approve the initial Program membership waiver and any material changes thereto, which approval shall not be unreasonably withheld.

9.13 At any time and from time to time, Operator may, in its sole discretion, offer discounts and promotions for the Program.

## SECTION 10

### MERCHANDISING, LICENSING AND INTELLECTUAL PROPERTY

10.1 [INTENTIONALLY OMITTED]

10.2 Subject to the limitations, terms and conditions as may be imposed by the Sponsor in the Sponsor's discretion, upon request by MTC and the Participating Cities, Operator shall seek to obtain for MTC and the Participating Cities, or shall assist MTC and the Participating Cities to obtain, for the benefit of MTC, the Participating Cities and their respective business partners and sublicensees, non-exclusive licenses to use during the term of any Sponsorship agreement the Sponsor trademarks, logos, servicemarks, and other similar intellectual property identified for use in connection with the Sponsorship agreement (individually and/or collectively the "Sponsor Property") to market and promote the Program under the name or title for the Program adopted by Operator for the Program (the "Program Name"), which name shall be subject to the consent of MTC and the Participating Cities, as applicable, to the extent the Program Name consists of MTC/Participating City Property; provided, however, the use of any Sponsor Property by MTC or the Participating Cities shall comply with reasonable quality control measures required by the Sponsorship agreement. To the extent that the Program Name incorporates MTC/Participating City Property, MTC and/or one or more of the Participating Cities, as the case may be, shall own the portion of any Program Name that consists of MTC/Participating City Property. For further clarity, with respect to obtaining the aforementioned licenses, Operator is not the agent of MTC or the Participating Cities and has no authority to enter into agreements on behalf of or otherwise bind MTC or the Participating Cities.

10.3 Subject to the limitations, terms and conditions as may be imposed by the Sponsor in the Sponsor's discretion to the extent the Operator Property incorporates any Sponsor Property, including, without limitation, the Sponsor's consent, Operator hereby grants to MTC and the Participating Cities and their respective business partners and sublicensees a non-exclusive, royalty-free license to use any trademarks, logos, servicemarks, and other similar intellectual property developed by Operator (individually and/or collectively the "Operator Property") required in connection with marketing and promoting the Program during the Term.

10.4 MTC hereby grants to Operator the exclusive right to use during the Term the name "Bay Area Bike Share" and variations thereof (individually and/or collectively "Bay Area Bike Share"). As part of Operator's exclusive right to use "Bay Area Bike Share", Operator shall have the right to sublicense the use of "Bay Area Bike Share" to the Sponsor or any other Person to market or promote the Program. Such rights shall terminate upon expiration or termination of this Agreement, but subject to the rights of the Recognized Lender.

10.5 Notwithstanding the foregoing Sections, the Recognized Lender shall not be precluded from collateralizing any intellectual property of Operator.

## SECTION 11

### RESERVED

11.1 [INTENTIONALLY OMITTED]

11.2 [INTENTIONALLY OMITTED]

11.3 [INTENTIONALLY OMITTED]

## SECTION 12

### RESERVED

12.1 [INTENTIONALLY OMITTED]

12.2 [INTENTIONALLY OMITTED]

12.3 [INTENTIONALLY OMITTED]

## SECTION 13

### MARKETING

13.1 Operator shall create a marketing plan for the Program, subject to approval by MTC, which approval will not be withheld so long as the plan is not in bad taste, offensive, obscene or derogatory to MTC or any Participating City. Following such approval, Operator shall market the Program in accordance with such plan. The marketing budget and the allocation of such budget shall be determined by Operator, in its sole discretion. The marketing plan shall include, at a minimum, demonstrations,

events, social media outreach, programs, partnerships and other efforts to educate residents of the Participating Cities about bike share, to launch the Program and to grow membership and ridership in a financially sustainable manner.

13.2 A portion of Operator's marketing plan will include marketing and outreach to low-income communities, disadvantaged communities, and communities for which English is not the native language, shall be subject to the approval of MTC and the Participating Cities, shall comply with local requirements regarding language access for each Participating City, shall comply with local standards for decency and not be offensive to the general public. MTC retains the non-exclusive right to conduct marketing and outreach to low-income neighborhoods and limited English proficiency neighborhoods. Operator's marketing activities shall not violate the Advertising Restrictions.

13.3 [INTENTIONALLY OMITTED]

## SECTION 14

### WEBSITE

14.1 Operator shall create and maintain a Program website, subject to the MTC's prior review. The Program's website shall include, at a minimum, all of the following elements:

- 14.1.1 Eligibility requirements;
- 14.1.2 Subscription information and rate schedules;
- 14.1.3 Payment and subscription processing information;
- 14.1.4 Method for subscribers to update required information;
- 14.1.5 Subscriber agreement and acceptance of terms;
- 14.1.6 Map of network of Stations and real-time availability of Bicycles at each Station;
- 14.1.7 Frequently Asked Questions;
- 14.1.8 Safety requirements and information (including malfunctions and crashes);
- 14.1.9 News and operational updates;
- 14.1.10 Special events notices;
- 14.1.11 Links to other bike programs and events;
- 14.1.12 Call center contact information;
- 14.1.13 Real-time information on Bicycles and Docks for app developers (e.g. JSON Feed);
- 14.1.14 System-wide anonymized historical data;
- 14.1.15 For individual members, that member's ridership history;

- 14.1.16 For individual members, that member's payment history; and
- 14.1.17 Operator's privacy policy; and
- 14.1.18 Translation capability to Cantonese, Spanish, and Vietnamese at a minimum.

14.2 Operator shall keep all information on the Program's website updated.

## SECTION 15

### SECURITY FUND

15.1 Prior to installation by Operator of the first new Station, Operator shall deposit with MTC a security deposit ("Security Fund") in the amount of \$250,000.00. Interest on the Security Fund shall accrue in an interest bearing bank account for the benefit of Operator, and all such interest shall be paid annually to Operator on each anniversary of the Effective Date.

15.2 Operator shall maintain \$250,000.00 in the Security Fund at all times during the Term and for 90 days after the end of the Term. Upon expiration of the foregoing period, the remaining balance of the Security Fund shall be disbursed to Operator, unless prior to the expiration of such 90-day period MTC commences litigation against Operator, the underlying claim is covered by the Security Fund, and such litigation is not finally resolved prior to the expiration of such period, in which case an amount of the Security Fund equal to the amount of the outstanding claim shall be retained and only until such claim is resolved. Any amounts remaining in the Security Fund that are not being retained in accordance with this paragraph shall be promptly returned to Operator, and MTC shall fully and timely cooperate with the payment of the Security Fund to Operator.

15.3 The Security Fund shall serve as security for the faithful performance by Operator of all terms, conditions and obligations of this Agreement and shall be available for withdrawal under the following circumstances:

15.3.1 If Operator breaches a payment obligation under this Agreement and fails to remedy such breach within 10 business days following notice by MTC to Operator (a "Payment Breach"), other than the payment of liquidated damages under Section 2.6.3, which is addressed in Section 15.3.5. In the event of a Payment Breach, MTC shall be entitled to withdraw from the Security Fund the amount of the money that is due and payable as set forth in such notice, unless within such 10 business day period Operator initiates the Dispute Resolution Process by giving MTC notice stating that it contests the occurrence of such Payment Breach or the amount thereof. This Section 15.3.1 does not cover a Default under Section 18.1.1 (which is covered in Section 15.3.4).

15.3.2 If Operator commits a non-monetary breach under this Agreement that results in damage to any municipal structure or property of MTC or a Participating City, Operator fails to repair such damage within 30 days following notice by MTC to Operator and in response thereto MTC or the applicable Participating City undertakes such repair (a "Property Damage Breach"), in which event MTC shall be entitled to withdraw from the Security Fund the costs incurred by MTC or the applicable Participating City to undertake such repair, provided such costs are reasonable. Notwithstanding MTC's withdrawal from the Security Fund for a Property Damage Breach, Operator shall have the right to contest

such Property Damage Breach or the costs incurred by initiating the Dispute Resolution Contest, provided that Operator gives MTC notice thereof not later than 30 days after such withdrawal.

15.3.3 If Operator fails to undertake any other non-monetary obligation under this Agreement within the period required under this Agreement and in response thereto MTC or a Participating City exercises self-help to perform such obligation pursuant to a provision of this Agreement that expressly permits self-help or with respect to which self-help is a reasonable response (e.g., a failure of Operator to timely complete a Station De-Installation; or failure of Operator to remove advertising that violates Advertising Restrictions within 24 hours of notice to Operator) (a “Self-Help Situation”), in which event MTC shall be entitled to withdraw from the Security Fund the costs incurred by MTC or the applicable Participating City to undertake such self-help, provided such costs are reasonable. Notwithstanding MTC’s withdrawal from the Security Fund for a Self-Help Situation, Operator shall have the right to contest such Self-Help Situation or the costs incurred by initiating the Dispute Resolution Contest, provided that Operator gives MTC notice thereof not later than 30 days after such withdrawal. This Section 15.3.3 does not cover a breach of Section 16 or matters covered by Section 15.3.2 or 15.3.4.

15.3.4 Operator commits a Default, in which event MTC shall be entitled to withdraw the actual, direct damages arising from such Default unless prior to the expiration of the applicable cure period set forth in Section 18.1 Operator initiates the Dispute Resolution Process by giving MTC notice stating that it contests the occurrence of such Defaults. This Section 15.3.4 does not cover matters covered by Section 15.3.1, 15.3.2, 15.3.3 or 15.3.5.

15.3.5 Operator fails to pay any amount of liquidated damages, and interest, if any due to MTC pursuant to Section 2.6.3 within the time periods provided therein.

15.4 Each notice by MTC to Operator under Section 15.3 of a failure, breach or Default, as applicable, shall provide specific and detailed information about Operator’s non-compliance, together with the amount MTC is intending to withdraw and detailed support for such amount, if then known. Each notice from Operator to MTC under Section 15.3 to contest the occurrence of such non-compliance or the amount to be withdrawn, which notice shall commence the Dispute Resolution Process, shall provide specific and detailed information that rebuts or challenges the information contained in the corresponding notice provided by MTC. Within 2 days following any withdrawal from the Security Fund, MTC shall notify Operator of the date and amount of the withdrawal, together with detailed support for the amount of the withdrawal.

15.5 MTC may not seek recourse against the Security Fund for any cost or damages for which MTC has previously been compensated by Operator or from the Security Fund. The withdrawal of the amounts from the Security Fund shall constitute a credit against the amount of the applicable liability of Operator.

15.6 If a withdrawal from the Security Fund is made, Operator shall be required to replenish the Security Fund by the amount withdrawn within 30 days after receipt of notice of such withdrawal. Notwithstanding the foregoing, if Operator is contesting in good faith MTC’s right to withdraw in accordance with the Dispute Resolution Process, then Operator shall not be obligated to replenish on account of such withdrawal until 30 days after such dispute is finally resolved in accordance with the Dispute Resolution Process. Interest on the amount required to be replenished shall accrue at the Applicable Interest Rate in effect from time to time commencing on such 30th date.

15.7 The obligation to perform and the liability of Operator pursuant to this Agreement shall not be limited in nature or amount by the acceptance of the Security Fund required by this Section 15.

## SECTION 16

### INDEMNITY

16.1 Indemnification. Operator shall defend, indemnify and save harmless MTC, the Participating Cities, and their respective commissioners, officers, agencies, departments, agents, and employees (each, an "Indemnified Party"; and collectively, "Indemnified Parties") from and against any and all claims, demands, causes of action, proceedings or lawsuits brought by third-parties ("Claims"), and all losses, damages, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including attorneys' fees and other costs of defense) (collectively, with Claims, "Liabilities"), resulting from, or arising out of, the operation of the Program and the provision of Services, whether such operation or Services is performed or provided by Operator or by Operator's subcontractors or any other person acting for or on behalf of Operator.

16.2 Notwithstanding the foregoing, the following shall be excluded from Operator's indemnification and defense obligations contained in the preceding sentence: any Liabilities to the extent resulting from, or arising out of, (i) the gross negligence or willful misconduct of any Indemnified Party, (ii) Operator complying with the written directives or written requirements of a Participating City, if the Operator has previously objected to such written directives or requirements in writing, with respect to (A) the location or configuration of any Station in relation to the street or sidewalk on which such Station is located or to which it adjoins or (B) a Participating City's Street Treatment Requirements, or (iii) the condition of any public property outside of the perimeter of a Station and not otherwise controlled by Operator (and expressly excluding from this clause (iii) the condition of the Bicycles or other Equipment). If any Claim against Operator includes claims that are covered by clause (iii) of the preceding sentence or claims contesting a Participating City's authority to issue a permit for a Station, then each Party shall be responsible for its own defense against such claims.

16.3 Upon receipt by any Indemnified Party of actual notice a Claim to which such Indemnified Party is entitled to indemnification in accordance with Sections 16.1 and 16.2, such Indemnified Party shall give prompt notice of such Claim to Operator. Operator shall assume and prosecute the defense of such Claim at the sole cost and expense of Operator. Operator may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.

## SECTION 17

### INSURANCE

17.1 Minimum Coverages. The insurance requirements specified in this section shall cover Operator's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Operator authorizes to work under this Agreement (hereinafter referred to as "Agents"). Operator shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

17.2 Operator shall include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover the risks associated with work to be performed by the Agent. To the extent that an Agent does not procure and maintain such insurance coverage, Operator shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Operator's indemnity obligation under Section 16 as to itself or any of its Agents in the absence of such coverage.

17.3 In the event Operator or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Operator's or its Agent's insurance, as the case may be, be primary without right of contribution from MTC.

- 17.3.1 Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee for injury by disease and \$1,000,000 for injury for each accident, and any and all other coverage of Operator's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Operator is a sole proprietor or a corporation with stock 100% owned by officers with no employees.
- 17.3.2 Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Operator and Operator's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC. MTC and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. In addition, the entities listed in Section 17.12 and their respective commissioners, directors, officers, representatives, agents and employees are also to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Operator's operations.
- 17.3.3 Business Automobile Insurance for all automobiles owned (if any), used or maintained by Operator and Operator's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.
- 17.3.4 Umbrella Insurance in the amount of \$4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.
- 17.3.5 Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$5,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. The policy shall provide coverage for all work

performed by Operator and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Operator. Operator may delegate the obligation to maintain Errors and Omissions Professional Liability Insurance to an Agent, but the failure of such Agent to maintain such insurance shall not relieve Operator of its obligation to maintain such insurance.

- 17.3.6 Property Insurance. Property Insurance covering Operator's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

17.4 Acceptable Insurers. All policies will be issued by insurers qualified to do business in California and with a Best's Rating of A-VIII or better.

17.5 Self-Insurance. Operator's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

17.6 Deductibles and Retentions. Operator shall be responsible for payment of any deductible or retention on Operator's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

17.7 In the event that MTC is entitled to coverage as an additional insured under any Operator insurance policy that contains a deductible or self-insured retention, Operator shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Operator, subconsultant, subcontractor, or any of their employees, officers or directors, even if Operator or subconsultant is not a named defendant in the lawsuit.

17.8 Claims Made Coverage. If any insurance specified above is written on a "Claims-Made" (rather than an "occurrence") basis, then in addition to the coverage requirements above, Operator shall:

- 17.8.1 Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;
- 17.8.2 Maintain and provide evidence of similar insurance for at least three (3) years following the expiration or termination of this Agreement, including the requirement of adding all additional insureds; and
- 17.8.3 If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the commencement of any work hereunder, Operator shall purchase "extended reporting" coverage for a minimum of three (3) years after the expiration or termination of this Agreement.

17.9 Failure to Maintain Insurance. All insurance specified above shall remain in force until the expiration or termination of this Agreement. Operator must notify MTC if any of the above required



coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

17.10           Certificates of Insurance. Prior to commencement of any work hereunder, Operator shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

17.11           Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Operator are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Operator pursuant hereto, including, but not limited to, liability assumed pursuant to Section 16 .

17.12           Additional Insureds: The following entities are to be named as Additional Insureds under applicable sections of this Section 17 and as Indemnified Parties pursuant to Section 16.

17.12.1       Metropolitan Transportation Commission (MTC)

17.12.2       City of Berkeley

17.12.3       City of Oakland

17.12.4       City of San Francisco

17.12.5       City of Emeryville

17.12.6       City of San Jose

## SECTION 18

### TERMINATION AND DEFAULT

18.1           The following events shall be a Default under this Agreement:

18.1.1       A breach by Operator of a payment obligation under Section 8 [Revenue Sharing] and the failure to remedy such breach within 10 business days after receipt by Operator from the Executive Director of written notice of such breach;

18.1.2       A breach by Operator of a material obligation under Section 7 of this Agreement or Section 29 of the Coordination Agreement [Advertising and Sponsorship]; Section 9 [Price Schedules], Section 10 of this Agreement or Section 30 of the Coordination Agreement [Merchandising, Licensing and Intellectual Property]; any separate licensing agreement between Operator (or its affiliate) and MTC and/or a Participating City; Section 31 of the Coordination Agreement [Marketing, Promotions and Reporting]; Section 14 [Website]; Section 15 [Security Fund]; Section 16 [Indemnity]; Section 20 [Employment and Purchasing]; and Section 21 [Inspection and Audit], and the failure to remedy such breach within 10 business days after receipt by Operator from the Executive Director of written notice of such breach;

- 18.1.3 A breach by Operator of Section 22 [Assignment];
- 18.1.4 A breach by Operation of Section 17 [Insurance] and the failure to remedy such breach within 5 business days after receipt by Operator from the Executive Director of written notice of such breach;
- 18.1.5 (a) Operator's chronic Program-wide failures to abide by its obligations under Sections 2, 3, 4 and 6 of this Agreement and Section 22 of the Coordination Agreement, which failures materially and adversely affect the non-pecuniary benefits to be derived by MTC and the Participating Cities under this Agreement, (b) the failure of Operator to submit to MTC and the Participating Cities, within 15 business days following receipt by Operator from the Executive Director of written notice of such failures, a credible business plan for Operator to proactively and comprehensively address Operator's deficiencies, which plan shall be subject to approval by MTC in consultation with the relevant Participating Cities, and (c) the failure of Operator to take concrete steps to implement such response plan within 30 days of MTC's approval of such plan;
- 18.1.6 If the Security Fund balance falls below \$50,000 and Operator does not replenish the full amount of the Security Fund within 10 days following notice thereof from the Executive Director. However, if Operator is then contesting one or more prior withdrawals from the Security Fund in accordance with the Dispute Resolution Process and the aggregate amount in dispute exceeds \$200,000, then such \$50,000 may only be used pursuant to Section 15.3.2 or Section 15.3.3 until such dispute has been finally resolved;
- 18.1.7 The commencement of any proceeding by Operator under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of Operator for the benefit of creditors;
- 18.1.8 The commencement of any involuntary proceeding against Operator under the Bankruptcy Code that has not been stayed or dismissed within 120 days of its commencement;
- 18.1.9 If Operator or any of its officers, directors or senior management has been convicted after the Effective Date under any state or federal law of any of the matters listed in clauses (a) through (e) of this Section 18.1.9: (x) in connection with a matter that is not directly or indirectly connected with this Agreement or the Program and, in the case of the conviction of an individual, such individual has not been terminated by Operator within 30 days after Operator receives notice of such conviction, or (y) in connection with a matter that is directly or indirectly connected with this Agreement or the Program. The matters referred to above as being listed in clauses (a) through (e) are the following:
- (a) A criminal offense that is incident to obtaining or attempting to obtain or to performing a public or private contract;
  - (b) Fraud, embezzlement, theft, bribery, forgery, falsification, destruction of records, or receiving stolen property;

- (c) A criminal violation of any state or federal antitrust law;
- (d) Violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract; or
- (e) Conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above.

18.1.10 If Operator or any of its officers, directors, partners, managers, 5 percent or greater owners, principals, or other employees or persons substantially involved in its activities (a) are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract, or (b) intentionally makes or causes to be made any false, deceptive, or fraudulent material statement in any bid, proposal, or application for government work, and the individual responsible for such act, omission or material misstatement, if an employee, has not been terminated by Operator, or if not an employee, the relationship therewith has not been terminated, within 30 days after such judgment is entered into in the case of clause (a) above or after a judgment is entered into that any such material statement was intentionally false, deceptive or fraudulent in the case of clause (b).

18.2 If a Default occurs, then, subject to Sections 3.5 and 18.3, MTC shall, at MTC's option, have any or all of the following remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at law or in equity or under any other terms of this Agreement. MTC's remedies include, but are not limited to:

- 18.2.1 Cause a withdrawal from the Security Fund, pursuant to Section 15, subject to any right of Operator to contest such withdrawal pursuant to the Dispute Resolution Process;
- 18.2.2 Seek actual, direct damages only from Operator for such Default (and notwithstanding anything to the contrary herein, in no event shall MTC be entitled to special, consequential or punitive damages under this Agreement);
- 18.2.3 Seek to restrain by injunction the continuation of such Default;
- 18.2.4 Purchase the Equipment at its then fair market value, subject to the rights of the Recognized Lender not to permit the sale of the Equipment to MTC;
- 18.2.5 Pursue any other remedy permitted by law or in equity or in this Agreement; or
- 18.2.6 Terminate this Agreement, subject to the rights of the Recognized Lender.

18.3 Nothing in this Agreement precludes Operator from contesting the existence of such Default or the breach, failure or other occurrence underlying a Default in accordance with this Section

18.3 and the Dispute Resolution Process. If Operator seeks to contest any of the foregoing, Operator must notify MTC prior to the expiration of the applicable cure period set forth in Section 18.1. Following such notice, the dispute shall be addressed and resolved in accordance with the Dispute Resolution Process. Pending final resolution of such dispute, Operator may continue operating the Program in accordance with the terms of this Agreement, and any exercise by MTC of its remedies hereunder shall be stayed until final resolution of such dispute in accordance with the Dispute Resolution Process. In addition, if such final resolution is against Operator, then MTC shall have the right to terminate this Agreement only if such Default is not cured within the period otherwise provided in the definition of Default to remedy such default, provided that for this purpose the applicable remedy period shall commence upon the final resolution of such dispute.

18.4 Subject to the rights of the Recognized Lender (if any and if applicable), upon termination of this Agreement on account of a Default by Operator, reduction of Initial Term under Section 2.3, or expiration of the Term, Operator shall comply with the following close-out procedures:

- 18.4.1 Turning over to MTC or its designees copies of all books, records, documents and materials specifically relating to this Agreement and reasonably requested by MTC;
- 18.4.2 Submitting to MTC, within 120 days, a final statement and report relating to this Agreement that has been reviewed by a certified public accountant or a licensed public accountant;
- 18.4.3 Providing reasonable assistance to MTC during the transition; and
- 18.4.4 Continuing to operate the Program in accordance with the terms of this Agreement and to effect an efficient and orderly transition of responsibility with respect to the operation of the Program until the earlier of (i) 180 days after such termination and (ii) the selection of a replacement operator for the Program and such replacement operator commencing operation of the Program; provided, however, that Operator shall have the right to cease operating prior thereto if Operator experiences an operating shortfall during the transition period and MTC fails to compensate Operator for such shortfall.

18.5 Subject to the rights of the Recognized Lender (if any and if applicable), upon termination of this Agreement on account of a Default by Operator, reduction of the Initial Term under Section 2.3, or expiration of the Term, MTC shall have the option to:

- 18.5.1 require Operator to remove all Equipment at its sole cost and expense;
- 18.5.2 subject to satisfaction of the Program Property Assignment Conditions, require Operator to assign to MTC (or a third-party operator designated by MTC) the Equipment and Operator's rights under the Escrow Agreement, in which event Operator shall reasonably cooperate with MTC (or such designee) to obtain the legal right to use the Software (excluding the Operator Basic Function Software and the Operator Non-Basic Function Software) either through an assignment of Operator's license with the Vendor to MTC (or such designee) or by MTC (or such designee) entering a license agreement for such Software with the Vendor; or

18.5.3 subject to satisfaction of the Program Property Assignment Conditions, take over operation of the Program, and in connection therewith assign to MTC the Equipment and Operator's rights under the Escrow Agreement, in which event Operator shall reasonably cooperate with MTC to obtain the legal right to use the Software (excluding the Operator Basic Function Software and the Operator Non-Basic Function Software) either through an assignment of Operator's license with the Vendor to MTC or by MTC entering a license agreement for such Software with the Vendor.

18.6 Not less than 6 months prior to the expiration of the Term, MTC shall elect either (a) to purchase (or have a designee purchase) the Program Property at the expiration of the Term or (b) to require Operator to remove the Equipment upon expiration of the Term. If MTC elects clause (a), then Operator and MTC shall negotiate a purchase price for the Program Property based on the fair market value of the Program Property as an installed system, and at the expiration of the Term, Operator shall reasonably assign to MTC (or its designee) the Equipment and Operator's rights under the Escrow Agreement and cooperate with MTC (or its designee) to obtain the legal right to use the Software (excluding the Operator Basic Function Software and the Operator Non-Basic Function Software) either through an assignment of Operator's license with the Vendor or by MTC (or its designee) entering a license agreement for such Software with the Vendor, subject to satisfaction of the Program Property Assignment Conditions. If MTC elects clause (b), then within 90 days of the expiration of the Term, Operator shall remove all Equipment.

18.7 In the event of a breach of this Agreement by any Party or by any Participating City, the other Party or parties shall act in good faith and exercise commercially reasonable efforts to mitigate any damages or losses that result from such breach. Notwithstanding the foregoing, nothing contained in this Section shall limit in any respect the rights of MTC and the Participating Cities to indemnification pursuant to Section 16.

18.8 No Party shall be liable (including, but not limited to, for payment of liquidated damages) for failure to perform any of its obligations, covenants, or conditions contained in this Agreement, to the extent such failure is caused by the occurrence of an Event of Force Majeure, and such Party's obligation to perform shall be extended for a reasonable period of time, commensurate with the nature of the event causing the delay, and no breach or default shall exist or liquidated damages be payable with respect to such extended period.

## SECTION 19

### RIGHTS OF RECOGNIZED LENDER

19.1 Operator shall have the right to collaterally assign its rights under this Agreement to the Recognized Lender as collateral for the Recognized Loan. Operator or the Recognized Lender shall notify MTC of the existence of the Recognized Loan and the collateral assignment of this Agreement and shall notify MTC of the name and address of the Recognized Lender. In no event shall there be more than one Recognized Lender at any one time.

19.2 MTC shall give the Recognized Lender, at the address of such Recognized Lender and in the manner set forth in Section 25.2 a copy of each notice of default at the same time as it gives notice of

default to Operator. A notice of default to Operator shall not be effective unless a copy thereof is concurrently given to the Recognized Lender.

19.3 The Recognized Lender shall, in the case of any Default by Operator under Section 18.1.1, have a period of 10 days more than is given Operator, to remedy such Default prior to MTC terminating this Agreement on account of such Default, and in the case of a Default by Operator under Section 18.1.2 or 18.1.5, shall have a period of 10 days more than is given Operator to remedy such Default prior to MTC terminating this Agreement on account of such Default, provided that if such Default is not one that can be cured with the payment of money and if the Recognized Lender needs to exercise its remedies and obtain access to its collateral prior to being able to effectuate the cure of any such default, such additional 10-day period shall, so long as the Recognized Lender is diligently and continuously pursuing such cure and has provided written notice to MTC of its intent to cure such Default, be extended for such additional time as is necessary for the Recognized Lender to obtain such access and commence and effectuate such cure.

19.4 If this Agreement terminates on account of a Default, then Operator shall give any Recognized Lender prompt notice thereof. Within 60 days following receipt of such notice, the Recognized Lender may elect to require MTC to enter into a new agreement with a replacement operator designated by the Recognized Lender for the remaining Term of this Agreement, considered as if the Term had not ended on account of such Default and on substantially the same terms as contained in this Agreement (the "Replacement Agreement"). Within 120 days of such notice, the Recognized Lender shall identify a replacement operator and credible business plan for such replacement operator to proactively and comprehensively address Operator's deficiencies. Such replacement operator and business plan shall be subject to the approval of MTC, which approval shall not be unreasonably withheld or delayed. If MTC approves such replacement operator and business plan, then MTC and such replacement operator shall enter into the Replacement Agreement. If MTC and the Recognized Lender are unable to agree on the replacement operator or the business plan within 150 days following such notice, or if the Recognized Lender does not elect to require MTC to enter into a Replacement Agreement within 60 days following receipt of such notice, then MTC shall have the right to exercise its other remedies under Section 18.5 without regard to the rights of the Recognized Lender.

19.5 If pursuant to Section 2.3, MTC exercises its right to reduce the Initial Term by 5 years, then MTC shall give the Recognized Lender notice thereof. Within 60 days following receipt of such notice, the Recognized Lender may elect to require MTC to enter into a new agreement with a replacement operator designated by the Recognized Lender commencing on the expiration of the Term as reduced pursuant to Section 2.3 for the remaining Term of this Agreement, considered as if the Term had not been reduced pursuant to Section 2.3 and on substantially the same terms as contained in this Agreement. Within 120 days of such notice, the Recognized Lender shall identify a replacement operator and credible business plan for such replacement operator to proactively and comprehensively address Operator's deficiencies. Such replacement operator and business plan shall be subject to the approval of MTC, which approval shall not be unreasonably withheld or delayed. If MTC approves such replacement operator and business plan, then MTC and such replacement operator shall enter into such replacement agreement. If MTC and the Recognized Lender are unable to agree on the replacement operator or the business plan within 150 days following such notice, or if the Recognized Lender does not elect to require MTC to enter into a replacement agreement within 60 days following receipt of such notice, then the Recognized Lender shall have no further rights arising on account of the reduced Term.

19.6 MTC and Operator shall not amend or modify any provision of this Agreement if the effect thereof is to reduce the Term, reduce Operator's rights or increase Operator's obligations in any material respect, or weaken any of the Recognized Lender's express rights under this Agreement, including the Recognized Lender's rights under this Section 19, in each case without the prior written consent of the Recognized Lender. MTC shall not accept a surrender of this Agreement by Operator, nor shall MTC and Operator agree to a termination of this Agreement, without the prior written consent of the Recognized Lender.

19.7 If Operator defaults on the Recognized Loan and as a result thereof the Recognized Lender has a right under the applicable loan documents to foreclose on its Program-related collateral, then without the consent of MTC or any Participating City, the Recognized Lender (or a subsidiary thereof) and/or a third party may succeed to the interest of Operator under this Agreement, so long as (a) the party succeeding to the interest of Operator under this Agreement, or a third party manager designated by such successor, has the experience and expertise to operate a large-scale bikeshare program, (b) such successor succeeds to Operator's interest in the Bicycles, other Equipment and other collateral, (c) such successor has substantially the same legal right to obtain replacement Bicycles and other Equipment, to utilize the Bicycle patents and other Equipment patents, and to utilize the required Software that Operator has as of the Effective Date; and (d) agrees to comply with all terms of this Agreement.

19.8 The terms and provisions of this Section 19 and the rights of the Recognized Lender hereunder shall survive a termination of this Agreement pursuant to a Default or the expiration of this Agreement pursuant to Section 2.3.

## SECTION 20

### EMPLOYMENT

20.1 Operator will pay wages to all of its employees that equal or exceed the living wage in effect as of the date of this agreement under State law or applicable local law.

20.2 Operator shall use reasonable efforts, at its own cost and expense, to conduct outreach for employment purposes to residents of the Participating Cities for the opportunities to be created by the construction, installation, operation, management, administration, marketing and maintenance of the Program. Such recruitment activities shall include provisions for the posting of employment and training opportunities at appropriate Participating City agencies responsible for encouraging employment of Participating City residents. Operator shall ensure the promotion of equal employment opportunity for all qualified Persons employed by, or seeking employment with, Operator. For San Francisco-based entry level job openings with Operator, Operator shall post such openings through San Francisco's First Source Hiring Program and offer the City of San Francisco the first opportunity to refer qualified candidates to Operator for such openings.

20.3 Operator shall not refuse to hire, train, or employ, bar or discharge from employment or discriminate against any individual in compensation, hours of employment, or any other term, condition, or privilege of employment, including, but not limited to, any promotion, upgrading, demotion, downgrading, transfer, layoff, or termination, on the basis of race, creed, color, national origin, sex, age, handicap, marital status, affectional preference or sexual orientation, in accordance with applicable law. Operator agrees to comply in all respects with all applicable federal, state and local employment discrimination laws and requirements during the Term.

20.4 Operator shall select, train and employ such number of employees as is necessary or appropriate for Operator to satisfy its responsibilities hereunder. Operator shall be the sole authority to hire, terminate and discipline any and all personnel employed by Operator.

## SECTION 21

### INSPECTION AND AUDIT RIGHTS

21.1 MTC shall have the right at reasonable times and upon reasonable notice to inspect the installation, operation, and maintenance of the Program and its associated elements.

21.2 Operator shall open and maintain a facility in each of San Francisco, San Jose and East Bay to support Program operations.

21.3 Operator shall comply with the reporting requirements set forth in Appendix C.

21.4 Throughout the Term, Operator shall maintain complete and accurate books of account and records of the business, ownership and operations of Operator with respect to the Program.

21.5 MTC has the right upon written demand with reasonable notice to Operator under the circumstances, to inspect, examine or audit during normal business hours all documents, records or other information pertaining to Ridership Revenue and Sponsorship Revenue or any other data collected and maintained by Operator to comply with the reporting requirements of Appendix C. All such documents shall be made available at one of Operator's local offices. All such documents shall be retained by Operator for a minimum of 6 years following the expiration or termination of this Agreement.

## SECTION 22

### RESTRICTION AGAINST ASSIGNMENT

22.1 Operator shall not sell, assign or otherwise transfer all or any portion of its interest in this Agreement without the prior written consent of MTC, except as otherwise provided in Sections 19.1 and 19.7. Operator shall notify MTC of any proposed sale, assignment or transfer of this Agreement, in writing, at least 60 days prior to the proposed effective date of such sale, assignment or transfer. In the event that any such sale, assignment or transfer of this Agreement is approved by MTC, the purchaser, assignee or transferee shall agree to be bound by all the covenants of this Agreement required of Operator to the extent arising from and after the effective date of such sale, assignment or transfer. Any purported sale, assignment or transfer without MTC's approval as required above shall be void and of no force or effect. Nothing in the foregoing shall limit (a) the right of Bikeshare Holdings to sell, assign or otherwise transfer interests in Operator, (b) the right of direct or indirect owners of equity interests in Bikeshare Holdings to sell, assign or otherwise transfer such interests, (c) the right of Bikeshare Holdings to sell, assign or transfer all or substantially all of its assets, including its interest in this Agreement, so long as Operator or, in the case of clause (c), its successor, has the experience and expertise to operate a large-scale bikeshare program and has substantially the same legal right to obtain replacement Bicycles and other Equipment, to utilize the Bicycle patents and other Equipment patents, and to utilize the required Software that Operator has as of the Effective Date. In addition, nothing in the foregoing shall prohibit a merger, reorganization, recapitalization, consolidation or similar transaction involving Bikeshare Holdings or any direct or indirect holder of equity interests in Bikeshare Holdings, so long as the conditions set forth in the preceding sentence are satisfied.



SECTION 23  
DISPUTE RESOLUTION PROCESS

23.1 In the event of a dispute between the Parties, including, without limitation, a dispute regarding liquidation damages pursuant to Section 2.6.3, a dispute regarding the Security Fund, a dispute regarding a breach of this Agreement or regarding the occurrence or continued existence of a Default, such dispute shall be addressed and resolved in accordance with the following (the “Dispute Resolution Process”):

23.1.1 MTC’s Program Manager assigned to the Program and Operator’s General Manager of the Program, or their respective delegates, shall meet, within 10 days after receipt by one Party of notification from the other Party of such dispute, to negotiate in good faith in order to try to resolve such dispute (the date of the first such meeting, or the expiration of such 10-day period if the meeting is not timely held, being the “Initial Meeting Date”). A KPI Contest Notice shall constitute appropriate notification for a dispute regarding a right to liquidated damages under Section 2.6.3, and a rejection of a KPI Change Request shall constitute appropriate notification for a dispute under Section 2.6.2(a). If such persons fail to resolve such dispute within 15 days after the Initial Meeting Date, then the Executive Director of MTC and the President of Bikeshare Holdings shall meet promptly and negotiate in good faith in order to resolve such dispute. If such persons fail to resolve such dispute within 30 business days after the Initial Meeting Date, then such dispute shall be subject to mediation under Section 23.1.2. As used in this Section 23.2.1, a meeting may be held in person, by conference call or by video conference. By agreement of the Parties, any of the deadlines set forth in this Section 23.1.1 may be extended or shortened. The process described in this Section 23.1.1 shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

23.1.2 Unless the Parties otherwise agree, mediation shall be administered by the American Arbitration Association (the “AAA”) in accordance with its Commercial Rules, or similar service. A request for mediation shall be made in writing, delivered to the other Party and filed with the applicable mediation service. Either Party may submit such request. The Parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in San Francisco. The Parties shall be represented by individuals of their choosing. Agreements reached in mediation shall be binding on the Parties and enforceable in a State or Federal Court of competent jurisdiction sitting in San Francisco County. The mediation process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

23.1.3 For the avoidance of doubt, the Parties shall comply with any settlement agreement regarding any dispute that is the subject of a settlement agreement.

23.1.4 As used in this Agreement, “final resolution” of a dispute or a dispute being “finally resolved” means that (a) the Parties have entered into a settlement agreement to resolve such dispute, or (b) if either Party has initiated a judicial proceeding to contest such dispute, that a final-non-appealable order of a court of competent jurisdiction has been issued for such dispute.

SECTION 24  
REPRESENTATIONS AND WARRANTIES OF OPERATOR

24.1 In addition to the representations, warranties, and covenants of Operator set forth elsewhere herein, Operator represents and warrants to MTC and the Participating Cities as of the Effective Date:

- 24.1.1 Operator is a limited liability company, validly existing and in good standing under the laws of the State of Delaware, and it is duly authorized to do business in the State of California;
- 24.1.2 The sole owner of Operator is Bikeshare Holdings; and
- 24.1.3 Operator has all requisite power and authority to own or lease its properties and assets, to conduct its business as currently conducted and to execute, deliver and perform this Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.
- 24.1.4 The execution, delivery and performance of this Agreement and all other agreements, if any, entered into in connection with the transactions contemplated hereby have been duly, legally and validly authorized by all necessary action on the part of Operator.
- 24.1.5 This Agreement has been duly executed and delivered by Operator and constitute the valid and binding obligations of Operator, and are enforceable in accordance with their respective terms, subject to equitable legal principles and the laws governing creditors' rights. Operator has obtained the requisite authority to authorize, execute and deliver this Agreement and to consummate the transactions contemplated hereby and no other proceedings or other actions are necessary on the part of Operator to authorize the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.
- 24.1.6 Neither the execution and delivery of this Agreement by Operator nor the performance of its obligations contemplated hereby will:
  - (a) Conflict with, result in a material breach of or constitute a material default under (or with notice or lapse of time or both result in a material breach of or constitute a material default under) (i) any governing document of Operator or to Operator's knowledge, any agreement among the owners of Operator, or (ii) any statute, regulation, agreement, judgment, decree, court or administrative order or process or any commitment to which Operator is a party or by which it (or any of its properties or assets) is subject or bound;
  - (b) Result in the creation of, or give any party the right to create, any material lien, charge, encumbrance, or security interest upon the property and assets of Operator; or

- (c) Terminate, breach or cause a default under any provision or term of any contract, arrangement, agreement, license or commitment to which Operator is a party.

24.1.7 Warranty of Services. In the performance of its services, Operator represents and warrants that it has and will exercise the degree of professional care, skill, efficiency, and judgment of those with special expertise in providing such services, and that it carries and will maintain all applicable licenses, certificates, and registrations needed for the work in current and good standing.

24.1.8 Neither Operator nor any of its officers, directors or senior management has committed or been convicted (where such conviction is a final, non-appealable judgment or the time to appeal such judgment has passed) of any criminal offense, including, but not limited to, bribery or fraud, arising out of or in connection with (a) this Agreement, (b) the award of this Agreement, or (c) any act to be taken pursuant to this Agreement by MTC or its officers, employees or agents, or (d) the business activities and services to be undertaken or provided pursuant to this Agreement. Operator shall promptly terminate its relationship with any office, director or senior management of Operator who is convicted (where such conviction is a final, non-appealable judgment or the time to appeal such judgment has passed) of any criminal offense, including, but not limited to, bribery or fraud, arising out of or in connection with: (i) this Agreement, (ii) the award of this Agreement, (iii) any act to be taken pursuant to this Agreement by MTC or its officers, employees or agents, or (iv) the business activities and services to be undertaken or provided by Operator pursuant to this Agreement.

24.2 All representations and warranties contained in this Agreement shall survive the Term.

## SECTION 25 MISCELLANEOUS

25.1 Operator, MTC and the Participating Cities acknowledge and agree that the nature of the Program requires extensive and ongoing long-term coordination among the Parties and the Participating Cities. Accordingly, no later than 10 business days after the Effective Date, Operator, MTC and, in accordance with the Coordination Agreement, each Participating City, shall designate an employee as its designated representative (the "Designated Representative") to be the principal contact of such party in its dealings with the other parties in connection with the implementation of the Program. Any party may change its Designated Representative in its sole discretion so long as notice of such change is given to the other parties.

25.2 All notices, demands or requests under this Agreement shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, by electronic mail (email), by overnight mail, or by personal delivery, in each case to the address listed below, or to such other location or person as any party may designate in writing from time to time. Any notice, demand or

request under this Agreement intended for the Participating Cities shall be sent to MTC. Any notice, demand or request shall be deemed given on the date of receipt or rejection by the intended recipient.

If to MTC:

Metropolitan Transportation Commission  
Joseph P. Bort MetroCenter,  
Oakland, CA 94607-470  
Attention: Executive Director  
Email: [SHeminger@mtc.ca.gov](mailto:SHeminger@mtc.ca.gov)  
Attention: General Counsel:  
Email: [AWeil@mtc.ca.gov](mailto:AWeil@mtc.ca.gov)  
Attention: Designated Representative  
Email: [KMulder@mtc.ca.gov](mailto:KMulder@mtc.ca.gov)

If to Operator:

Bay Area Motivate, LLC  
5202 Third Avenue  
Brooklyn, New York 11220  
Attention: Jay Walder, President and CEO  
Email: [jaywalder@motivateco.com](mailto:jaywalder@motivateco.com)  
Attention: Justine Lee, Vice President and General Counsel  
Email: [justinelee@motivateco.com](mailto:justinelee@motivateco.com)

Bay Area Motivate, LLC  
2200 Jerrold Avenue, Unit J  
San Francisco, California 94124  
Attention: Emily Stapleton, General Manager and Designated Representative  
Email: [emilystapleton@motivateco.com](mailto:emilystapleton@motivateco.com)

Notwithstanding the foregoing, any notice required to be given to Operator pursuant to Section 18 for which a cure period is 10 business days or less or any other notice that requires action to be taken within 10 business days or less must be given by email, personal delivery or overnight mail service.

25.3 If Operator receives either a notice of default or a notice of noncompliance from a Sponsor, a lender or a material supplier, it shall notify MTC and supply a copy of the notice of noncompliance within 5 days of receipt.

25.4 Upon request by Operator, MTC shall execute, acknowledge and deliver to Operator (or directly to a designated third party) an estoppel certificate in a form reasonably acceptable to the Parties. MTC shall sign, acknowledge, and return such estoppel certificate within 15 days after request, even if Operator is in default. Any estoppel certificate shall bind MTC to the extent set forth therein.

25.5 This Agreement shall be binding upon and inure to the benefit of the parties and their respective permitted successors and assigns. The Recognized Lender shall be a third party beneficiary of Section 19.

25.6 No failure on the part of MTC or Operator to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right preclude any other right, except as provided herein, subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights of any party under applicable law, subject in each case to the terms and conditions of this Agreement. A waiver of any right or remedy by a party at any one time shall not affect the exercise of such right or remedy or any other right or other remedy by such party at any other time. In order for any waiver of any party to be effective, it must be in a writing signed by such party. The failure of MTC to take any action regarding a default by Operator shall not be deemed or construed to constitute a waiver of, or otherwise affect, the right of MTC to take any action permitted by this Agreement at any other time regarding such default.

25.7 The clauses and provisions of this Agreement are intended to be severable. If any clause or provision is declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such provision shall be deemed a separate, distinct, and independent portion, and such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect, but only so long as the essential terms underlying this Agreement are not undermined. If, however, the essential terms underlying this Agreement are undermined as a result of any clause or provision being declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, and such declaration is not stayed within 30 days by a court pending resolution of a legal challenge thereto or an appeal thereof, the adversely affected party shall notify the other parties in writing of such declaration of invalidity and the effect of such declaration of invalidity and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such declaration of invalidity. If the parties cannot come to an agreement modifying this Agreement within 120 days (which 120 day period shall be tolled during any stay contemplated above) of such notice, then this Agreement shall terminate with such consequences as would ensue if it terminated pursuant to Section 18, except Operator shall not be liable for any damages.

25.8 If any applicable federal, state, or local law or any regulation or order is passed or issued, or any existing applicable federal, state, or local law or regulation or order is changed (or any judicial interpretation thereof is developed or changed) in any way which undermines the essential terms underlying this Agreement, the adversely affected party shall notify the other parties in writing of such change and the effect of such change and the parties shall enter into good faith negotiations to modify this Agreement to compensate for such change, subject to any necessary approvals of MTC and the Participating Cities.

25.9 The headings contained in this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the construction or interpretation hereof. Terms such as "hereby," "herein," "hereof," "hereinafter," "hereunder" and "hereto" refer to this Agreement as a whole and not to the particular sentence or paragraph where they appear, unless the context otherwise requires. The term "may" is permissive; and, the terms "shall," "must," and "will" are mandatory, not merely directive. The term "day" means a calendar day, unless otherwise stated herein to be a "business day." The term year means any period of 365 days, unless otherwise stated herein to be a "calendar year." All references to any gender shall be deemed to include both the male and the female, and any reference by number shall be deemed to include both the singular and the plural, as the context may require. Terms used in the plural include the singular, and vice versa, unless the context otherwise requires. References

in this Agreement to Sections, Appendices and Exhibits are to Sections, Appendices and Exhibits of this Agreement.

25.10 Operator shall conduct the work to be performed pursuant to this Agreement as an independent contractor and not as an agent of MTC or any Participating City.

25.11 This Agreement shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of California, irrespective of conflict of laws principles, as applicable to contracts entered into and to be performed entirely within the State of California.

25.12 Subject to the requirement that disputes be addressed in accordance with the Dispute Resolution Process, each hereby irrevocably submits to the jurisdiction of any State or federal court sitting in San Francisco County, California, over any suit, action or proceeding arising out of or relating to this Agreement. Each party hereby irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to such venue as being an inconvenient forum.

25.13 Should any party employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding. The "prevailing party" means the party in whose favor a judgment, decree, or final order is rendered.

25.14 No provision of this Agreement nor any Appendix or Exhibit shall be amended or otherwise modified, in whole or in part, except by a written instrument, duly executed by the Parties and approved as required by applicable law.

25.15 This Agreement may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

25.16 Time is of the essence with respect to the obligations of the parties under this Agreement and with respect to the deadlines for submitting notices, including, without limitation, a KPI Failure Notice, a KPI Contest Notice or any notice under Section 15.3 or 18.1.

25.17 If Operator publishes a work dealing with any aspect of performance under this Agreement, or of the results and accomplishments attained in such performance, then MTC shall have a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use the publication, or, in the event that only a portion of the publication deals with an aspect of performance under this Agreement, such portion of the publication.

IN WITNESS WHEREOF, MTC and Operator have executed this Agreement as of the Effective Date.

METROPOLITAN TRANSPORTATION COMMISSION

By:

  
Name: Steve Heminger  
Title: Executive Director

BAY AREA MOTIVATE, LLC

By: 

Name: Jay Walder

Title: President and Chief Executive Officer



## Appendix A

### Key Performance Indicators and Liquidated Damages

This Appendix A sets forth the Key Performance Indicators and the liquidated damages assessed against Operator for failing to comply with the Key Performance Indicators. Key Performance Indicators are subject to extension for Events of Force Majeure. Liquidated damages are subject to the annual limitation of 4% of Ridership Revenues.

| KPI # | Title                                  | Definition                                                                                                                                                                                                                                                                                                                                | Measurement Tool(s) <sup>1</sup> | Liquidated Damages                                                                                                                           |
|-------|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| 1     | <b>Station Cleaning and Inspection</b> | Station Cleaning for each Station must occur 2 times per month-- one time between the first and fifteenth days of the month, and one time between the sixteenth and last days of the month. Litter removal needs to occur for on street Stations at least once per week.<br><br>Additional litter removal to occur on an as-needed basis. | Operator records/<br>databases   | \$75 for each Station that is not cleaned according to schedule.                                                                             |
| 2     | <b>Graffiti Removal</b>                | (a) Except as required by clause (b) below, Operator shall remove conspicuous graffiti within 72 hours after Notification.<br><br>(b) Operator shall remove racist and hate graffiti within 4 hours after Notification.                                                                                                                   | Operator records/<br>databases   | (a) \$50 for each 24-hour period (or part thereof) beyond 72 hours.<br><br>(b) \$50 for each 4-hour period (or part thereof) beyond 4 hours. |
| 3     | <b>Litter Removal</b>                  | Operator shall remove conspicuous accumulations of litter from Stations within 24 hours after Notification.                                                                                                                                                                                                                               | Operator records/<br>databases   | \$50 for each 4-hour period (or part thereof) beyond 24 hours.                                                                               |
| 4     | <b>Bicycle Maintenance</b>             | Every Bicycle in the Bicycle Fleet shall receive a Bicycle Maintenance check at least once every two calendar months.                                                                                                                                                                                                                     | Operator records/<br>databases   | \$25 for each Bicycle that is not subject to a Bicycle Maintenance in any 2-calendar month period.                                           |

<sup>1</sup> Sources of information used to assess compliance with these service levels may include, but are not limited to, those listed in the "Measurement Tool(s)" column.

| KPI # | Title                                           | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | Measurement Tool(s) <sup>1</sup> | Liquidated Damages                                                                                                                                                                                                                                                                                                                                                                           |
|-------|-------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 5     | <b>Station Deactivation and De-Installation</b> | <p>As directed by MTC or a Participating City, Operator must perform:</p> <ul style="list-style-type: none"> <li>(i) Station Deactivation(s);</li> <li>(ii) Station De-Installation(s);</li> <li>(iii) Station Re-Installation(s);</li> <li>(iv) Station Adjustment(s).</li> </ul> <p>(i) Operator will Deactivate a Station within 24 hours after a request from a Participating City, except in instances where the continued presence/activity of the station has been determined to pose a threat to public safety.</p> <p>(ii) Operator will complete a De-Installation of a Station within 72 hours after a request from a Participating City, except in instances where the continued presence/activity of the station has been determined to pose a threat to public safety.</p> <p>(iii, iv) Deactivated Stations must be reactivated within 24 hours of direction from a Participating City. De-Installed or Adjusted Stations must be reinstalled or Readjusted to their original configurations within 72 hours of direction from a Participating City.</p> <p>Notwithstanding the foregoing, the KPIs for De-Installation and reinstallations are limited to 20 in any 72-hour period. The time permitted for larger scale De-Installation and reinstallation will be subject to agreement between Operator and MTC.</p> | Electronic communications        | <p>(i) \$75 for each hour of delay (or part thereof) beyond 24 hours for Deactivation.</p> <p>(ii) \$75 for each hour of delay (or part thereof) beyond 72 hours for De-Installation.</p> <p>(iii, iv) \$50 for each hour of delay (or part thereof) beyond 24 hours for reactivation; \$50 for each hour of delay (or part thereof) beyond 72 hours for reinstallation or Readjustment.</p> |

| KPI # | Title                        | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Measurement Tool(s) <sup>1</sup> | Liquidated Damages                                                                                                                                                 |
|-------|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 6     | <b>Program Functionality</b> | <p>The Program must be operational 100% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), so that, at a minimum, all Program users can dock and undock Bicycles at all times, excluding (i) scheduled downtime, and (ii) any period when the Computer Hardware for the Program and/or Software is, and remains, damaged through Hacking.</p> <p>Program Functionality does not apply to hardware malfunctions at individual Stations or to individual Stations that are not Operable Stations.</p>                                                                                                                                                                      | Software System                  | If in any month the Program is operational less than 100% of the time, then \$300 for every hour (or part thereof) that the Program is not operational.            |
| 7     | <b>Station Operability</b>   | <p>Stations, in the aggregate, must be Operable Stations 99% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), excluding (i) during scheduled downtime, and (ii) any period when a Station is not an Operable Station because the Kiosk or other Equipment located at the Station has been damaged by third-parties.</p> <p>Calculated by taking the sum of the number of hours that each Station was an Operable Station during a month, dividing that sum by the product of the total number of hours in the month and the number of Stations that month.</p> <p>Station Operability does not apply during any period in which the entire Program system is down.</p> | Operator records/<br>databases   | If in any month the Stations are not Operable Stations 99% of the time, then \$100 for every hour that Stations are not Operable Stations below the 99% threshold. |

| KPI # | Title                           | Definition                                                                                                                                                                                                                                                                                                                                                                                           | Measurement Tool(s) <sup>1</sup> | Liquidated Damages                                                                                                                      |
|-------|---------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| 8     | <b>Website Operations</b>       | The Program website must be operational 100% of the time every year (i.e., every hour of every day, 24 hours per day, 7 days per week, measured annually) excluding (i) scheduled downtime, and (ii) any period when the Computer Hardware for the Program and/or Software is, and remains, damaged through Hacking.                                                                                 | Operator records/<br>databases   | If in any year the website is not operational 100% of the time, then \$50 for every hour each year that the website is not operational. |
| 9     | <b>Telephone Answering Time</b> | Not less than 80% of telephone calls to Operator's call center each month must be answered by a person within 90 seconds or less.                                                                                                                                                                                                                                                                    | Operator records/<br>databases   | \$100 for every percentage point below 80% that telephone calls are not answered in 90 seconds or less in any month.                    |
| 10    | <b>Email Response Time</b>      | Not less than 95% of emails to Operator's public information email address must be answered within 1 business day.                                                                                                                                                                                                                                                                                   | Operator records/<br>databases   | \$100 for every percentage point below 95% that emails are not answered within 1 business day or less in any month.                     |
| 11    | <b>Bicycle Availability</b>     | <p>This Bicycle Availability requirement is met if the monthly average Bicycle Fleet Level, recorded once each Day of the month between the hours of 11:00 AM and 3:00 PM, is not less than 90% of the Program Fleet.</p> <p>Damages are calculated as the sum of Bicycles under the threshold for each Day that the recorded Bicycle Fleet Level is less than the required Bicycle Fleet Level.</p> | Software System                  | \$15 for each Bicycle that is under the 90% threshold each month.                                                                       |

| KPI # | Title              | Definition                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Measurement Tool(s) <sup>1</sup>                   | Liquidated Damages                                                                                                                                                                                                                                         |
|-------|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 12    | <b>Rebalancing</b> | <p>No station Cluster shall be completely empty of available bikes for use or completely lacking of empty, operable docks for more than 10 consecutive minutes during Peak Hours (i.e., 6:00 am to 10:00 pm).</p> <p>The Rebalancing KPI set forth above is an interim KPI. During the Assessment Period (as defined in Section 2.6.2(b) of the Agreement), the Rebalancing KPI will be assessed and reformulated, and a new Rebalancing KPI will be fully implemented immediately following the Assessment Period.</p> | Software System/<br>Operator records/<br>databases | <p>\$1.00 for each minute that a Cluster Outage occurs beyond 10 consecutive minutes during Peak Hours.</p> <p>Liquidated Damages do not apply to the Stations installed as part of a Phase for the first 6 months after the completion of such Phase.</p> |

## **Appendix B**

### **Cost of Equipment**

#### **PENINSULA PILOT CITIES:**

- Cost to upgrade AD Equipment: \$12.50 per Dock per month, subject to PPI Adjustment.
- Cost to purchase new Equipment: As set forth in the New Equipment Price Schedule below. The prices set forth in such schedule are subject to PPI Adjustment.
- Cost to install new Equipment (including site planning and drawings): \$4,000 per Station, subject to CPI Adjustment
- Cost to operate and maintain the Equipment: \$100 per Dock per month, subject to CPI Adjustment, and subject to the following reductions:
  - (i) Cost to operate and maintain will be reduced to \$75 per Dock per month, subject to CPI Adjustment, during any 12-month period in which there is an average of 1 Trip per Bicycle per day for the entire Bicycle Fleet in such Peninsula Pilot City (subject to Bicycle Availability)
  - (ii) Cost to operate and maintain will be reduced to \$50 per Dock per month, subject to CPI Adjustment, during any 12-month period in which there is an average of 1.5 Trips per Bicycle per day for the entire Bicycle Fleet in such Peninsula Pilot City (subject to Bicycle Availability)
  - (iii) Cost is reduced to \$0 per dock, adjusted by CPI, if an average of 3 rides per bike per day citywide occurs for a 12 month period

#### **OTHER ELIGIBLE CITIES:**

- Cost to purchase new Equipment: As set forth in the New Equipment Price Schedule below. The prices set forth in such schedule are subject to PPI Adjustment.
- Cost to install new Equipment (including site planning and drawings): \$4,000 per Station, subject to CPI Adjustment
- Cost to operate and maintain the Equipment: \$130 per Dock per month, subject to CPI Adjustment, and subject to the following reductions:
  - (i) Cost to operate and maintain will be reduced to \$97.50 per Dock per month, subject to CPI Adjustment, during any 12-month period in which there is an average of 1 Trip per Bicycle per day for the entire Bicycle Fleet in such Eligible City (subject to Bicycle Availability)

- (ii) Cost to operate and maintain will be reduced to \$65 per Dock per month, subject to CPI Adjustment, during any 12-month period in which there is an average of 1.5 Trips per Bicycle per day for the entire Bicycle Fleet in such Eligible City (subject to Bicycle Availability)
  - (iii) Cost to operate and maintain will be reduced to \$0 per Dock per month, subject to CPI Adjustment, during any 12-month period in which there is an average of 3.0 Trips per Bicycle per day for the entire Bicycle Fleet in such Eligible City (subject to Bicycle Availability)
- If Operator contracts with a private property owner to locate a publicly-accessible Station on private property in the Eligible City, then the cost to operate and maintain the Equipment will be a matter for agreement between Operator and the private property owner.

| New Equipment Price Schedule   |              |                            |  |  |
|--------------------------------|--------------|----------------------------|--|--|
| Station Size (No. of Bicycles) | No. of Docks | Cost (Excluding Sales Tax) |  |  |
| 8                              | 15           | \$ 47,166.98               |  |  |
| 10                             | 19           | \$ 55,503.56               |  |  |
| 12                             | 23           | \$ 63,840.15               |  |  |
| 14                             | 27           | \$ 72,176.74               |  |  |
| 16                             | 31           | \$ 80,513.33               |  |  |
| 18                             | 35           | \$ 88,849.92               |  |  |
| 20                             | 39           | \$ 97,186.51               |  |  |

## **Appendix C**

### **Reporting Requirements**

MTC shall have real-time, read-only access to data as specified in the Functional Specifications.

Operator shall deliver a monthly report, by the 25th day of each month, to MTC, with all of the data described below, and in a form that is acceptable to, and approved by, MTC for the Program. Except for financial information, the data shall reflect all relevant facts as they existed with respect to the immediately preceding calendar month (e.g., the June report would reflect the non-financial data for May), and the reports shall provide cumulative calendar year-to-date totals for each category (as may be applicable). For all financial information, the data shall reflect all relevant facts as they existed with respect to the calendar month that immediately precedes the immediately preceding calendar month (e.g., the June report would reflect the financial data for April), and the reports shall provide cumulative calendar year-to-date totals for each category (as may be applicable). No more frequently than once every six months, Operator may request a meeting with MTC to assess the effectiveness of these Reporting Requirements; upon mutual agreement, the Reporting Requirements below may be adjusted.

#### **1) Membership:**

- YTD membership counts at the end of the reporting month, by membership type and Participating City;
- Number of new members by type and Participating City, who signed up during the reporting month, by day and month; and
- Number of cancellations and expirations of registered members, by type and Participating City, during the reporting month.

#### **2) Ridership:**

- “Trip” shall mean the use of a Bicycle from one Station to another Station or back to the initial Station;
- Trips per Day, per Participating City and member type, for the entire Program; and
- Total Trips per month, and YTD per Station, Participating City, and member type, for the entire Program.

#### **3) Environmental Impact:**

- Total and average calories burned per Day/month, by Participating City for the entire Program, based on calculation using total and average Trip durations; and
- Carbon offset per month, by Participating City and for the entire Program, based on calculation using total hours of usage.

#### **4) Rebalancing Operations:**



- Number of Bicycles rebalanced per Day;
- Bicycles on the street per Day per Participating City;
- List of full and empty instances (Station, start time, end time, and date) in excess of 10 consecutive minutes between 6:00 AM and 10:00 PM;
- Count of full and empty instances per Station and Participating City by Day and month in excess of 10 consecutive minutes between 6:00 AM and 10:00 PM;
- Breakdown of full and empty instances by duration in excess of 10 consecutive minutes between 6:00 AM and 10:00 PM;
- List of full and empty instances (Station, start time, end time, and date) between 6:00 AM and 10:00 PM at “priority” Stations (to the extent “priority” Stations have been established);
- Count of full and empty instances per Station and Participating City by Day and month between 6:00 AM and 10:00 PM at “priority” Stations (to the extent “priority” Stations have been established);
- Breakdown of full and empty instances by duration between 6:00 AM and 10:00 PM at “priority” stations (to the extent “priority” stations have been established); and
- Percentage of time Stations are normal, full, or empty.

5) Station Maintenance Operations:

- List of Stations cleaned and dates of each cleaning;
- Number of active Stations;
- List of all Station malfunctions (Station, start and end date and time, and event); and
- Percentage of time Stations were available to provide rentals for monthly and annual members by Station and for the entire Program.

6) Bicycle Maintenance Operations:

- Count of Bicycles checked per month;
- Count of Bicycles repaired per month;
- List of Bicycles by unique ID number not checked per month.

7) Incident Reporting:

- List of all incidents (crash, vandalism, theft, and police action) with dates and summary of outcomes.

8) Customer Service Reporting:

- Number of calls and emails, with total and broken down by classification;
- Average time to answer call;
- Average time of call;
- Number of refunds and amount given per month; and
- Upon call center software availability, number of calls of different types of issues, and average length of call.

9) Customer Outreach:

- Web site analytics.

10) Financial Summary:

- Fees assessed to bike share users due to lost or damaged bicycles;
- Revenue generated from subscriptions, by subscription type;
- Revenue generated from usage fees, by subscription type; and
- Revenue generated from other sources, including Advertising and Sponsorships.

11) Compliance with KPIs:

- Recorded Bicycle Fleet Level for each day as recorded between the hours of 11:00 AM and 3:00 PM.

## Appendix D

### Functional Specifications

| Functional Specification |                                                                                             |
|--------------------------|---------------------------------------------------------------------------------------------|
| Software                 |                                                                                             |
| Billing                  |                                                                                             |
|                          | <b>Product requirements</b>                                                                 |
|                          | Annual and casual billing                                                                   |
|                          | Usage charges billing                                                                       |
|                          | Discounts                                                                                   |
|                          | Refunds                                                                                     |
|                          | Administrative and stolen bike charges                                                      |
|                          | Automatic renewal of accounts                                                               |
|                          | Opt-in/Opt-out ability for automatic renewal                                                |
|                          | Allow Annual Members to use Clipper Card to access Bicycles in lieu of key fob <sup>2</sup> |
|                          | <b>Automatic emails to customers</b>                                                        |
|                          | Ability to edit text in emails to customers                                                 |
|                          | <b>Automatic emails in the following instances:</b>                                         |
|                          | Upon successful renewal                                                                     |
|                          | Upon signup                                                                                 |
|                          | Upon failed monthly payment                                                                 |
|                          | Upon successful monthly payment                                                             |
|                          | Upon credit card change                                                                     |
|                          | Upon credit card expiration                                                                 |
|                          | Upon account renewal needed (manual billing)                                                |
|                          | Upon upcoming automatic account renewal (automatic billing)                                 |
|                          | Upon successfully account renewal                                                           |
|                          | Upon failed account renewal                                                                 |
|                          | Upon successful bike return (user configurable)                                             |
|                          | Upon missing bike (user and system configurable)                                            |
|                          | Upon incurrence of overage fees                                                             |
|                          | Upon system shut down                                                                       |
|                          | <b>PCI Compliance</b>                                                                       |
|                          | PCI Compliance of Bike Share Operator and System                                            |
|                          | <b>Remote functionality</b>                                                                 |
|                          | Ability to shut down system (prevent bikes from being rented)                               |
|                          | Ability to lock down bikes (with visual indicator)                                          |
|                          | Ability to shut down stations                                                               |
|                          | Ability to reboot remotely (when connected)                                                 |
|                          | <b>Operational Dashboards (The following dashboards should be available at a minimum)</b>   |

<sup>2</sup>To be achieved by the later of 20 months after the Effective Date and completion of Phase IV.

|                 |                                                                                                      |
|-----------------|------------------------------------------------------------------------------------------------------|
|                 | <b>Subscriptions</b>                                                                                 |
|                 | Number of casual users by subscription type                                                          |
|                 | Number of members by subscription type                                                               |
|                 | <b>Customer rental activity</b>                                                                      |
|                 | Number of open rentals and duration of rental                                                        |
|                 | Number of trips and rentals completed by casual and registered members                               |
|                 | <b>Real-Time Dashboards</b>                                                                          |
|                 | Station status (total, working, out of order, locked, disconnected)                                  |
|                 | Station occupancy (current and recent history of station bike/dock occupancy)                        |
|                 | Docking point status (total, locked, error, empty, bike docked)                                      |
|                 | Bike status (docked, in rental, defective, other)                                                    |
|                 | <b>Private data feed</b>                                                                             |
|                 | MTC to have access to analytical/reporting databases provided by bikeshare system.                   |
|                 | <b>Public data feed</b>                                                                              |
|                 | All public data feeds should cover the following at a minimum:                                       |
|                 | Station Name                                                                                         |
|                 | Station ID                                                                                           |
|                 | Station Status (locked/unlocked)                                                                     |
|                 | Latitude                                                                                             |
|                 | Longitude                                                                                            |
|                 | # of total docking points                                                                            |
|                 | # of available docking points                                                                        |
|                 | # of inoperable docks (w/ and w/o bikes)                                                             |
|                 | # of available bikes                                                                                 |
|                 | Last communication time with server                                                                  |
|                 | Excludes test/warehouse station                                                                      |
|                 | <b>Product support and redundancy</b>                                                                |
|                 | <b>Features for product support include</b>                                                          |
|                 | System redundancy                                                                                    |
|                 | Real-time database backups                                                                           |
|                 | Development and QA will be done separate from the production environment                             |
|                 | <b>Software escrow</b>                                                                               |
|                 | A third-party software escrow with the latest major software release must be maintained at all times |
| <b>Hardware</b> |                                                                                                      |
|                 | <b>Docking mechanism</b>                                                                             |
|                 | Subscriber can unlock a bike (e.g., via a valid key or card)                                         |
|                 | Locking mechanism that opens within configurable number of seconds                                   |
|                 | Locking mechanism that closes immediately with moderate docking force                                |
|                 | Defaults to unlocked/open when bike is not present                                                   |
|                 | Functional user lock-down capability ("wrench button") with permanent visual                         |

|                      |                                                                                                                                                       |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
|                      | indicator                                                                                                                                             |
|                      | Visual and audible indication of successful, failed, or in-progress transaction                                                                       |
| <b>Bike</b>          |                                                                                                                                                       |
|                      | Step through design                                                                                                                                   |
|                      | Hold someone up to 240 pounds                                                                                                                         |
|                      | Can lock and unlock securely                                                                                                                          |
|                      | Bell                                                                                                                                                  |
|                      | Front and rear flashing lights when bike is moving; stay illuminated for 60 seconds after bike stops                                                  |
|                      | Reflective sidewalls on tires                                                                                                                         |
|                      | Within range, an infinitely adjustable seat height with ergonomic lever/tension adjustment and high-contrast height markings                          |
|                      | Carrier not susceptible to trash accumulation                                                                                                         |
|                      | Wheels greater than or equal to 26" in diameter                                                                                                       |
|                      | Fenders for front and rear wheels                                                                                                                     |
|                      | Front and rear hand brakes                                                                                                                            |
|                      | Multiple speed drivetrain                                                                                                                             |
|                      | Scratch- and graffiti-resistant frame finish                                                                                                          |
|                      | Reflectors on pedals, spokes, and front and rear of bike                                                                                              |
|                      | Rubber tread on pedals                                                                                                                                |
|                      | Room for safety messaging on handlebar and front cockpit                                                                                              |
|                      | Tamper-resistant hardware (including hidden cables and custom wrench fittings)                                                                        |
|                      | Chain guard                                                                                                                                           |
| <b>Kiosk station</b> |                                                                                                                                                       |
|                      | Short-term user can unlock one or multiple bikes (e.g., via valid ride code or key).<br>Casual users can use single credit card to rent up to 4 bikes |
|                      | Hibernation stage                                                                                                                                     |
|                      | Vandal resistant, replaceable screens                                                                                                                 |
|                      | Nearby station functionality                                                                                                                          |
|                      | Multiple languages                                                                                                                                    |

## **Attachment A**

### **Agreement to Continue Pilot Bike Share Program**

**ATTACHMENT A**

**AGREEMENT TO CONTINUE PILOT BIKE SHARE PROGRAM**

**by and between**

**BAY AREA MOTIVATE, LLC**

**and**

**METROPOLITAN TRANSPORTATION COMMISSION**

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## **ATTACHMENT A**

### **AGREEMENT TO CONTINUE PILOT BIKE SHARE PROGRAM**

THIS AGREEMENT TO CONTINUE THE PILOT BIKE SHARE PROGRAM (this “Continuation Agreement”), has an effective date (the “Effective Date”) that is the same as the effective date of the BAY AREA BIKE SHARE PROGRAM AGREEMENT, to which this Continuation Agreement is attached (the “Program Agreement”), by and between the METROPOLITAN TRANSPORTATION COMMISSION, a California public agency established pursuant California Government Code § 66500 et seq., having an office at 101 Eighth Street, Oakland, California (“MTC”), and BAY AREA MOTIVATE, LLC, a Delaware limited liability company, having any office at 5202 Third Avenue, Brooklyn, New York 11220, as Operator of the Bay Area Bike Share Program (“Operator”).

### **RECITALS**

WHEREAS, Alta Bicycle Share, Inc., an Oregon corporation (“Alta”), and Bay Area Air Quality Management District, a California special district (the “Air District”), entered into a Bike Share Program Agreement having an effective date of February 6, 2013 (the “Pilot Program Agreement”), pursuant to which Operator operated a pilot bike sharing program (the “Pilot Program”) in the cities of San Jose, Palo Alto, Mountain View, Redwood City and San Francisco (each, a “Pilot City” and collectively, the “Pilot Cities”);

WHEREAS, on the date hereof, (a) the Air District and Motivate International, Inc., formerly known as Alta (“Motivate”), terminated the Pilot Program Agreement, (b) the Air District and MTC agreed to the conveyance of all of the Air District’s right, title and interest in and to the tangible and intangible property acquired or developed in connection with the Pilot Program from the Air District to MTC, and (c) MTC and Operator agreed to the conveyance of all of MTC’s right, title and interest in and to the tangible property acquired or developed in connection with the Pilot Program (the “Pilot Program Property”) from MTC to Operator ;

WHEREAS, the Parties have agreed that Operator will continue to operate the Pilot Program in the Pilot Cities using the Pilot Program Property; and

WHEREAS, capitalized terms not otherwise defined when they first appear in this Continuation Agreement are defined in Article XI.

NOW, THEREFORE, in consideration of the foregoing clauses, which clauses are hereby made a part of this Continuation Agreement, and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties do hereby covenant and agree as follows:

### **ARTICLE I**

#### **PURCHASE OF PILOT PROGRAM PROPERTY; SERVICES; TERM**

1.1 Purchase of Pilot Program Property. On the Effective Date, Operator shall purchase the Pilot Program Property for the purchase price agreed to among Operator, MTC and

the Air District, and Operator shall remit payment of the purchase price to MTC not later than the 15<sup>th</sup> day after the Effective Date.

1.2 Services. Operator shall, during the Term (as defined in Section 1.3), operate and maintain in the Pilot Cities a bike share system that was originally established under the Pilot Program Agreement (the “System”). Operator shall (a) utilize the Sites being used as of the Effective Date from the Pilot Program as well as the Bicycles, Docks, Technical Platforms, Map Frames, Terminals and other Equipment existing as of the Effective Date from the Pilot Program, and Operator shall not be obligated to purchase any Equipment, new or otherwise, that was not Pilot Program Property; (b) subject to Events of Force Majeure, provide the specific services set forth in this Continuation Agreement; (c) provide all technical expertise and qualified personnel to operate the System safely and competently; and (d) correct defective or non-conforming services. All services shall be performed in compliance with this Continuation Agreement and shall be carried out in strict compliance with all applicable federal, state and local laws and regulations.

1.3 Term. This Continuation Agreement shall commence on the Effective Date and shall end (a) for Mountain View, Palo Alto and Redwood City, on June 30, 2016, and (b) for San Francisco and San Jose, upon installation of 75% of the Phase I Stations located in San Francisco and San Jose. Notwithstanding the foregoing, if MTC terminates the Program Agreement pursuant to the second to last sentence of Section 3.4.1 of the Program Agreement, then this Continuation Agreement shall terminate at the same time the Program Agreement terminates, and Sections 5.1D, 5.5 and 5.6 shall apply. The bike share program to be implemented under the Program Agreement is referred to as the “BABS Program.”

## **ARTICLE II**

### **REVENUES; USER FEES; AND OPERATING EXPENSES**

2.1 Revenues. Operator shall be entitled to collect and retain all System Operating Revenues.

2.2 User Fees. From the Effective Date to June 30, 2016, user fees shall be consistent with the fee schedule set forth in Attachment A-2. After June 30, 2016, Operator shall have the right to institute the fee schedule set forth in Attachment A-3.

2.3 Operating Expenses.

2.3.1 San Francisco and San Jose. Subject to Section 2.3.3, Operator shall be responsible for paying the expenses of operating and maintaining the System in San Francisco and San Jose.

2.3.2 Mountain View, Palo Alto and Redwood City. Subject to Section 2.3.3, from the Effective Date through December 31, 2015, Operator shall be responsible for paying the expenses of operating and maintaining the System in Mountain View, Palo Alto and Redwood City. From January 1, 2016 to the end of the Term, MTC shall pay to Operator \$100 per Dock per month for Mountain View, Palo Alto and Redwood City to cover Operating Expenses in those cities.

2.3.3 MTC Payment. Subject to the last sentence of this paragraph, MTC shall cover 50% of Operator's (and Motivate's) Operating Losses for the period commencing August 29, 2015 and ending on the earlier of the Effective Date and December 31, 2015 (the "Covered Period"). Within 30 days after the end of the Covered Period, Operator shall send MTC a statement setting forth Operator's (or Motivate's) Operating Losses, if any, for the Covered Period accompanied by reasonable back-up. Notwithstanding the existence of Operator's (or Motivate's) Operating Losses for any particular month, MTC's obligation under this Section 2.3.3. shall apply only to Operator's (and Motivate's) cumulative Operating Losses over the entire Covered Period. MTC shall pay Operator for any such cumulative Operating Losses within 30 days following Operator's submission of its statement for the Covered Period. MTC's payment obligation under this paragraph is capped at \$100,000.

2.4 Taxes, Dues, and Fees. Operator shall pay all applicable federal, state, and local taxes assessed against, arising out of, and collected from the service operation, including sales, use, license, and/or privilege taxes. Operator shall at all times maintain records evidencing revenue and the taxes collected as are required to substantiate the correctness of the tax returns filed.

2.5 No Tax Exemption. No provision of this Continuation Agreement shall be construed to provide Operator or any of its subcontractors with an exemption, exclusion, deferral, offset or other relief from any assessment, tax, levy, or penalty which is now or which may be hereafter authorized by law.

2.6 Covenant Against Contingent Fees. Operator warrants that it has not employed or retained any company or person, other than a bona fide employee working for Operator, to solicit or secure this Continuation Agreement and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Continuation Agreement. For breach or violation of this warranty, MTC shall have the right to annul this Continuation Agreement without liability, or, at its discretion, to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

2.7 Liquidated Damages. Subject to Events of Force Majeure, the failure of Operator to achieve the service levels described in Section 3 of Attachment A-1 will result in liquidated damages but only if such failure relates to a service level described in such Section 3 for which there is a corresponding "Key Performance Indicator" in Appendix A of the Program Agreement. Operator will have no liability for a failure to achieve a service level described in such Section 3 for which there is no corresponding "Key Performance Indicator" in Appendix A of the Program Agreement. Liquidated damages will be assessed at half of the rate set forth in Appendix A of the Program Agreement. MTC shall notify Operator on a monthly basis of any such failures and the corresponding liquidated damages, but payment of such liquidated damages shall not be due until the completion of Phase I.

### **ARTICLE III**

#### **EMPLOYEE AND EMPLOYMENT MATTERS**

3.1 Project Manager. Each Party shall appoint a project manager to act, except as otherwise specified in this Continuation Agreement, as the primary contact person for purposes of this Continuation Agreement. The provision by Operator of services to operate and maintain the System is subject at all times to inspection and review by MTC Project Manager.

3.2 Fairness Policy. No employee of MTC shall be admitted to any share or part of this Continuation Agreement or to any benefit that may arise therefrom that is not available to the general public.

3.3 Employment Discrimination by Operator Prohibited. During the performance of this Continuation Agreement, Operator agrees as follows:

- A. Operator shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of Operator. Operator agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. Operator, in all solicitations or advertisements for employees placed by or on behalf of Operator, will state that Operator is an Equal Opportunity Employer.
- C. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this Section 3.3.
- D. Operator will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.
- E. Operator shall not discriminate against any customer, prospective customer, employee or prospective employee because of race, color, sex, age, religion, or country of origin.

3.4 General Compliance with Laws and Wage Rates. Operator will comply with all federal, state, and local laws and ordinances applicable to the provision of services to operate and maintain the System. This includes compliance with prevailing wage rates and their payment in accordance with California Labor Code section 1775, to the extent applicable.

3.5 Supervision by Operator. Operator shall at all times require strict discipline and good order among Operator's employees and all subcontractors providing any of the services required hereunder. Operator shall not permit, and shall require all subcontractors not to permit,

any employee or other person to provide any service required hereunder unless such employee or other person has demonstrated proficiency in the type of work which such employee or other person is assigned to perform.

3.6 Non-Discrimination. During the performance of this Continuation Agreement, Operator and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (e.g., cancer), age (over 40), marital status, and denial of family care leave. Operator and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Operator and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Continuation Agreement by reference and made a part hereof as if set forth in full. Operator and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

3.7 Subcontractors Restrictions. Operator shall only enter into subcontracts with subcontractors that have clearly demonstrated proficiency in the tasks which are the subject of such subcontracts. Operator is prohibited from hiring or subcontracting with any individuals that participated in the selection of Operator or the development of this Continuation Agreement for a period of 24 months from the date of execution of this Continuation Agreement.

#### **ARTICLE IV**

#### **OWNERSHIP AND PROPRIETARY RIGHTS**

4.1 Rights, Authorizations, Licenses, Permits, and Other Permissions. Except as explicitly set forth in Attachment A-1, Operator shall, at its sole cost and expense, obtain all rights, authorizations, licenses, permits, and other permissions, from all federal, state, and local governments, and other entities or persons, necessary for Operator to provide the services required under this Continuation Agreement. MTC's execution of this Continuation Agreement shall neither constitute nor be deemed to be governmental approval of, or consent to, any rights, authorizations, licenses, permits, and permissions required or needed to be obtained by Operator.

4.2 Use of Seals, Logos, Servicemarks, Trademarks, and Copyrighted Material. Operator shall not use, display, or reproduce the seal, logo, servicemark, trademark, or copyrighted material of the Air District, MTC or any Pilot City without the prior express written authorization of the Air District, MTC or any Pilot City, as applicable.

4.3 Third Party Intellectual Property. Operator covenants to save, defend, hold harmless, and indemnify MTC and the Pilot Cities, and all of their officers, officials, departments, agencies, agents, and employees from and against any and all claims, losses, damages, injuries, fines, penalties, costs (including court costs and attorney's fees), charges, liability, or exposure, however caused, for or on account of any trademark, copyright, patented or

unpatented invention, process, or article manufactured, supplied, or used in the performance of this Continuation Agreement, including its use by MTC or any Pilot City.

## **ARTICLE V**

### **TERMINATION**

#### **5.1     Termination.**

- A. Right of MTC to Terminate. MTC shall have the right to terminate this Continuation Agreement if Operator fails to provide the services required hereunder satisfactorily or if Operator breaches any term, condition, or covenants of any of this Continuation Agreement.
- B. Failure or Breach. If Operator fails to provide the services required hereunder satisfactorily or if Operator breaches any term, condition, or covenants of any of this Continuation Agreement, then MTC will give Operator written notice of such failure or breach and 30 days to cure such failure or breach. If Operator fails to cure such failure or breach by the expiration of such 30-day period, then MTC shall have the right to give Operator a written notice of termination, including the date when the termination shall be effective (the “Termination Effective Date”).
- C. Operator’s Contest. If Operator in good faith contests any such failure or breach, then such termination shall be suspended pending the outcome of such contest.
- D. Termination of Program Agreement. If the Program Agreement terminates for any reason prior to completion of Phase I under the Program Agreement, then this Continuation Agreement shall terminate concurrently, and Sections 5.5 and 5.6 shall apply.

5.2     Stop Work. Unless otherwise directed in writing by MTC, Operator shall stop providing services as of the Termination Effective Date, terminate all vendors and subcontractors effective as of the Termination Effective Date, and settle all outstanding liabilities and claims.

5.3     Compensation. Operator will be entitled to receive compensation as provided in Article II to the Termination Effective Date.

5.4     Sole Remedies. Notwithstanding anything to the contrary herein, other than liquidated damages under Section 2.7, the sole remedy of MTC and the Pilot Cities against Operator for breach of this Continuation Agreement, excluding a breach of Article VIII, or for failure to provide the services satisfactorily, is to terminate this Continuation Agreement in accordance with Article VII. Except for liquidated damages under Section 2.7, in no event shall Operator be liable for damages of any kind for breach of this Continuation Agreement, other than a breach Article VIII, or for failure to provide the services satisfactorily.

5.5     Transition. Upon termination of this Continuation Agreement pursuant to Section 5.1D, Operator shall comply with the following close-out procedures:

5.5.1 Turning over to MTC or its designees copies of all books, records, documents and materials specifically relating to this Continuation Agreement and reasonably requested by MTC;

5.5.2 Submitting to MTC, within 120 days, a final statement and report relating to this Continuation Agreement that has been reviewed by a certified public accountant or a licensed public accountant;

5.5.3 Providing reasonable assistance to MTC during the transition; and

5.5.4 Continuing to operate the System in accordance with the terms of this Continuation Agreement and to effect an efficient and orderly transition of responsibility with respect to the operation of the System until the earlier of (i) 180 days after such termination and (ii) the selection of a replacement operator for the System and such replacement operator commencing operation of the System (such earlier date being the "Transition Termination Date"); provided, however, that MTC shall cover 100% of Operator's Operating Losses for the period commencing upon termination of this Continuation Agreement and ending on the Transition Termination Date (such period being the "Transition Period"), subject to an aggregate cap for the Transition Period equal to the product of (X) the number of months of the Transition Period, (Y) \$20 for each Dock, and (Z) the number of Docks. Within 30 days after the end of each month during the Transition Period, Operator shall send MTC a statement setting forth Operator's Operating Losses, if any, for the preceding month accompanied by reasonable back-up. MTC shall pay Operator for any such monthly Operating Losses within 30 days following Operator's submission of its statement for such month, subject to a cap calculated on a monthly basis equal to \$20 for each Dock. Within 60 days following the end of the Transition Period, the Parties shall reconcile Operator's cumulative Operating Losses for the entire Transition Period with Operator's monthly, non-cumulative Operating Losses for the entire Transition Period, and shall also reconcile the aforementioned aggregate cap applied to the cumulative Operating Losses for the entire Transition Period with the aforementioned monthly cap applied to the monthly Operating Losses for the entire Transition Period. If the payment for Operating Losses received by Operator from MTC on a monthly basis exceeds the payment for Operating Losses to which Operator is entitled from MTC on an aggregate basis, then Operator shall reimburse MTC for the difference between the two calculations within 30 days following such calculation; and if the payment for Operating Losses received by Operator from MTC on a monthly basis is less than the payment for Operating Losses to which Operator is entitled from MTC on an aggregate basis, then MTC shall pay Operator the difference between the two calculations within 30 days following such calculation.

5.6 Disposition of the Equipment. Upon termination of this Continuation Agreement pursuant to Section 5.1D, MTC shall have the option to:

5.6.1 require Operator to remove all Equipment at its sole cost and expense;

5.6.2 subject to satisfaction of the Equipment Assignment Conditions, require Operator to assign to MTC (or a third-party operator designated by MTC) the Equipment, in which event Operator shall reasonably cooperate with MTC (or such designee) to obtain the legal right to use the Backend Software and Computer Hardware either through an assignment of

Operator's license with the vendor thereof to MTC (or such designee) or by MTC (or such designee) entering a license agreement for Backend Software and Computer Hardware with such vendor; or

5.6.3 subject to satisfaction of the Equipment Assignment Conditions, take over operation of the System, and in connection therewith require Operator to assign to MTC the Equipment, in which event Operator shall reasonably cooperate with MTC to obtain the legal right to use the Backend Software and Computer Hardware either through an assignment of Operator's license with the vendor thereof to MTC or by MTC entering a license agreement for Backend Software and Computer Hardware with such vendor.

## **ARTICLE VI**

### **DISPUTE RESOLUTION**

6.1 In the event of a dispute between the Parties, such dispute shall be addressed and resolved in accordance with the following (the "Dispute Resolution Process"):

6.1.1 The MTC Project Manager assigned to the System and Operator's General Manager of the System, or their respective delegates, shall meet, within 10 days after receipt by one Party of notification from the other Party of such dispute, to negotiate in good faith in order to try to resolve such dispute (the date of the first such meeting, or the expiration of such 10-day period if the meeting is not timely held, being the "Initial Meeting Date"). If such persons fail to resolve such dispute within 15 days after the Initial Meeting Date, then the Executive Director of MTC and the President of Bikeshare Holdings shall meet promptly and negotiate in good faith in order to resolve such dispute. If such persons fail to resolve such dispute within 30 business days after the Initial Meeting Date, then such dispute shall be subject to mediation. A meeting may be held in person, by conference call or by video conference. By agreement of the Parties, any of the deadlines set forth in this section may be extended or shortened. The process described in this section shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

6.1.2 Unless the Parties otherwise agree, mediation shall be administered by the American Arbitration Association (the "AAA") in accordance with its Commercial Rules, or similar service. A request for mediation shall be made in writing, delivered to the other Party and filed with the applicable mediation service. Either Party may submit such request. The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in San Francisco. The Parties shall be represented by individuals of their choosing. Agreements reached in mediation shall be binding on the Parties and enforceable in a State or Federal Court of competent jurisdiction sitting in San Francisco County. The mediation process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

6.1.3 The Parties shall comply with any settlement agreement regarding any dispute that is the subject of a settlement agreement.



6.1.4 If mediation fails to resolve a dispute, then the exclusive forum for resolving such dispute shall be any State or federal court sitting in San Francisco County, California.

6.1.5 As used in this Continuation Agreement, “final resolution” of a dispute or a dispute being “finally resolved” means that (a) the Parties have entered into a settlement agreement to resolve such dispute, or (b) if either Party has initiated a judicial proceeding to contest such dispute, that a final-non-appealable order of a court of competent jurisdiction has been issued for such dispute.

## **ARTICLE VII** **INSURANCE**

7.1 Minimum Coverages. The insurance requirements specified in this section shall cover Operator’s own liability and the liability arising out of work or services performed under this Continuation Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Operator authorizes to work under this Continuation Agreement (hereinafter referred to as “Agents”). Operator shall, at its own expense, obtain and maintain in effect at all times during the life of this Continuation Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Continuation Agreement.

7.2 Operator shall include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover the risks associated with work to be performed by the Agent. To the extent that an Agent does not procure and maintain such insurance coverage, Operator shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Operator’s indemnity obligation under Article VIII as to itself or any of its Agents in the absence of such coverage.

7.3 In the event Operator or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Operator’s or its Agent’s insurance, as the case may be, be primary without right of contribution from MTC.

7.3.1 Workers' Compensation Insurance with Statutory limits, and Employer’s Liability Insurance with a limit of not less than \$1,000,000 per employee for injury by disease and \$1,000,000 for injury for each accident, and any and all other coverage of Operator’s employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers’ Compensation & Employer’s Liability may be waived, if and only for as long as Operator is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

7.3.2 Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Operator and Operator’s officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single

limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC. MTC and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. In addition, the entities listed in Section 7.13 and their respective commissioners, directors, officers, representatives, agents and employees are also to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Operator's operations.

7.3.3 Business Automobile Insurance for all automobiles owned (if any), used or maintained by Operator and Operator's officers, agents and employees, including but not limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

7.3.4 Umbrella Insurance in the amount of \$4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

7.3.5 Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$5,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. The policy shall provide coverage for all work performed by Operator and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Operator. Operator may delegate the obligation to maintain Errors and Omissions Professional Liability Insurance to an Agent, but the failure of such Agent to maintain such insurance shall not relieve Operator of its obligation to maintain such insurance.

7.3.6 Property Insurance. Property Insurance covering Operator's own business personal property and equipment to be used in performance of this Continuation Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

7.4 Acceptable Insurers. All policies will be issued by insurers qualified to do business in California and with a Best's Rating of A-VIII or better.

7.5 Self-Insurance. Operator's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

7.6 Deductibles and Retentions. Operator shall be responsible for payment of any deductible or retention on Operator's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the

deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

7.7 In the event that MTC is entitled to coverage as an additional insured under any Operator insurance policy that contains a deductible or self-insured retention, Operator shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Operator, subconsultant, subcontractor, or any of their employees, officers or directors, even if Operator or subconsultant is not a named defendant in the lawsuit.

7.8 Claims Made Coverage. If any insurance specified above is written on a “Claims-Made” (rather than an “occurrence”) basis, then in addition to the coverage requirements above, Operator shall:

7.8.1 Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Continuation Agreement or the beginning of any work under this Continuation Agreement;

7.8.2 Maintain and provide evidence of similar insurance for at least three (3) years following the expiration or termination of this Continuation Agreement, including the requirement of adding all additional insureds; and

7.8.3 If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date to Effective Date, Operator shall purchase “extended reporting” coverage for a minimum of three (3) years after the expiration or termination of this Continuation Agreement.

7.9 Failure to Maintain Insurance. All insurance specified above shall remain in force until the expiration or termination of this Continuation Agreement. Operator must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Continuation Agreement.

7.10 Certificates of Insurance. On the Effective Date, Operator shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

7.11 Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Operator are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Operator pursuant hereto, including, but not limited to, liability assumed pursuant to Article VIII.

7.12 Additional Insureds. The following entities are to be named as Additional Insureds under applicable sections of this Article VII and as Indemnified Parties pursuant to Article VIII of this Continuation Agreement.

7.12.1 Metropolitan Transportation Commission (MTC)

7.12.2 City of Mountain View

7.12.3 City of Palo Alto

7.12.4 City of Redwood City

7.12.5 City of San Francisco

7.12.6 City of San Jose

## **ARTICLE VIII**

### **INDEMNIFICATION AND LIMITATION OF LIABILITY**

8.1 **Indemnification.** Operator shall defend, indemnify and save harmless MTC, the Pilot Cities, and their respective commissioners, officers, agencies, departments, agents, and employees (collectively, “Indemnified Parties”) from and against any and all claims, demands, causes of action, proceedings or lawsuits brought by third-parties (“Claims”), and all losses, damages, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including attorneys’ fees and other costs of defense) (collectively, with Claims, “Liabilities”), resulting from, or arising out of, the operation of the System and the provision of services, including the condition of the Bicycles or other Equipment, whether such operation or services is performed or provided by Operator or by Operator’s subcontractors or any other person acting for or on behalf of Operator.

8.2 **Exclusions.** Notwithstanding the foregoing, the following shall be excluded from Operator’s indemnification and defense obligations contained in the preceding sentence: any Liabilities to the extent resulting from, or arising out of, (i) the gross negligence or willful misconduct of any Indemnified Party, (ii) Operator complying with the written directives or written requirements of a Pilot City, if the Operator has previously objected to such written directives or requirements in writing, with respect to (A) the location or configuration of any Station in relation to the street or sidewalk on which such Station is located or to which it adjoins or (B) a Pilot City’s Street Treatment Requirements, or (iii) the condition of any public property outside of the perimeter of a Station and not otherwise controlled by Operator. The exclusion in clause (iii) does not include the condition of the Bicycles or other Equipment. In addition, if any Claim against Operator includes claims that are covered by clause (iii) of the preceding sentence or claims contesting a Pilot City’s authority to issue a permit for a Station, then each Party shall be responsible for its own defense against such claims.

8.3 **Notice.** Upon receipt by any Indemnified Party of actual notice a Claim to which such Indemnified Party is entitled to indemnification in accordance with Section 8.1, such Indemnified Party shall give prompt notice of such Claim to Operator. Operator shall assume and prosecute the defense of such Claim at the sole cost and expense of Operator. Operator may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.

**ARTICLE IX**  
**THIRD PARTY BENEFICIARIES**

9.1 Third-Party Beneficiaries Under This Continuation Agreement. Except as provided in Sections 7.13, 8.1, 8.2 and 8.3, this Continuation Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the signatories to this Continuation Agreement.

**ARTICLE X**  
**MISCELLANEOUS**

10.1 Governing Law. This Continuation Agreement shall be governed exclusively by the internal laws of the United States and of the State of California applicable to contracts made, accepted and performed wholly within said State, without regard to application of principles of conflict of laws. Any claim, suit or action arising under or relating to this Continuation Agreement must be brought only in courts located in San Francisco, California. The Parties hereby agree that such courts shall have exclusive personal and subject matter jurisdiction over any such claim, suit or action.

10.2 Survival. All provisions of this Continuation Agreement that by their terms survive the expiration or any termination of this Continuation Agreement, together with all other provisions of this Continuation Agreement that may be reasonably construed as surviving the expiration or any termination of this Continuation Agreement, shall survive the expiration or any termination of this Continuation Agreement.

10.3 Notices. Except as otherwise provided herein, all notices, requests, demands and other communications which are required or may be given under this Continuation Agreement shall be provided in the manner set forth in this section. Notice to a Party shall be delivered to the attention of the person listed below, or to such other person or persons as may hereafter be designated by that Party in writing. Notice shall be in writing sent by e-mail, facsimile, or regular first class mail. In the case of e-mail and facsimile communications, valid notice shall be deemed to have been delivered upon sending, provided the sender obtained an electronic confirmation of delivery. E-mail and facsimile communications shall be deemed to have been received on the date of such transmission, provided such date was a business day and delivered prior to 4:00 p.m. PST. Otherwise, receipt of e-mail and facsimile communications shall be deemed to have occurred on the following business day. In the case of regular mail notice, notice shall be deemed to have been delivered on the mailing date and received five business days after the date of mailing.

If to MTC:

Metropolitan Transportation Commission  
Joseph P. Bort MetroCenter,  
Oakland, CA 94607-470  
Attention: Executive Director  
Email: SHeminger@mtc.ca.gov

Attention: General Counsel:  
Email: [AWeil@mtc.ca.gov](mailto:AWeil@mtc.ca.gov)  
Attention: Designated Representative  
Email: [KMulder@mtc.ca.gov](mailto:KMulder@mtc.ca.gov)

If to Operator:

Bay Area Motivate, LLC  
5202 Third Avenue  
Brooklyn, New York 11220  
Attention: Jay Walder, President and CEO  
Email: [jaywalder@motivateco.com](mailto:jaywalder@motivateco.com)  
Attention: Justine Lee, Vice President and General Counsel  
Email: [justinelee@motivateco.com](mailto:justinelee@motivateco.com)

Bay Area Motivate, LLC  
2200 Jerrold Avenue, Unit J  
San Francisco, California 94124  
Attention: Emily Stapleton, General Manager and Designated Representative  
Email: [emilystapleton@motivateco.com](mailto:emilystapleton@motivateco.com)

10.4 Entire Agreement; Amendments and Waivers. This Continuation Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. No supplement, modification or waiver of this Continuation Agreement shall be binding unless executed in writing by the Party to be bound thereby. No waiver of the provisions of this Continuation Agreement, or any breach thereof, shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, or shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

10.5 Counterparts; Severability. This Continuation Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties may rely upon a facsimile copy or scanned copy of any Party's signature as an original for all purposes. In the event that any one or more of the provisions contained in this Continuation Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Continuation Agreement or any other such instrument and the remaining provisions shall remain in full force and effect. To the extent permitted by applicable law, any such provision will be restricted in applicability or reformed to the minimum extent required for such provision to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the Parties prior to the determination of such invalidity or unenforceability.

10.6 Construction; Incorporation. The headings of the articles, sections, and paragraphs of this Continuation Agreement are inserted for convenience only and shall not be deemed to constitute part of this Continuation Agreement or to affect the construction hereof.

All sections and article references are to this Continuation Agreement, unless otherwise expressly provided. As used in this Continuation Agreement, (a) “hereof”, “hereunder”, “herein” and words of like import shall be deemed to refer to this Continuation Agreement in its entirety and not just a particular section of this Continuation Agreement, and (b) unless the context otherwise requires, words in the singular number or in the plural number shall each include the singular number or the plural number, words of the masculine gender shall include the feminine and neuter, and, when the sense so indicates, words of the neuter gender shall refer to any gender. The Parties acknowledge and agree that: (i) this Continuation Agreement is the result of negotiations between the Parties and shall not be deemed or construed as having been drafted by any one Party, (ii) each Party and its counsel have reviewed and negotiated the terms and provisions of this Continuation Agreement (including, without limitation, any exhibits and schedules attached hereto) and have contributed to its revision, (iii) the rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Continuation Agreement, and (iv) the terms and provisions of this Continuation Agreement shall be construed fairly as to both Parties and not in favor of or against either Party, regardless of which Party was generally responsible for the preparation of this Continuation Agreement.

10.7 Relationship of the Parties. Operator is an independent contractor and neither Operator nor its employees shall, under any circumstances, be considered employees, servants, or agents of MTC, nor shall MTC nor its agents or employees be considered employees, servants, or agents of Operator. At no time during the Term or otherwise shall Operator, its employees, or agents, represent to any person or entity that Operator and its employees are acting on behalf of, or as an agent of, MTC or any of its employees. MTC shall not be legally responsible or liable for any negligence, intentional act, or other wrongdoing by or of Operator, its employees, servants, agents, subcontractors, suppliers, or manufacturers of goods or services provided by Operator pursuant to this Continuation Agreement. MTC will not withhold payments to Operator for any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Operator. MTC will not provide to Operator any insurance coverage or other benefits, including Workers' Compensation, normally provided by MTC for its employees. This Continuation Agreement does not constitute and shall not be construed as constituting a partnership or joint venture or grant of a franchise between the Parties.

10.8 Cooperation. The Parties agree to execute such further instruments and to take such further action as may reasonably be necessary or helpful to carry out the intent of this Continuation Agreement.

10.9 Failure or Delay in Performance. Operator shall not be held responsible for failure to perform the duties and responsibilities imposed by this Continuation Agreement if such failure is due to Event of Force Majeure, beyond the control of Operator, that make performance impossible or illegal, unless otherwise specified in this Continuation Agreement; provided that the Operator (in order to not be held responsible for failure to perform) shall have given MTC Project Manager written notification of such failure, event, or occurrence beyond the control of Operator not later than 48 hours after the beginning of such failure, event, or occurrence.

10.10 Representations of Operator. Operator hereby represents and warrants to MTC that:

10.10.1 Operator is a limited liability company, validly existing and in good standing under the laws of the State of Delaware, and it is duly authorized to do business in the State of California; and

10.10.2 Operator has all requisite power and authority to own or lease its properties and assets, to conduct its business as currently conducted and to execute, deliver and perform this Continuation Agreement and all other agreements entered into or delivered in connection with or as contemplated hereby.

10.11 Ethics in Public Contracting. This Continuation Agreement incorporates all local, state, and federal law, regulations and rules related to ethics, conflicts of interest, or bribery. Operator certifies that its offer is made without collusion or fraud and that it has not offered or received any kickbacks or inducements from any other officer, supplier, manufacturer, or subcontractor and that it has not conferred on any public employee having official responsibility for this purchase any payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised unless consideration of substantially equal or greater value was exchanged.

10.12 Remedies. The remedies available to MTC in various sections of this Continuation Agreement shall be deemed to be in addition to, and not in limitation of, any other remedies MTC has or may have under applicable law or in equity arising out of or relating to this Continuation Agreement.

10.13 Assignment. Operator shall not assign, transfer, convey, sublet, or otherwise dispose of any award, or any or all of its rights, obligations, or interests under this Continuation Agreement, without the prior written consent of MTC, except the preceding clause shall not limit Operator's rights to enter into subcontracts for the provision of services hereunder.

10.14 Prohibition of Expending Local, Agency, State or Federal Funds for Lobbying

A. Operator certifies to the best of its knowledge and belief that:

- i. No state, federal or local agency appropriated funds have been paid, or will be paid by-or-on behalf of Operator to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.



- ii. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this Continuation agreement; Operator shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, US. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- C. Operator also agrees by signing this Continuation Agreement that it shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000, and that all such sub recipients shall certify and disclose accordingly.

## **ARTICLE XI**

### **DEFINITIONS**

11.1 **Defined Terms.** As used herein, the terms below shall have the following meanings. Any of such terms, unless the context otherwise requires, may be used in the singular or plural, depending upon the reference.

**"Backend Software and Computer Hardware"** shall mean an electronic interface enabling, among other things, Stations, Bicycles, subscriber customer service, cellular service, Customer Keys, the website, and call center to function.

**"Bicycle"** shall mean a device propelled solely by human power, upon which a person may ride either on or astride a regular seat attached thereto, having two or more wheels in tandem.

**"Crash"** shall mean every reported incident or event involving a subscriber, Bicycle user, Bicycle, and/or Station resulting in personal injury to the subscriber or others, or property damage to the Equipment, or to the property of others.

**"Customer Key"** shall mean a fare card or fob for rental of Bicycles.

**"Dock"** or **"Docking Point"** shall mean a locking mechanism contained on a Station designed to receive a Bicycle for locked storage.

**"Equipment"** shall mean all physical components provided by, or used by, Operator so that the System is available for use by the public, including, without limitation Bicycles, Docks, Technical Platforms, Map Frames, Terminals, cables, Station batteries, maintenance trailer, truck, electric bicycle, Customer Keys, trailer, and Bicycle and Station spare parts.

**“Equipment Assignment Conditions”** shall mean the following: (a) Operator and the purchaser of the Equipment have agreed on the purchase price for the Equipment, which shall be based on the fair market value of the Equipment as an installed system at the time of the purchase, and (b) such purchaser has paid Operator the agreed upon purchase price for the Equipment.

**“Event of Force Majeure”** shall mean a delay, suspension or interruption due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the Party claiming an Event of Force Majeure, provided in each case that such Party has taken and continues to take all reasonable actions to avoid or mitigate such delay, suspension or interruption and provided that such Party notifies the other Party to this Continuation Agreement in writing of the occurrence of such delay, suspension or interruption within five (5) business days, or if not reasonably practicable, as soon thereafter as reasonably practicable, of the date upon which the Party claiming an Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an “Event of Force Majeure” unless such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the Party claiming Event of Force Majeure has taken and continues to take all reasonable steps to pursue such decision. In no event will a government entity’s final decision relating to Operator, this Continuation Agreement or the System, whether positive or negative, once made constitute an Event of Force Majeure (the term “final decision” in this sentence shall refer to a decision with respect to which all available appeals have been exhausted or the time period for filing such appeals has expired). The financial incapacity of Operator shall not constitute an Event of Force Majeure.

**“Fleet”** shall mean 100% of the number of Bicycles obtained by Operator from MTC on the Effective Date minus the number of stolen (or otherwise unreturned) and unrepairable Bicycles.

**“Functional Bicycle”** shall mean the condition of a Bicycle, consistent with the technical specifications of the Bicycles to be provided under this Continuation Agreement, to be ridden by an ordinary subscriber using such Bicycle under normal conditions. A Functional Bicycle does not refer to comfort, speed, quality of the riding experience, or minor issues with the Bicycle that does not impede the ability to be ridden.

**“Functional Station”** shall mean a Docking Station, consistent with the technical specifications of the Docking Stations under the Pilot Program, to be used by an ordinary subscriber using such Docking Station under normal conditions. A Functioning Station does not refer to inconvenience or inability of a subscriber to follow directions, provided such directions are provided in a form understandable by an ordinary subscriber. A Functional Station shall have at least one Docking Point containing a Functional Bicycle, at least one empty Docking Point, and all other elements in working condition to be considered a Functional Station.

**“Hacking”** shall mean unauthorized and intentional access to the Computer Hardware for the System and/or Software.

**“Map Frame”** shall mean a two-sided metal informational display unit, including translucent covering and lock.

**“MTC Project Manager”** shall mean an individual appointed by MTC to act as the project officer.

**“Notification”** shall mean all information provided by MTC, a Pilot City or the general public to Operator about a specific defect or problem concerning the System, Equipment or operations of the System by written document, email to Operator’s public information email address for the System, or telephone call to Operator’s call center for the System.

**“Operable Station”** shall mean a Station at which at least 90 percent of all installed Docks are Operable Docks from which an annual member can check out and return a Bicycle.

**“Operating Expenses”** shall mean, with respect to Operator (or Motivate) for any period, the costs expended by Operator (or Motivate) to operate and maintain the System and to provide the specific services set forth in this Continuation Agreement, including, without limitation, personnel costs, software license fees, insurance costs, costs of maintaining service vehicles, costs of leasing and maintaining facilities used for the System.

**“Operating Losses”** shall mean, with respect to Operator (or Motivate) for any period, the amount, if any, by which Operating Expenses for such period exceed System Operating Revenues for such period.

**“Party”** means either MTC or Operator, as the context requires; **“Parties”** means MTC and Operator.

**“Service”** shall mean the use of the Equipment by the public at large after the Effective Date.

**“Site”** shall mean a designated area on publicly or privately owned real property, which area contains one or more of each of the following items made available by Operator for the System: Bicycles, Docks, Terminal, Technical Platforms, and Map Frame.

**“Station”** shall a designated area of docking Bicycles at which Docks, Terminal, Technical Platforms, and Map Frame are located.

**“System Operating Revenues”** shall mean all funds derived from ridership use of the System, including subscription fees and usage fees.

**“Technical Platform”** shall mean a base component that rests on the ground and supports the Docks, Terminal, and Map Frame.

**“Terminal”** shall mean a kiosk that provides Bicycle rental instructions, contains payment equipment (i.e. credit card device), and includes all other means necessary for the rental of Bicycles.

**“Trip”** shall mean the use of a Bicycle from one Station to another Station or back to the initial Station.

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## **Attachment A-1, Description of Services**

### **1. Description of Services**

Operator shall operate the bike-sharing system in the Pilot Cities that was installed and in place at the termination of the Pilot Program Agreement using the same Sites, Bicycles, Docking Stations, Terminals, Docking Points, Technical Platforms, Customer Keys, Back-end Software and Computer Hardware and other Equipment that was used for the Pilot Program. Operator guarantees the following minimum equipment numbers in Mountain View, Palo Alto, and Redwood City:

Mountain View: 7 Stations; 117 Docks; 59 Bicycles

Palo Alto: 5 Stations, 75 Docks, 37 Bicycles;

Redwood City: 7 Stations; 117 Docks; 59 Bicycles;

San Francisco: 35 Stations; 665 Docks; 300 Bicycles;

San Jose: 16 Stations; 264 Docks; 110 Bicycles

Operator's responsibilities include:

- (1) Handle ongoing Equipment maintenance and rebalancing;
- (2) Manage intellectual property issues related to a program sponsor such as brands and trademarks;
- (3) Manage all ongoing customer service issues associated with the System (unless otherwise instructed); and
- (4) Conduct bicycle safety trainings and encourage the use of bicycle helmets.

### **2. Subscriber Information/Relations.**

2.1 Subscriber and Usage Fees. User fees shall be consistent with Attachment A-2, subject to application of Attachment A-3 as provided in Section 2.2 of this Continuation Agreement.

2.2 Age Requirement for Program Subscribers. Subscriptions shall only be issued to individuals 18 years of age and older.

2.3 Subscriber Privacy. Operator shall, at all times, protect the privacy rights of all subscribers. Operator shall strictly comply with all applicable federal, state, and local laws,

ordinances, and regulations concerning the privacy of all subscriber information obtained by Operator in the course of providing services under this Continuation Agreement.

2.4 Subscriber Agreement. Operator shall use the same form of Subscriber Agreement that was used for the Pilot Program with such changes thereto as Operator considers appropriate. Any material changes to the Pilot Program form shall be subject to the review and approval of MTC. The Subscriber Agreement shall address, at a minimum, the following:

- (1) The rates, fees, and deposits (if any).
- (2) Confidentiality of personal and financial data and information.
- (3) Subscriber's agreement to return the Bicycle in the same condition as it was when rented.
- (4) Subscriber's agreement to immediately report to the call center any Crash, as defined in this Continuation Agreement to include any incident or event resulting in personal injury to the subscriber or others or in property damage to the Equipment or to the property of others and agreement to follow any instructions from the call center regarding reporting a Crash to police.
- (5) Subscriber's agreement to immediately report to the call center a lost or stolen Bicycle or a lost or stolen Customer Key.
- (6) Subscriber's responsibility and liability for any consequences of any kind or nature whatsoever related to a stolen or lost Bicycle or Customer Key.
- (7) Prohibited uses including, without limitation, no more than one person on a Bicycle at one time.
- (8) Subscriber's acknowledgement of and acceptance of responsibility and risk.
- (9) Prohibition against any person other than the subscriber operating any Bicycle rented from Operator and prohibition against transfer of a Customer Key to anyone in any manner whatsoever.
- (10) A representation by each subscriber that s/he is physically able to ride a Bicycle without risk to health, knowledgeable about the operation of a Bicycle, and knowledgeable about the laws pertaining to Bicycles operated within the jurisdictions where the Bicycles are to be used.
- (11) Age limits.
- (12) Subscriber's indemnification of MTC and the Pilot Cities, its elected and appointed officers, officials, employees, and agents.
- (13) Prohibition against use of Bicycle while under the influence of alcohol, drugs, any controlled substance, or any medication that would impair the Bicycle operator's ability to safely operate the Bicycle.
- (14) Instructions regarding proper use of Bicycle luggage carrier as to type of contents, weight, or visual obstruction.
- (15) Prohibition against Bicycle use for any illegal purpose.

2.5 Loss Fees. Operator shall deem a Bicycle as "lost or stolen" if not returned to a Site within 24 hours of being signed out, and charge the subscriber whose account is associated with that sign-out the amount of the "Loss Fee" set forth in Attachment A-2, subject to application of Attachment A-3 as provided in Section 2.2 of this Continuation Agreement, which covers the replacement value of the Bicycle, along with shipping fees and expenses and service charges for placing a new Bicycle into the operational Fleet. Credit accounts will be charged the Loss Fee at the time a loss is determined. Operator shall include all such circumstances in its

monthly report to MTC. Notwithstanding the foregoing, Operator shall waive such fees for stolen Bicycles or Bicycles that are damaged in connection with a crime against the rider or in a collision with a motor vehicle, so long as an appropriate police report is filed for the incident.

2.6 Helmets. Operator shall provide information on the System website and in the subscription agreement about the importance of wearing helmets for safety reasons. Operator will make reasonable best efforts to provide users with information that directs them to nearby bike shops and other locations where subscribers may purchase a helmet and shall display on the System website where discounts are available and at Terminals.

2.7 Subscriber Communications. Upon request from MTC, Operator will send biking related information announcements via electronic mail to all subscribers who do not “opt out” of receiving such emails.

### 3. Operations

3.1 Continuous Operation and Management. The System shall commence operating on the Effective Date and shall remain in operation 24 hours per day, 365 days per year.

#### 3.2 Inspection and Maintenance.

- (1) Operator shall, at all times, follow and strictly comply with the manufacturer’s requirements, warranties, and recommendations for assembly, maintenance, storage and repair of all Equipment. Operator shall not be obligated to purchase any replacement Equipment.
- (2) Operator shall perform a maintenance check for each Bicycle once every two calendar months consisting of the following checks, with deficient elements repaired or replaced as necessary:

Check tire pressure, and add air as may be needed, to recommended Pounds per Square Inch measurement;

Check tightness of handlebars, headset bearings, and full handlebar range of motion (left to right);

Check tightness of seat, seat post quick-release, and see that seat post moves freely in full range of motion (up and down);

Check brake function (front and rear);

Check grips for wear and brake levers for tightness and damage;

Check bell for tightness and correct function;

Check handlebar covers for damage and instruction stickers;

Check front basket for tightness and damage, and check bungee cord for wear;

Check for correct gears and shifter function through all 5 gears;

Check fenders (front and rear) for damage, and clean outside of fenders;

Check tires (front and rear) for damage or wear;

Check wheels (front and rear) for trueness, broken or bent spokes and hub or axle tightness;

Check LED lights (front and rear) for function;

Check reflectors on wheels, seat and basket, to ensure they are present, clean, and undamaged;  
Check pedals and cranks for tightness;  
Lubricate and clean chain and check chain tensioner for correct function;  
Check kickstand for correct function; and  
Take brief test ride to ensure overall correct function of Bicycle.

- (3) Operator shall clean each Station two times per month-- one time between the first and fifteenth days of the month, and one time between the sixteenth and last days of the month. Station cleaning shall consist of, at a minimum, litter removal and, as needed, power washing of Docks, Terminal Platforms and pavement.
- (4) (a) Except as required by clause (b) below, Operator shall remove conspicuous graffiti within 72 hours after Notification; and (b) Operator shall remove racist and hate graffiti within 4 hours after Notification.
- (5) Operator shall remove conspicuous accumulations of litter from Stations within 24 hours after Notification.
- (6) The System must be operational 100% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), so that, at a minimum, all System users can dock and undock Bicycles at all times, excluding (i) scheduled downtime, and (ii) any period when the Computer Hardware for the System and/or Software is, and remains, damaged through Hacking. System functionality does not apply to hardware malfunctions at individual Stations or to individual Stations that are not Operable Stations.
- (7) Stations, in the aggregate, must be Operable Stations 99% of the time every month (i.e., every hour of every day, 24 hours per day, 7 days per week, measured monthly), excluding (i) during scheduled downtime, and (ii) any period when a Station is not an Operable Station because the Terminal or other Equipment located at the Station has been damaged by third-parties. Calculated by taking the sum of the number of hours that each Station was Operable Station during a month, dividing that sum by the product of the total number of hours in the month and the number of Stations that month. Station Operability does not apply during any period in which the entire System is down.
- (8) The System website must be operational 100% of the time every year (i.e., every hour of every day, 24 hours per day, 7 days per week, measured annually) excluding (i) scheduled downtime, and (ii) any period when the Computer Hardware for the System and/or Software is, and remains, damaged through Hacking.

In any circumstances where Operator is required to perform cleaning services under this Continuation Agreement, Operator shall use the most environmentally friendly cleaning solutions and chemicals available for these purposes.

3.3 Availability of Bicycles. Operator shall ensure that at least 90% of bicycles in the Fleet are operational, on-the-street and available for public use. The number of available bicycles will be recorded once each Day of the month between the hours of 11:00 AM and 3:00 PM.



3.4 Distribution of Bicycles. Operator shall re-distribute Bicycles among Sites and place the Bicycles in operable Docks throughout the day from 6 am to 10 pm during each day of operation. Such distribution shall be critically timed to increase the probability that each Site, at all times, contains a sufficient number of empty Docks for Bicycles to be returned and occupied Docks containing Bicycles available for subscribers. All Bicycles placed in operational Docks shall be in acceptable operating condition. Operator shall ensure that, during any day, no Site has all empty Docks or all full Docks for more than three hours between the hours of 6 am and 10 pm. If during any month the average usage of a Site is greater than 2.5 Trips per day per Dock or less than 0.75 Trips per day per Dock, then this service level does not apply for such Site for such month.

3.5 Operator's Call Center. Operator shall provide to MTC, all subscribers, and the public at large, a toll-free telephone number for Operator's call center. The call center shall be in continuous operation 24 hours per day, 7 days per week, and 365 days per year. Not less than 80% of telephone calls to Operator's call center each month must be answered by a person within 90 seconds or less. Operator shall conspicuously post a notice on each Station advising the general public that they may direct their complaints and comments to Operator's call center.

Operator shall ensure that the call center can handle calls in English, Spanish, Mandarin and Cantonese, using operators fluent in those languages. The operators at the call center shall be fully competent and knowledgeable to answer questions and provide information concerning, among other things, subscription process, subscription prices, billing, Crashes, comments, complaints, malfunction problems, location of Sites, directions to nearest Site that has Bicycles available for use and/or available Docks for returns, directions to helmet sales location(s), and instructions on how to fit a helmet. The call center manager shall be knowledgeable about all service areas. The call center operators shall keep accurate and complete written records of each such call in a Customer Service Log as hereinafter required, including the primary reason for each call and the status of the call (e.g., "no further action", "requires reimbursement").

3.6 Email Response Time. Not less than 95% of emails to Operator's public information email address must be answered within 1 business day.

3.7 Comments and Complaints. Operator shall establish and maintain during the Term prompt and efficient procedures for handling complaints from the public for which Operator receives a Notification. Such procedures shall be consistent with all applicable laws, rules and regulations and the provisions of this Section. Such procedures shall be set forth in writing and copies thereof shall be maintained at Operator's office and shall be available to the public and the Pilot Cities upon request.

3.8 System Website. Operator shall create and maintain a System website the content of which shall address, at a minimum, the following:

- (1) Eligibility requirements;
- (2) Subscription information and rate, schedules;
- (3) Payment information and subscription processing;
- (4) Method for subscribers to log in, update required information, and track individual usage data compiled by the system;

- (5) Subscriber Agreement and acceptance of terms;
- (6) Map with the entire regional network of Sites and real-time availability of Bicycles at each Site, both for a standard computer screen and mobile phone;
- (7) Frequently Asked Questions;
- (8) Safety requirements and information (including notification in the event of malfunction or Crash);
- (9) Encouragement of helmet use for subscribers and a listing of nearby locations where users may purchase or lease helmets;
- (10) Merchandise page;
- (11) Permitted links to other Bay Area based bike programs and events;
- (12) A listing of nearby bike rental shops, locations and contract information;
- (13) Safety video (supplied by the Air District or others) addressing safe use of bicycles, helmets, and California Vehicle Code and local laws pertaining to bicycle riders; and
- (14) A webpage that contains links to MTC- approved information (i.e. links to partner websites and notices).

Operator, at all times, shall keep the website information updated, current, and accurate on a regular basis.

3.9 Operator Staffing Levels. Operator, at all times, shall provide sufficient staff to efficiently and promptly provide the services set forth in this Continuation Agreement.

3.10 Personnel and Staffing Requirements. Operator shall deliver to MTC copies of all written personnel policies that, at a minimum, address employee conduct and qualifications.

3.11 Relocation, Resizing, and/or Reconfiguration of Stations.

- (1) By Operator. In the event that Operator wishes to remove, relocate, resize, and/or reconfigure any Station, other than those Stations whose locations are fixed pursuant to the terms of a grant or sponsorship agreement, due to under-utilization or lack of profitability, it must notify MTC in writing, providing sufficient detail and description of the proposed relocation site and reasons therefore, prior to removal. Assuming that MTC does not disapprove the request within ten business days, Operator may remove, relocate, resize, and/or reconfigure the Station consistent with Operator's notice of same to MTC and subject to local review and permitting requirements.
- (2) By MTC. MTC shall provide Operator with 48 hours advance notice of any relocation or reconfiguration of Stations to accommodate construction, special events, or other reasons. The fee payable by MTC (or the applicable Pilot City) to Operator for any such relocation or reconfiguration shall be determined in accordance with Attachment A-4.

3.12 Interruption of Service.

- (1) Intentional Interruption of Service. If, at any time, Operator intends, or is required, to temporarily interrupt all or a portion of the service, for any reason beyond Operator's reasonable control, including, without limitation, weather, safety, or other event or circumstance where continued service

would be unsafe, unavailable, impractical, or impossible , then Operator shall contact MTC by telephone and by email at least 24 hours before the interruption of service and specifically describe the reason, proposed duration, Operator's proposed actions to correct the cause of the interruption (if possible), minimize the interruption, and Operator's plans to resume service.

Operator promptly shall notify the subscribers of the cause and expected duration of the proposed interruption of service by posting notice on the website, via email, and Terminals (electronic message).

- (2) Unintentional Interruption of Service. If, at any time, a System malfunction or an event or circumstance occurs where continuous service would be unsafe or unavailable for reasons beyond Operator's reasonable control, and this causes or will cause a temporary interruption of service, then Operator shall immediately contact MTC by telephone and by email and specifically describe the reason, estimated duration, Operator's proposed actions to correct the cause of the interruption (if possible), efforts to minimize the interruption, and Operator's plans to resume service.

Operator promptly shall notify the subscribers of the cause and expected duration of the interruption of service by posting notice on the website, via email, and Terminals (electronic message).

In the case of both Intentional and Unintentional Interruptions of Service, Operator shall be obligated to perform all necessary and appropriate acts to restart the service as soon as possible.

3.13 Safety Training: On at least a quarterly basis, Operator shall provide safety training on proper use of bicycles and applicable rules and regulations of the road to current and/or potential users in each city.

## **Attachment A-2, Subscriber Related Fees**

### **1. Annual and Monthly Subscription and Usage Fees**

- a) Annual Subscription Fee - One-time payment of \$88
- b) Annual and Monthly Subscription Usage Fees:
  - i. No charge for up to 30 minute use of a Bicycle per session,
  - ii. \$4.00 for 31-60 minutes,
  - iii. \$7.00 for each additional 30 minutes

A usage fee will be tracked and charged to credit accounts within one hour (or based on normal credit card operating procedures) of any occurrence of continuous usage exceeding thirty (30) minutes.

- c) Annual Memberships may be purchased at a discounted rate for promotional purposes and may be purchased in bulk at a discounted rate

### **2. Other Subscription and Usage Fees**

- a) Short-term Subscription Fees
  - i. Three day Subscription fee - \$22,
  - ii. One day Subscription fee - \$9
- b) Other Subscription Usage Fee:
  - a. No charge for up to 30 minute use of a Bicycle per session,
  - b. \$4.00 for 31-60 minutes,
  - c. \$7.00 for each additional 30 minutes

A usage fee will be charged to credit accounts at the time any continuous usage exceeding 30 minutes is determined.

- 3. Bicycle Loss Fee - \$1,200.
- 4. Operator reserves the right, in its sole discretion, to increase or decrease the fees under 2(a) and 2(b) above.

### **Attachment A-3, New Subscriber-Related Fees**

1. General. At Operator's election, after June 30, 2016, Membership Fees and Initial Ride Periods shall be consistent with Section 2, the Membership Fee for users eligible for the affordability subscription specified in Section 3 shall be as described in said Section 3, the maximum Bicycle usage charge shall be consistent with Section 4 and the fees for damaged, lost, stolen or otherwise unreturned Bicycles shall be consistent with Section 5 initially charged by Operator shall be consistent with this Section. A "Membership Fee" is an amount that entitles the purchaser of the membership (a "member", for the period of such purchased membership) to check out (as defined below) one or more Bicycle(s) at a time, for the length of time described below, provided that the member shall be charged a usage fee associated with the time period the Bicycle is checked out beyond the Initial Ride Period. A Bicycle is "checked out" for the period from the time it is removed from a Dock to the time it is returned to a Dock. A member may check out and return a Bicycle from or to any Dock at any Station in the System, for an unlimited number of times, at any time during the period of the member's membership, with the usage fee applicable to each such checkout and return sequence being calculated separately (so, for example, an annual member may, within the member's membership period, check out a Bicycle and return it within the first 30 minutes after checkout, and then subsequently check out a Bicycle and return that Bicycle with the first 30 minutes after that checkout, without incurring any usage fee for either checkout period).

#### 2. Membership Fees, New Ridership Programs/Arrangements, and Initial Ride Periods:

2.1 Operator shall offer an annual membership ("Annual Membership") for a fee (the "Annual Membership Fee") in an amount not to exceed the Annual Membership Fee Cap in effect from time to time. The Annual Membership Fee Cap shall be \$149 for a one-year period. The period of an Annual Membership shall run from the day the annual membership is activated until the first anniversary of the date on which the Annual Membership had been activated (but a membership purchased on February 29 shall expire on March 1 of the following year). At the end of the Term, each member can elect whether to roll his or her Annual Membership into the BABS Program. Such election can be made by contacting the call center. If a member elects not to roll into the BABS Program, then if the Annual Membership Fee has been paid in advance for a full 12 months, the prorated amount for the portion of an Annual Membership period that is beyond the Term shall be reimbursed to or credited to the credit card account of the Annual Member;

2.2 Annual Memberships may be paid in 12 equal monthly instalments at a price not greater than 120% of the Annual Membership Fee;

2.3 All memberships will include a free period of usage (the "Initial Ride Period"), which is the length of time at the beginning of each individual Trip to which additional usage fees will not be applied. For Annual Memberships and Affordability Memberships, the Initial Ride Period is 30 Minutes. Usage fees will be applied to all Trips that exceed the Initial Ride Period; and

2.4 For monthly, weekly and daily memberships, and for usage of the System by non-members, Operator will determine the applicable fees, usage fees, and periods of use for members beyond the Initial Ride Period in its sole discretion.

2.5 Nothing in the foregoing shall limit the right of Operator to offer premium memberships featuring an Initial Rider Period longer than 30 minutes for an Annual Membership Fee greater than \$149.

### 3. Affordability Option:

3.1 Notwithstanding the permitted rate for an Annual Membership set forth in set forth in Section 2.2.1, Operator shall charge those eligible for an “affordability subscription” no more than \$60 per annum (excluding sales tax) as the Annual Membership Fee, or \$5.00 per month for a 12-month membership.

3.2 Persons who were entitled to affordability memberships under the Pilot Program shall be entitled to affordability memberships for the System. Members of households enrolled in the Utility Lifeline Programs (also known as California Alternative Rates for Energy (CARE)) available in the MTC Area are also eligible for affordability memberships. Within 10 days following the Effective Date, Operator shall propose, for MTC’s review and approval, procedures for verifying enrollment in CARE. In San Francisco, those who meet Muni Lifeline income requirements as determined by the City of San Francisco’s Human Services Agency are also eligible for the affordability membership. Upon mutual agreement of the Parties, eligibility may expand to include other categories of persons so long as the eligibility is determined by third parties.

3.3 Members enrolling through the affordability program shall be entitled to the same rights and privileges as all other Annual Membership holders.

3.4 The usage fees for affordability members shall not exceed the rate charged to general annual members.

4. The checkout period for the purposes of calculating usage fees shall always commence with the time a Bicycle is actually removed from a Dock, and it shall not be based on the time of insertion of a payment or identification card.

5. The maximum Bicycle usage charge initially charged with respect to any member shall be \$100 per 24 hour period, not including charges for damaged, lost, stolen or otherwise unreturned Bicycles.

6. Fees for damaged, lost or otherwise unreturned Bicycles initially charged shall be (i) \$1,200, if not returned, or (ii) if returned, the sum of all direct costs of the repair, including all labor and parts, as determined by Operator in its reasonable discretion, plus a 10% administrative fee; provided, however, that the fees charged to affordability members for unreturned or damaged Bicycles shall be not more than 33% of the fees set forth in the preceding clauses (i) and (ii). Notwithstanding the foregoing, Operator shall waive such fees for stolen Bicycles or Bicycles that are damaged in connection with a crime against the rider or in a collision with a motor vehicle, so long as an appropriate police report is filed for the incident.

7. Operator shall at all times post on all Stations and on Operator's website a complete and up-to-date fee description that sets forth each and every current membership and usage fee offered by Operator, the methods of purchasing memberships and paying fees, available discounts on such fees, the applicability and terms of such discounts and, to the extent applicable, how to apply for or qualify for such discounts, and fees associated with damaged, lost, stolen or otherwise unreturned Bicycles. Operator shall furnish written copies of such material to the public upon request.

8. Operator shall accept credit card and debit card payments online and at all Stations but in the case of debit cards only those that have a Visa or Mastercard logo on them. Operator may employ such other methods of payment as it may determine.

9. All required state sales and use taxes with respect to membership and usage fees shall be collected and paid by Operator, as required by applicable law.

10. Operator shall be permitted to create System pricing discount programs, which may be targeted in connection with marketing and outreach efforts, and in connection with Sponsorship or Advertising programs, to expand or enable System use among different communities or for other lawful purposes.

11. At any time and from time to time, Operator shall have the right:

11.1 To adjust the amount of the Annual Membership Fee specified in Section 2 downwards at any time and upwards on each anniversary of the Effective Date by an amount not to exceed the Annual Membership Fee Cap then in effect;

11.2 To adjust in its sole discretion all other fees, time periods and charges specified hereunder other than those fees, time periods and charges specified in Section 2 and Section 3; and

11.3 To adjust upward the duration of the Initial Ride Period.

**ATTACHMENT A-4 FEE SCHEDULE FOR**  
**STATION DEACTIVATION, DE-INSTALLATION AND ADJUSTMENT**

*As stated in Section 3.11(2) of Attachment A-1 of this Continuation Agreement, the following is the fee schedule for Station Deactivation, De-Installation, and Adjustments (each as defined below). (Capitalized terms used but not otherwise defined herein shall be defined as provided below.))*

**Section 1: For Public Works, Other Special Events and Public Safety Emergencies there is no charge to the Pilot City. In addition, for each Pilot City, there is no charge for the first 2 Discretionary Requests by the Pilot City.**

**Section 2: For (a) Private property owners or contractors doing private construction on public or private property, (b) event producers or organizers of For Profit and Political Special Events, and (c) Discretionary Requests by a Pilot City after the first 2 Discretionary Requests by the Pilot City, the following fee schedule applies:**

1. Deactivation: Station is deactivated but not removed; Bicycles are removed and cannot be returned by customers:  
  
\$500/Station + \$10/Dock/day of Deactivation. (Each of the foregoing amounts is subject to CPI Adjustment.)
2. De-installation and Reinstallation: Station is completely removed from the location and returned to same location:  
  
\$1,000/Station + \$20/Dock + \$10/Dock/day of Deactivation. (Each of the foregoing amounts is subject to CPI Adjustment.)
3. Adjustment: Property owners and utilities may seek permanent or temporary changes to a Station's size or configuration, and changes to Street Treatments and Street Markings as necessitated by such, without changes to the Station location:  
  
\$1,000/Station + \$20/Dock that is adjusted. (Each of the foregoing amounts is subject to CPI Adjustment.)
4. Temporary Relocation Followed by Reinstallation: Property owners and utilities who need to De-install or Deactivate a Station for a period greater than 15 business days must pay for the temporary relocation of the Station during the event or construction, which allows for continuous operation of the Station, and must also pay for the reinstallation of the Station at the original location after completion of the event or construction:



\$5,000/Station + \$40/Dock. (Each of the foregoing amounts is subject to CPI Adjustment.)

Defined Terms:

“Adjustment” shall mean permanent or temporary changes to a Station’s size or configuration, and changes to Street Treatments and Street Markings as necessitated by such, without changes to the Station location.

“CPI” shall mean the Consumer Price Index for the Consolidated Metropolitan Statistical Area covering San Francisco-Oakland-San Jose, as measured by the Consumer Price Index for All Urban Consumers, as published from time to time by the Bureau of Labor Statistics, U.S. Department of Labor.

“CPI Adjustment” shall mean, with respect to a specific cost, that such cost is subject to annual adjustment each January 1 based on changes in the CPI from the Effective Date to the date of adjustment.

“Deactivation” shall mean, at a minimum, shut-down of Terminal (or display of messaging on a Terminal screen indicating that Station is out of service) removal of all Bicycles present, installation of physical barriers on all Docks that prevent docking of Bicycles, and designation of the Station as “Out of Service” on the System website, app, and all other real-time data sources. A Deactivation event is not over until the Station has been reactivated.

“De-Installation” shall mean, at a minimum, (i) the temporary or permanent full removal of the Station and its associated Street Treatments, and, (ii) the designation of the Station as “Out of Service” on, or removal of the Station from, the System website, app, and all other real-time data sources.

“Discretionary Request” shall mean any De-Installation and/or Re-Installation or Station Adjustment requested by the Pilot City that is not related to Public Works, Other Special Events, or Public Safety Emergencies.

“For Profit and Political Special Events” shall mean temporary events permitted by the Pilot City that (i) have entry fees for participation (e.g., road races, cycling tours); or (ii) have the purpose of selling products (e.g., street fairs, food festivals, holiday fairs, film festivals, film shoots); or (iii) have a title sponsor; or (iv) are political events.

“Other Special Events” shall mean temporary events permitted by the Pilot City other than For Profit and Political Special Events (e.g., heritage or cultural parades).

“Public Safety Emergency” shall mean an instance when (i) Equipment is damaged or in an unsafe state so as to cause an immediate danger to the public; or (ii) circumstances or situations

immediately surrounding Equipment create an imminent danger to the public; or (iii) the area around a Station becomes unsafe or is required by police department or other emergency responders of a Pilot City in order to respond to a natural disaster or avoid a calamity.

“Public Works” shall mean all instances where a Pilot City (including a utility owned by a Pilot City) or its contractors (including any private contractors hired by a Pilot City) are undertaking construction, maintenance, repairs or other public improvements.

“Street Marking(s)” shall mean thermoplastic paint markings and/or striping on the pavement for the express purpose of demarcating a Station.

“Street Treatments” shall mean the three-dimensional objects used to demarcate the Station, and protect it from adjacent parking and moving traffic. Such objects may include, but are not limited to, delineators and wheel stops.

**COORDINATION AGREEMENT**

**between**

**THE METROPOLITAN TRANSPORTATION COMMISSION,  
BAY AREA MOTIVATE, LLC, as Operator of the Bay Area Bike Share Program;  
THE CITY OF BERKELEY,  
THE CITY OF EMERYVILLE,  
THE CITY OF OAKLAND,  
THE CITY AND COUNTY OF SAN FRANCISCO by and through  
THE SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY, and  
THE CITY OF SAN JOSE**

**for**

**THE BAY AREA BIKE SHARE PROGRAM**

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## **COORDINATION AGREEMENT FOR THE BAY AREA BIKE SHARE PROGRAM**

This coordination agreement (hereinafter, this “Agreement”) has been executed and delivered as of December 31, 2015 (the “Effective Date”) by and between the METROPOLITAN TRANSPORTATION COMMISSION (“**MTC**”), BAY AREA MOTIVATE, LLC, as Operator (“**Operator**”) of the Program (as defined in the last recital below) , and the following entities which shall be collectively referred to as the “**Participating Cities**”: the CITY OF BERKELEY (“**Berkeley**”), the CITY OF EMERYVILLE (“**Emeryville**”), the CITY OF OAKLAND (“**Oakland**”), the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**San Francisco**”) acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (“**SFMTA**”), and the CITY OF SAN JOSE (“**San Jose**”) (each of MTC and Operator and each of the Participating Cities is referred to herein as a “party” and collectively as the “parties”).

### **RECITALS**

On August 29, 2013, the Bay Area Air Quality Management District (the “Air District”), in association with local and regional partners, launched a bike share pilot system (“Pilot”) with 70 docking stations and 700 bicycles in San Francisco, Redwood City, Palo Alto, Mountain View, and San Jose. The Air District selected Alta Bicycle Share, Inc. (“Alta”) as the operator for the Pilot.

Bikeshare Holdings LLC purchased Alta in October 2014 and assumed operations of the Pilot under the name “Motivate”.

In January 2015, Motivate delivered an unsolicited proposal to MTC to use private funding to expand the bike share program in San Francisco and San Jose and to bring the bike share program to Berkeley, Emeryville, and Oakland.

On May 27, 2015, following negotiations with Motivate, the MTC Commission authorized MTC’s Executive Director or designated representative to enter into a contract with Operator. The MTC Commission also approved a term sheet that outlines the agreed upon properties of the expanded system.

Concurrently with entry into this Agreement, MTC and Operator are entering into the Bay Area Bike Share Program Agreement (“Program Agreement”), which provides for the creation and operation of a bike share program in Berkeley, Emeryville, Oakland, San Francisco, and San Jose (the “Program”).

The parties therefore agree as follow:

### **PURPOSE**

The purpose of this Agreement is to establish the certain rights, liabilities, and responsibilities of each party with respect to the Program, and to define the organizational, management, and operational structure for the successful development of the Program.

## **SECTION 1.0            DEFINITIONS**

**1.1**        “AAA” has the meaning given such term in Section 34.3.

**1.2**        “Adjustment” shall mean permanent or temporary changes to a Station’s size or configuration, and changes to Street Treatments and Street Markings as necessitated by such, without changes to the Station location.

**1.3**        “Advertising” shall mean any printed matter, including, but not limited to, words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual messages or information for the sale or use of a product or service, but in no event shall it include any textual information that is required to be posted on any Equipment by any federal, state or local law, rule or regulation, or by this Agreement.

**1.4**        “Advertising Restrictions” has the meaning given such term in Section 29.5.1.

**1.5**        “Agents” has the meaning given such term in Section 36.1.

**1.6**        “Agreed Completion Dates” has the meaning given such term in the Program Agreement.

**1.7**        “Agreed Site Permit Submission Dates” has the meaning given such term in the Program Agreement.

**1.8**        “Agreement” has the meaning given such term in the Preamble.

**1.9**        “Air District” has the meaning given such term in the Recitals.

**1.10**       “Alcohol Advertising” shall mean Advertising or Sponsorship, the purpose or effect of which is (i) to identify a brand of an alcohol product, a trademark of an alcohol product or a trade name associated exclusively with an alcohol product, or (ii) to promote the use or sale of an alcohol product.

**1.11**       “Alta” has the meaning given such term in the Recitals.

**1.12**       “Annual Membership Fees” has the meaning given such term in the Program Agreement.

**1.13**       “Bicycle” shall mean a vehicle with pedals and with 2 wheels held in a frame and aligned one behind the other and steered with a steering wheel as further described in Appendix D of the Program Agreement. “Bicycle” shall not include motorized vehicles, including scooters or mopeds. For the avoidance of doubt, electric assisted bicycles constitute Bicycles and do not constitute motorized vehicles.

**1.14** “Bicycle Fleet Level” has the meaning given such term in the Program Agreement.

**1.15** “BIDs” has the meaning given such term in Section 20.2.1.

**1.16** “Bikeshare Holdings” shall mean Bikeshare Holdings LLC, a Delaware limited liability company, the sole member of Operator, and its successors.

**1.17** “Claims” has the meaning given such term in Section 13.2.

**1.18** “CPI” shall mean the Consumer Price Index for the Consolidated Metropolitan Statistical Area covering San Francisco-Oakland-San Jose, as measured by the Consumer Price Index for All Urban Consumers, as published from time to time by the Bureau of Labor Statistics, U.S. Department of Labor.

**1.19** “CPI Adjustment” shall mean, with respect to a specific cost, that such cost is subject to annual adjustment each January 1 based on changes in the CPI from the Effective Date to the date of adjustment.

**1.20** “Communities of Concern” shall mean areas within the Participating Cities designated by MTC as Communities of Concern as set forth at [http://gis.mtc.ca.gov/samples/Interactive\\_Maps/cocs.html](http://gis.mtc.ca.gov/samples/Interactive_Maps/cocs.html). Such designation is subject to change from time to time.

**1.21** “Community of Concern Requirement” has the meaning given such term in Section 17.4.

**1.22** “Contract Year” has the meaning given such term in the Program Agreement.

**1.23** “Deactivation” shall mean, at a minimum, shut-down of Kiosk (or display of messaging on Kiosk screen indicating that Station is out of service) removal of all Bicycles present, installation of physical barriers on all Docks that prevent docking of Bicycles, and designation of the Station as “Out of Service” on the Program website, app, and all other real-time data sources. A Deactivation event is not over until the Station has been reactivated.

**1.24** “Default” has the meaning given such term in the Program Agreement.

**1.25** “De-Installation” shall mean, at a minimum, (i) the temporary or permanent full removal of the Station and its associated Street Treatments, and, (ii) the designation of the Station as “Out of Service” on, or removal of the Station from, the Program website, app, and all other real-time data sources.

**1.26** “Dispute Resolution Process” has the meaning given such term in Section 34.1.



**1.27** “Discretionary Request” shall mean any De-Installation and/or Re-Installation or Station Adjustment requested by the Participating City that is not related to Public Works, Other Special Events, or Public Safety Emergencies.

**1.28** “Docks” shall mean the locking mechanisms contained on a Station that are designed to receive a Bicycle for locked storage.

**1.29** “E-Bikes” has the meaning given such term in Section 32.2.

**1.30** “Effective Date” has the meaning given such term in the Preamble.

**1.31** “Equipment” shall include Stations, Kiosks, Docks and Bicycles, either individually or in any combination thereof.

**1.32** “Event of Force Majeure” shall mean a delay, suspension or interruption due to strike; war or act of war (whether an actual declaration of war is made or not); terrorism; insurrection; riot; injunction; fire, flood or similar act of providence; or other similar causes or events to the extent that such causes or events are beyond the control of the party claiming an Event of Force Majeure, provided in each case that such party has taken and continues to take all reasonable actions to avoid or mitigate such delay, suspension or interruption and provided that such party notifies the other party to this Agreement in writing of the occurrence of such delay, suspension or interruption within 5 business days, or if not reasonably practicable, as soon thereafter as reasonably practicable, of the date upon which the party claiming an Event of Force Majeure learns or should have learned of its occurrence. A delay in a decision by a government entity, the approval of which is a condition to an occurrence, shall not constitute an “Event of Force Majeure” unless such delay is beyond the normal period in which such entity generally acts with respect to the type of decision being sought and only if the party claiming Event of Force Majeure has taken and continues to take all reasonable steps to pursue such decision. The financial incapacity of Operator shall not constitute an Event of Force Majeure.

**1.33** “Executive Director” shall mean the Executive Director of MTC, or any successor in function to the Executive Director.

**1.34** “Free Memberships” has the meaning given such term in Section 37.1.

**1.35** “Firearms Advertising” shall mean Advertising or Sponsorship, the purpose or effect of which is (i) to identify a brand of firearms or ammunition, a trademark of a firearm or ammunition or a manufacturer of firearms or ammunition, or a trade name associated exclusively with a firearms or ammunition, or (ii) to promote the use or sale of firearms or ammunition.

**1.36** “For Profit and Political Special Events” shall mean temporary events permitted by the Participating City that:

**1.36.1** Have entry fees for participation (e.g., road races, cycling tours); or

**1.36.2** Have the purpose of selling products (e.g., street fairs, food festivals, holiday fairs, film festivals, film shoots); or

**1.36.3** Have a title sponsor; or

**1.36.4** Are political events.

**1.37** “Hacking” shall mean unauthorized and intentional access to the Computer Hardware for the Program and/or Software.

**1.38** “Indemnified Party” and “Indemnified Parties” have the meaning given such terms in Section 13.2.

**1.39** “Infill” shall mean the placement of additional Stations within the Program Area in order to address unmet demand or community request.

**1.40** “Initial Meeting Date” has the meaning given such term in Section 34.2.

**1.41** “Initial Ride Period” has the meaning given such term in the Program Agreement.

**1.42** “Installation Scheduling Permits” shall mean permits required for the scheduling of the installation of Station-related Equipment at Sites proposed for Stations for which a Site Permit has been issued as a check for conflicts with other activities at the same location. The “temporary occupancy permit” issued by the San Francisco Department of Public Works is an example of an Installation Scheduling Permit.

**1.43** “Key Performance Indicators” (or “KPIs”) shall mean the key metrics used to evaluate performance of the Operator on various operational factors and defined as listed in Appendix A of the Program Agreement.

**1.44** “Kiosk” shall mean the payment terminal that provides Bicycle rental instructions, contains payment equipment (e.g., a credit card device), and includes all other physical means necessary for the rental of Bicycles.

**1.45** “Liabilities” has the meaning given such term in Section 13.2.

**1.46** “MTC” has the meaning given such term in the Preamble, together with any successor thereto.

**1.47** “Operator” has the meaning given such term in the Preamble. The term “Operator” shall also include the permitted successors and assigns of the Operator named herein.

**1.48** “Other Special Events” shall mean temporary events permitted by the Participating City other than For Profit and Political Special Events (e.g., heritage or cultural parades).

**1.49** “Participating City” and “Participating Cities” have the meaning given such terms in the Preamble.

**1.50** “Participating City Delay” has the meaning given such term in Section 16.8.

**1.51** “party” and “parties” have the meaning given such terms in the Preamble.

**1.52** “Person” shall mean any human being or any association, firm, partnership, joint venture, corporation, limited liability company, governmental entity, or other legally recognized entity, whether for profit or not for profit.

**1.53** “Phase” has the meaning given such term in the Program Agreement.

**1.54** “PPI” shall mean the Producer Price Index for the United States, as measured by the Producer Price Index for final demand, as published from time to time by the Bureau of Labor Statistics, U.S. Department of Labor.

**1.55** “PPI Adjustment” shall mean, with respect to a specific cost, that such cost is subject to annual adjustment each January 1 based on changes in the PPI from the Effective Date to the date of adjustment.

**1.56** “Program” has the meaning given such term in the Recitals.

**1.57** “Program Area” shall mean the entire area of all Participating Cities.

**1.58** “Program Agreement” shall mean the Bay Area Bike Share Program Agreement identified in the Recitals, and also includes any Replacement Agreement.

**1.59** “Program Density” shall mean the distribution of Stations within the Service Area.

**1.60** “Program Density Requirements” shall mean the average target densities specified in Section 17.2.

**1.61** “Prohibited Advertising” shall mean outdoor advertising that is prohibited by local laws, regulations or ordinances of the Participating City.

**1.62** “Public Entity Parties” shall mean MTC and the Participating Cities.

**1.63** “Public Safety Emergency” shall mean an instance when:

**1.63.1** Program Equipment is damaged or in an unsafe state so as to cause an immediate danger to the public; or

**1.63.2** Circumstances or situations immediately surrounding Program Equipment create an imminent danger to the public; or

**1.63.3** The area around a Station becomes unsafe or is required by police department or other emergency responders of a Participating City in order to respond to a natural disaster or avoid a calamity.

**1.64** “Public Works” shall mean all instances where a Participating City (including a utility owned by a Participating City) or its contractors (including any private contractors hired by a Participating City) are undertaking construction, maintenance, repairs or other public improvements.

**1.65** “Regular Annual Member” has the meaning given such term in the Program Agreement.

**1.66** “Regular Annual Membership” has the meaning given such term in the Program Agreement.

**1.67** “Replacement Agreement” has the meaning given such term in the Program Agreement, and, for purposes of this Agreement, also includes a replacement agreement under Section 19.5 of the Program Agreement.

**1.68** “Recognized Lender” has the meaning given such term in the Program Agreement.

**1.69** “Scheduled Phase Completion Date” has the meaning given such term in the Program Agreement.

**1.70** “Scheduled Phase V Plus 90 Days Date ” has the meaning given such term in the Program Agreement.

**1.71** “Security Fund” shall mean the deposit provided by the Operator to MTC prior to installation of the first new Station and as further defined in Section 15 of the Program Agreement.

**1.72** “Service Area” shall mean, as of the date of determination, the portions of the Program Area that are located within 0.25 mile of a Station as measured radially.

**1.73** “Services” shall mean the installation, operation and maintenance of the Stations and the acquisition, placement, maintenance and rental to users of the Bicycles.

**1.74** “Site” shall mean a designated area on publicly or privately owned real property, which area contains a Station that conforms to the Siting Criteria.

**1.75** “Site Permits” shall mean permits for installation of Station-related Equipment at Sites proposed for Stations (other than Installation Scheduling Permits or Special Traffic Permits).

**1.76** “Siting Criteria” shall have the meaning given such term in Section 19.1.

**1.77** “Site Plan” shall mean a scaled plan view of the Site, illustrating existing surface features and proposed improvements and meeting the requirements given such term in Section 18.

**1.78** “Software” shall mean the software and the Equipment it runs on required to operate the Equipment.

**1.79** “Solicitation” has the meaning given such term in Section 32.3.

**1.80** “Special Traffic Permit” shall mean a permit required if installation of Station-related Equipment will interfere with pedestrian, bicycle, transit or vehicular traffic in a material respect. The Special Traffic Permit issued by the San Francisco Municipal Transportation Authority (SFMTA) in accordance with SFMTA’s Regulations for Working in San Francisco Streets is an example of a Special Traffic Permit.

**1.81** “Sponsorship” shall mean an arrangement pursuant to which, in connection with a payment or payments that will be used to help defray the costs of installing or operating the Program, the Person contributing such payment or payments is acknowledged by the parties for such contribution.

**1.82** “Stand-Alone Sponsorship Stand” shall mean a stand-alone element located at each Station the purpose of which is to provide Sponsorship recognition and Wayfinding Elements.

**1.83** “State” means the State of California.

**1.84** “Station” shall mean a Kiosk, map module, a variable number of Docks and, when applicable, Street Treatment(s) and Street Markings, designed in accordance with the functional specifications set forth in Appendix D of the Program Agreement.

**1.85** “Station Locators” shall mean the text-based signage posted on every Station, indicating the location of that Station.

**1.86** “Street Marking(s)” shall mean thermoplastic paint markings and/or striping on the pavement for the express purpose of demarcating a Station.

**1.87** “Street Treatments” shall mean the three-dimensional objects used to demarcate the Station, and protect it from adjacent parking and moving traffic. Such objects may include, but are not limited to, delineators and wheel stops.

**1.88** “Street Treatment Requirements” shall mean a Participating City’s requirements with respect to Street Treatments as set forth in the Siting Criteria for such Participating City.

**1.89** “Term” has the meaning given such term in Section 2.

**1.90** “Title Sponsorship” shall mean Operator’s system-wide Sponsor for the entire Program.

**1.91** “Trips” shall mean the use of a Bicycle from one Station to another Station or back to the initial Station.

**1.92** “Tobacco Advertising” shall mean Advertising or Sponsorship that bears a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product (any substance that contains tobacco, including, but not limited to, cigarettes, cigars, pipe tobacco and chewing tobacco), a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

**1.93** “Underperforming Station” shall mean a Station for which Station Usage is less than 1 trip per Dock per day, excluding days that the Station is Deactivated or temporarily De-Installed.

**1.94** “Wayfinding Elements” shall mean the maps posted on every Station, showing the location of each Station.

## **SECTION 2.0            TERM OF THE AGREEMENT**

**2.1** This Agreement will become effective on the Effective Date and will continue in effect until termination of the Program Agreement and any Replacement Agreement.

## **SECTION 3.0            COSTS**

**3.1** Except as otherwise provided, each party shall bear its own costs in connection with the Program, if such costs are applicable, including, but not limited to, costs incurred in connection with: negotiating this Agreement and the Program Agreement and preparing the Siting Criteria ; Site selection; the review required for issuance of Site Permits, Installation Scheduling Permits, Special Traffic Permits and other permits; Equipment installation; exercising enforcement, inspection and audit rights; prosecuting or defending claims arising from the Program, and marketing, to the extent that MTC and/or the Participating Cities choose to undertake marketing.

**3.2** Except as otherwise provided in Section 3.3, MTC and the Participating Cities shall not be obligated to pay or bear any of the costs associated with or expenses incurred for the Equipment, Software, or Services.

**3.3** Each Participating City may elect, if additional incremental dedicated capital and operating funds becomes available for the Program, to expand the Program within its borders by adding Stations, Docks and Bicycles, provided that such Participating City shall be responsible for securing funds to pay for the cost of purchasing, installing, maintaining and operating the Equipment required for such expansion as set forth in Appendix A.

**3.4** Operator shall reimburse a Participating City for any other work performed by such Participating City under this Agreement in furtherance of the Program, provided that prior to performing such work such Participating City shall notify Operator that such work will be performed at the expense of Operator, such Participating City provides an

itemized invoice for any such work, and Operator is billed for the actual cost incurred by such Participating City without a markup or premium. For San Jose, the cost will be determined based on the then current time and materials fee set forth in the City of San Jose's Public Works Permit Fee schedule. Operator shall pay for such work within 30 days following receipt of the itemized invoice therefor. In connection with the installation of a Station, such other work may include, but is not limited to, (i) any necessary changes to signs, parking meters and curb paint, and (ii) installation of any striping, delineators or parking blocks outside the perimeter of a Station if the foregoing items are not installed by Operator.

## **SECTION 4.0            STEERING COMMITTEE**

**4.1**     MTC and the Participating Cities agree to create and hereby establish a Steering Committee to coordinate the activities of the Program and make decisions regarding its overall operation.

**4.2**     The Steering Committee will consist of one designated representative from MTC, and one designated representative from each of the Participating Cities. Each party with a designated representative shall have the right to change its designated representative upon five (5) days written notice to the other parties. Each party with a designated representative may appoint an alternate representative that will have full voting rights as the representative.

**4.3**     The Steering Committee shall hold such meetings as it deems necessary, which may be called at any reasonable time by any designated representative. A Steering Committee meeting or teleconference cannot be held unless a majority of the designated representatives, or alternates in their absence, are present or available by telephone. Designated representatives and any staff of a party may attend meetings in person or by teleconference. An absent designated representative may vote by giving a written proxy to another designated representative.

**4.4**     The goal of the Steering Committee will be to reach decisions by a unanimous vote. The Steering Committee shall endeavor in good faith to reach consensus in resolving all material matters. However, if a pending decision has been discussed at two Steering Committee meetings without reaching consensus, at the conclusion of the second meeting, the decision will be made by MTC. In addition, if the Steering Committee has been unable to reach consensus on a material matter for 30 days since such matter was brought to the attention of the Steering Committee for any reason, including failure to achieve quorums at scheduled meetings or inability to schedule timely meetings, MTC shall have the right to decide such matter. MTC shall also have the right to make decisions on those matters that MTC reasonably believes are not material or to make decisions after consulting with one or more members of the Steering Committee whose Participating City may be disproportionately (or solely) affected by such decisions. In no event shall MTC have the right to make any of the decisions enumerated in Section 33.

**4.5**     A party shall convey all communications and documents intended for the Steering Committee through that party's designated representative. The Steering

Committee shall convey all communications and documents intended for a party to that party's designated representative.

**4.6** Decisions to be made by Steering Committee shall include, but are not limited to:

**4.6.1** Whether Operator is in Default, under Section 18 of the Program Agreement;

**4.6.2** KPI Adjustments, as described in Section 2.6.2(a) of the Program Agreement;

**4.6.3** Title Sponsorship approval, as described in Section 7.1 of the Program Agreement.

**4.7** All decisions made by the Steering Committee or by MTC in accordance with this Section 4 shall be binding on the Participating Cities.

## **SECTION 5.0      RESPONSIBILITIES OF MTC**

**5.1** MTC shall:

**5.1.1** Serve as the program administrator;

**5.1.2** Organize and facilitate Steering Committee meetings by, for example:

- (a)** Determining designated representative availability for meetings;
- (b)** Providing notice of meetings; and
- (c)** Distributing materials and information as required;

**5.1.3** Serve as the fiscal agent for the program;

**5.1.4** Maintain records of the Program and its operation;

**5.1.5** Provide system data to the Participating Cities; and

**5.1.6** Distribute program revenues.

## **SECTION 6.0      RESPONSIBILITIES OF THE PARTICIPATING CITIES**

**6.1** Each Participating City shall:

**6.1.1** Provide any Site Permits, Installation Scheduling Permits, Special Traffic Permits, and any other necessary permits, leases, licenses or other preferred implementing mechanisms to Operator;



**6.1.2** Within the Participating City's sole discretion, assist with third party leases, licenses or permits within their jurisdiction as needed;

**6.1.3** Notify MTC as permits are completed so that MTC may administer requirements under the Program Agreement;

**6.1.4** Maintain all necessary records and documentation to support the permits and California Environmental Quality Act (CEQA) compliance for Program activities;

**6.1.5** Perform or assist with any required CEQA or environmental reviews as needed;

**6.1.6** Provide MTC semi-annually with a summary of local efforts and activities regarding local bicycle share, which summary shall also include data on efforts made by the Participating Cities to inform the public of the Program, comments made by the public to the Participating Cities on the Program, and the response of the Participating Cities to such comments; and

**6.1.7** Notify MTC and Operator immediately of any public emergencies affecting the bike share program. If the designated representative of a Participating City determines that a Public Safety Emergency exists, such Participating City shall promptly notify Operator's designated representative so that Operator may take such action as such Participating City deems necessary to address such emergency, including, but not limited to, removing, replacing, relocating, reinstalling or locking all or any portion of the Equipment and having repair and restoration work performed.

## **SECTION 7.0      DATA SHARING**

**7.1** MTC shall send to the Participating Cities monthly reports and other data or reports as they are received from Operator pursuant to Section 21.3 of the Program Agreement. MTC may also request data from Operator upon request from the Participating Cities.

**7.2** The Participating Cities shall provide documentation of any Key Performance Indicator (KPI) failures that they wish to report in addition to the measurement tools used, as described in Appendix A of the Program Agreement.

## **SECTION 8.0      REALLOCATION OF EQUIPMENT**

**8.1** Solely for the purposes of this section, the deadline for delivering the required Site Permits or other permits, leases, or licenses to provide for the minimum number of Stations is the Scheduled Phase V Plus 90 Days Date, as defined in Section 8.2.4 of the Program Agreement.

**8.2** If any Participating City fails to deliver the required Site Permits or other permits, leases, or licenses to provide for the minimum number of Stations for their respective city, MTC retains the right to work with Operator to reallocate the amount of

Equipment that has not been timely permitted for installation to another Participating City to avoid the credit described in Section 8.2.4 of the Program Agreement.

## **SECTION 9.0      ACCESS TO THE SECURITY FUND**

**9.1**      MTC and Operator shall have the sole right of access to the Security Fund.

**9.2**      At any time, any Participating City may request that MTC withdraw funds from the Security Fund on the Participating City's behalf for the purposes expressly set forth in the Program Agreement by providing MTC with a written request for the withdrawal and supporting documentation for the request. MTC shall then make the appropriate withdrawal from the Security Fund if permitted by the Program Agreement and transfer the amount directly to the affected party within 90 days. MTC will notify Steering Committee members of its actions.

## **SECTION 10.0      SHARED REVENUE FORMULA**

**10.1**      When revenues are shared between the Public Entity Parties in accordance with Sections 11 and 12 of this Agreement, unless otherwise stated, the revenues shall be split according to the following formula: The share of Docks in each Participating City will count for 70% of the allocation, and the share of Trips in each Participating City will count for 30% of the allocation.

**10.2**      The share of Docks and Trips will be calculated from the monthly reports provided by Operator. The share of Docks will be measured as an average of the number of Docks at the beginning and end of each month in each Participating City. The share of Trips will be measured as a total of the most recent 12 months, beginning with the completion of Phase I.

**10.3**      As an example, a Participating City with 14% of the Program's Docks and 20% of the Program's total Trips would receive 15.8% of the funds that are to be shared among the Participating Cities.

## **SECTION 11.0      LIQUIDATED DAMAGES**

**11.1**      Liquidated damages from KPI violations are payable to MTC from Operator quarterly, based on invoices from MTC and any good faith contests from Operator. Where a KPI failure directly affects one or more Participating Cities but is not Program-wide, MTC will transfer the whole amount of liquidated damages received to the affected Participating Cities. Where a KPI failure is Program-wide, MTC will distribute the funds according to the formula described in Section 10. MTC will calculate liquidated damages following receipt of each monthly report and will share the results at the following Steering Committee meeting. MTC will transfer the amounts to the respective cities within 90 days of receiving liquidated damages from Operator.

## **SECTION 12.0      REVENUE SHARING**

**12.1** Revenue Share, as described in the Program Agreement, is paid to MTC annually when the qualifications are met. If MTC receives revenue from Operator in a given Contract Year, MTC will distribute the revenue according to the following: 20% to MTC for administration of the program, 80% to be split between the Participating Cities according to the formula described in Section 10.

## **SECTION 13.0      INDEMNIFICATION**

**13.1** To the extent Operator is not required to indemnify the Public Entity Parties pursuant to Section 13.2, each Public Entity Party shall indemnify the other Public Entity Parties, their officers, commissioners, agents and employees from and against all claims, injury, suits, demands, liability, losses, and damages (including all costs and expenses in connection therewith), incurred by reason of any negligent or otherwise wrongful act or omission of the indemnifying Public Entity Party, its officers, commissioners, agents, employees, or any of them, under or in connection with this Agreement. The indemnifying Public Entity Party further agrees to defend any and all such actions, suits, or claims arising from the indemnifying Public Entity Party's negligence or otherwise wrongful act or omission and pay all reasonable charges of attorneys and all other costs, expenses, settlements, or judgments arising therefrom or incurred in connection therewith.

**13.2** Operator shall defend, indemnify, and save harmless MTC, the Participating Cities, and their respective commissioners, officers, agencies, departments, agents, and employees (each, an "Indemnified Party"; and collectively, "Indemnified Parties") from and against any and all claims, demands, causes of action, proceedings or lawsuits brought by third-parties ("Claims"), and all losses, damages, liabilities, penalties, fines, forfeitures, costs and expenses arising from or incidental to any Claims (including attorneys' fees and other costs of defense) (collectively, with Claims, "Liabilities"), resulting from, or arising out of, the operation of the Program and the provision of Services, whether such operation or Services is performed or provided by Operator or by Operator's subcontractors or any other person acting for or on behalf of Operator.

**13.3** Notwithstanding the foregoing, the following shall be excluded from Operator's indemnification and defense obligations contained in the preceding paragraph:

**13.3.1** Any Liabilities to the extent resulting from, or arising out of:

- (a) the gross negligence or willful misconduct of any Indemnified Party;
- (b) Operator complying with the written directives or written requirements of a Participating City, if Operator has previously objected to such written directives or requirements in writing, with respect to (A) the location or configuration of any Station in relation to the street or sidewalk on which such Station is located or to which it adjoins, or (B) a Participating City's Street Treatment Requirements; or

(c) the condition of any public property outside of the perimeter of a Station and not otherwise controlled by Operator (and expressly excluding from this clause (c) the condition of the Bicycles or other Equipment).

**13.4** If any Claim against Operator includes claims that are covered by clause (c) above or claims contesting a Participating City's authority to issue a permit for a Station, then each party shall be responsible for its own defense against such claims.

**13.5** Upon receipt by any Indemnified Party of actual notice of a Claim to which such Indemnified Party is entitled to indemnification in accordance with Sections 13.2 and 13.3, such Indemnified Party shall give prompt notice of such Claim to Operator. Operator shall assume and prosecute the defense of such Claim at the sole cost and expense of Operator. Operator may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.

## **SECTION 14.0      OTHER PROVISIONS**

**14.1** Nothing in this Agreement is intended to expand or limit the existing authority of any signatory.

**14.2** This Agreement may not be modified, or the term extended, except by written instrument executed by the Executive Director, his or her designated representative, or the governing body for each of the respective Participating Cities, as appropriate, and Operator.

**14.3** Each party represents and warrants that it has the right, power, and authority to execute this Agreement. Each party represents and warrants that it has given any and all notices, and obtained any and all consents, powers and authorities, necessary to permit it, and the persons executing this Agreement for it, to enter into this Agreement.

**14.4** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

**14.5** Subject to the requirement that disputes be addressed in accordance with the Dispute Resolution Process, each party hereby irrevocably submits to the jurisdiction of any State or federal court sitting in San Francisco County, California, over any suit, action or proceeding arising out of or relating to this Agreement. Each party hereby irrevocably waives, to the fullest extent permitted by law, any objection it may now or hereafter have to such venue as being an inconvenient forum. Notwithstanding the foregoing, with respect to any dispute arising out of or relating to this Agreement in which the sole parties are and remain San Jose and Operator, each such party hereby irrevocably submits to the jurisdiction of any State or federal court sitting in Santa Clara County, California.

**14.6** Should any party employ an attorney for the purpose of enforcing or construing this Agreement, or any judgment based on this Agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, including but

not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding. The “prevailing party” means the party in whose favor a judgment, decree, or final order is rendered.

**14.7** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. This Agreement shall be binding upon the receipt of facsimile or scanned signatures.

**14.8** If any provision of this Agreement is deemed invalid or unenforceable, the balance of this Agreement shall remain in full force and effect.

**14.9** This Agreement is not intended for the benefit of any person or entity not a signatory to this Agreement and is not enforceable by any third party, subject to Section 35.1 with respect to a Recognized Lender.

**14.10** Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled, and shall apply to all parties’ respective successors and assigns.

## **SECTION 15.0      NOTICES**

**15.1** All notices, demand, requests or reports under this Agreement shall be in writing and shall be sufficiently given if sent by registered or certified mail, return receipt requested, by electronic mail (email), by overnight mail, or by personal delivery, in each case to the address listed below, or to such other location or person as any party may designate in writing from time to time by sending a notice to the other parties in accordance with this Section 15.1. Any notice, demand or request shall be deemed given on the date of receipt or rejection by the intended recipient.

To MTC:

Metropolitan Transportation Commission  
Joseph P. Bort MetroCenter,  
Oakland, CA 94607-470  
Attention: Executive Director  
Email: [SHeminger@mtc.ca.gov](mailto:SHeminger@mtc.ca.gov)  
Attention: General Counsel:  
Email: [AWeil@mtc.ca.gov](mailto:AWeil@mtc.ca.gov)  
Attention: Designated Representative  
Email: [KMulder@mtc.ca.gov](mailto:KMulder@mtc.ca.gov)

To THE CITY OF BERKELEY:

Transportation Division Manager  
City of Berkeley  
Department of Public Works

2180 Milvia Street  
Berkeley, CA 94704  
Email: [transportation@cityofberkeley.info](mailto:transportation@cityofberkeley.info)

To THE CITY OF EMERYVILLE:

Director of Public Works  
City of Emeryville  
1333 Park Avenue  
Emeryville, CA 94608  
Email: [\_\_\_\_\_]

To THE CITY OF OAKLAND:

Carlos Hernandez  
City of Oakland  
250 Frank Ogawa Plaza  
Suite 4344  
Oakland, CA 94612  
Email: [chernandez@oaklandnet.com](mailto:chernandez@oaklandnet.com)

To SFMTA:

Heath Maddox  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103  
Email: [heath.maddox@sfmta.com](mailto:heath.maddox@sfmta.com)

To THE CITY OF SAN JOSE:

Paul Smith, Deputy Director  
Department of Transportation  
City of San Jose  
200 East Santa Clara Street, 8<sup>th</sup> Floor  
San Jose, CA 95113  
Email: [paul.smith@sanjoseca.gov](mailto:paul.smith@sanjoseca.gov)

To OPERATOR, as Operator of the Bay Area Bike Share Program:

Bay Area Motivate, LLC  
5202 Third Avenue  
Brooklyn, New York 11220  
Attention: Jay Walder, President and CEO  
Email: [jaywalder@motivateco.com](mailto:jaywalder@motivateco.com)  
Attention: Justine Lee, Vice President and General Counsel  
Email: [justinelee@motivateco.com](mailto:justinelee@motivateco.com)

Bay Area Motivate, LLC  
2200 Jerrold Avenue, Unit J  
San Francisco, California 94124  
Attention: Emily Stapleton, General Manager and Designated Representative  
Email: emilystapleton@motivateco.com

## **SECTION 16.0      PERMITTING PROCESS**

**16.1** Within 15 business days of the Effective Date, Operator will meet with appropriate permitting staff of each Participating City to finalize the process for permit review and issuance, and provide an estimate of the time needed to obtain such permits.

**16.2** This process will specify each Participating City's requirements for submitting applications for Site Permits, Installation Scheduling Permits and Special Traffic Permits, including drawings, photos, surveying and required paperwork.

**16.3** Operator will hire an outside planning and siting firm familiar with each Participating City to assist with the permitting process and reduce workload on the staff of the Participating City. Operator will solicit input from the Participating City to identify suitable consultants.

**16.4** If staff time exceeds estimates of the time needed to review applications for the issuance of permits, due to errors or omissions by Operator or its contractors in its submissions, Operator will reimburse each Participating City for reasonable and documented direct staff time in excess of such estimates to the extent arising from such errors and omissions, as follows:

**16.4.1** In Berkeley, staff time shall be reimbursed at the then current rate set forth in the City of Berkeley Master Fee Schedule. Such fee, as of the Effective Date, is \$160 per hour.

**16.4.2** In Emeryville, staff time shall be reimbursed at \$125 per hour.

**16.4.3** In Oakland, staff time shall be reimbursed at \$190 per hour.

**16.4.4** In San Jose, staff time shall be reimbursed at the then current time and materials fee set forth in the City of San Jose's Public Works Permit Fee schedule. Such fee, as of the Effective Date, is \$120 per hour.

**16.4.5** In San Francisco, staff time shall be reimbursed at \$150 per hour, subject to 3% annual increases effective January 1, 2017 and on each anniversary date thereof.

For purposes of this Section 16.4, the rejection of a permit application because of political, local or community opposition to a Site does not constitute an error or omission by Operator or its contractor, and Operator will not be responsible for the cost of staff time attributable to such rejection. If a Participating City intends to charge Operator for the cost of staff time pursuant to this provision, such Participating City shall provide Operator with a detailed accounting of the time to be charged to Operator.

**16.5** No permitting fees for Site Permits, Installation Scheduling Permits, Special Traffic Permits or other permits will be charged to the Operator for initial installations of Stations, except in Berkeley, Operator shall pay \$200 per Station, and in Emeryville, Operator shall pay \$250 per Station. In addition, permitting fees may be charged for Sites located on the property of the San Francisco Recreation & Parks Department and the Port of San Francisco.

**16.6** Permit fees do not apply to Deactivations, De-Installations, reinstallations or relocations requested by utilities, the Participating City or other public agencies. For requests for Station moves by special events or private companies, Operator can request reimbursement for Operator's fees from the sponsor of a special event or such private company.

**16.7** Nothing in this Agreement shall be construed as a waiver of any local law, rule or regulation of each Participating City or of each Participating City's right to require Operator to secure the appropriate permits or authorizations for Equipment installation on public sites.

**16.8** Delays in Approval: The following constitute delay ("Participating City Delay") for which Operator is entitled to an extension in the Agreed Site Permit Submission Dates and the Agreed Completion Dates:

**16.8.1** Identification of Sites. If, notwithstanding fulfillment of Operator's obligations under this Agreement regarding community engagement, field work and outreach, Operator fails to identify, by a date that is not less than 2 months prior to the Agreed Site Permit Submission Date for a Phase, 75% of the Sites required for such Phase, such Sites being both viable and acceptable to the Participating Cities and the applicable communities, or Operator fails to identify, by a date that is not less than 1 month prior to such Agreed Site Permit Submission Date, the remaining 25% of the Sites required for such Phase, such Sites being both viable and acceptable to the Participating Cities and the applicable communities, then such Agreed Site Permit Submission Date shall be extended by any reasonably necessary additional period required by Operator to identify a sufficient number of viable and acceptable Sites for such Phase.

**16.8.2** Issuance of Site Permits. If Operator timely submits complete applications for the Site Permits for any Phase by the applicable Agreed Site Permit Submission Date but the Participating Cities fail to issue Site Permits for 75% of the Stations by the date that is 3 months prior to the Scheduled Phase Completion Date for such Phase other than on account of errors or omissions by Operator or valid reasons for denial, then such failure shall constitute Participating City Delay and Operator shall have the right to delay submission of applications for Site Permits for the next following Phase until a reasonable period after the Participating Cities issue Site Permits for 75% of the Stations for such Phase.

**16.8.3** Installation Scheduling Permits. If the period of time for the Participating Cities to issue Installation Scheduling Permits exceeds, on average, 7 days after final submission of the required materials by Operator, or if more than 25% of the Installation Scheduling Permits are issued 14 days or longer after final submission of the required materials, other than on



account of errors or omissions by Operator or valid reasons for denial, then the Agreed Completion Dates shall be extended to reflect any reasonably necessary additional period required by Operator to complete the Phases.

## **SECTION 17.0      PLANNING CRITERIA**

**17.1** The minimum number of Bicycles and the minimum number of Stations in each Participating City is as follows:

**17.1.1** Berkeley: Bicycles-400; Stations-37

**17.1.2** Emeryville: Bicycles-100; Stations-10

**17.1.3** Oakland: Bicycles-850; Stations-70

**17.1.4** San Francisco: Bicycles-4,500; Stations-320

**17.1.5** San Jose: Bicycles-1,000; Stations-80

**17.2** Except as set forth in Sections 17.2.1 and 17.2.2, the target density within each Participating City is an average of 12 Stations per square mile within the Service Area. Except as set forth in Section 17.2.1, Operator may elect in its sole discretion to increase the number of Stations per square mile in certain areas.

**17.2.1** In Berkeley, the target density is an average of 12 Stations per square mile within the Service Area, with the density ranging to a maximum of 16 Stations per square mile within the Service Area.

**17.2.2** In San Francisco, the target density is an average of 20 stations per square mile within the Service Area.

**17.3** All Stations shall be located within the current Program Area, unless otherwise agreed to in writing by Operator and each Participating City.

**17.4** Operator shall locate not less than 20% of Stations in each Participating City within Communities of Concern located within such Participating City or within other areas designated by such Participating City in lieu of Communities of Concern (the “Community of Concern Requirement”).

**17.4.1** Operator shall locate Stations within all 7 distinct Communities of Concern located in San Francisco.

**17.4.2** Emeryville hereby designates the Transit Hub Overlay of the General Plan Land Use Map in Emeryville as an area in lieu of Communities of Concern.

**17.5** No Station shall be more than 0.5 mile from another Station as measured radially, except for variations in distance arising from Section 17.8.

**17.6** Operator shall utilize both each Participating City's demand analysis heretofore performed by each Participating City and the demand analysis performed by Operator's consultant as a basis to determine Station sizes. Site locations will be prioritized based on demand (i.e., the anticipated usage of Bicycles located at such Site).

**17.7** All Station sites on public property owned or controlled by a Participating City shall be subject to the approval of such Participating City.

**17.8** If in accordance with the foregoing target densities and the Siting Criteria Operator selects a Site that is rejected by a Participating City, then Operator will propose 3 alternative Sites within 1,000 feet of the rejected Site. If such Participating City rejects the 3 alternative Sites, then such Participating City will propose a viable alternative Site within 1,000 feet of the initial rejected Site.

**17.9** In order to be counted toward Program Density Requirements, a Station must:

**17.9.1** Have 12 or more Docks;

**17.9.2** Be accessible to the public 24 hours per day, 365 days per year, except in cases of special events or temporary construction; and, by mutual agreement of a Participating City and Operator, Stations may be located in areas with less than 24 hour per day, 365 days per year access;

**17.9.3** Be located on sidewalks, streets, parks, other Participating City-owned property, other public property owned by public agencies or other public entities other than each Participating City, or private property; and

**17.9.4** Have a Dock to Bicycle ratio of at least 1.7:1 (which ratio is measured on a Program-wide basis).

**17.10** A Bicycle stationed at a Station meeting the above-requirements will count toward Bicycle Fleet Level requirements.

**17.11** Operator shall cooperate with each Participating City to produce Wayfinding Elements and Station Locators for Station Kiosks. Operator shall bear production, printing and installation costs for these elements. Wayfinding maps shall include maps of each Participating City's bicycle network.

**17.12** Nothing in this Agreement shall restrict the right of Operator to enter into an agreement with the owner of private property, on terms mutually acceptable to Operator and such owner, to locate a Station on such owner's property. Any Station located on private property shall not constitute a Station for purposes of Sections 17.1 to 17.11 unless such Station meets the requirements of Section 17.9, in which event such Station shall constitute a Station for purposes of Sections 17.1 to 17.4 and 17.9 to 17.11.

## **SECTION 18.0      SITE PLANS ON PUBLIC PROPERTY**

**18.1** In connection with the submission of an application for a Site Permit for a Site on public property, Operator shall provide photographs of such Site along with a Site Plan for approval by the applicable Participating City. No Station on public property may be installed, re-installed or adjusted absent approval by the applicable Participating City of the Site Plan for such Station.

**18.2** A Site Plan for Stations on public property shall conform with all elements and dimensions relevant to the Siting Criteria including but not limited to Street Treatment Requirements, relevant utilities, doorways, street and sidewalk widths and obstructions, building numbers and amenities. All Site Plans shall be prepared to scale and must be signed by a California-licensed engineer or architect.

**18.3** All work on public property must conform to the Site Plan approved in connection with the issuance of a Site Permit.

**18.4** In the event that changes to the Site Plan as so approved are required at the time of installation or Adjustment, Operator shall obtain approval from the applicable Participating City for the necessary changes prior to such installation or Adjustment and provide such Participating City with an updated Site Plan reflective of the Station's actual, installed condition within 30 days of such installation or Adjustment.

**18.5** Operator shall schedule and complete Station installation, De-Installation, relocation, Re-installation or Adjustment upon receipt of permits and direction from each Participating City and within the relevant timeframes as specified in Appendix A of the Program Agreement.

## **SECTION 19.0      SITING CRITERIA**

**19.1** On or prior to the Effective Date, each Participating City shall deliver to Operator the criteria for siting Stations in such Participating City (the "Siting Criteria"), which shall include Street Treatment Requirements of such Participating City. Each Participating City has the right to amend its Siting Criteria, provided that a Participating City shall give Operator not less than 60 days' notice prior to the effective date of any such amendment, and no such amendment shall apply retroactively to Stations that have theretofore been installed.

**19.2** In Berkeley, if Stations occupy more than 20 metered parking spaces in the aggregate, Operator will pay Berkeley for the loss of parking meter revenue for all metered spaces occupied by Stations beyond 20 metered spaces.

## **SECTION 20.0      PROGRAM AREA SITE SELECTION PROCESS**

**20.1** Operator shall work with each Participating City to apply its Siting Criteria. Operator shall survey the Program Area using the Siting Criteria to identify viable Station locations.

**20.2** Operator will hire, at Operator's own expense, a community relations firm to assist Operator in organizing and hosting community meetings and in conducting outreach to community groups, residents and businesses within affected localities. Each Participating City shall designate a representative to coordinate the respective Participating City's community engagement efforts and the permitting process. The cost of any coordination or participation by a Participating City in community outreach shall be borne by such Participating City. Operator shall keep each such representative informed with respect to Operator's outreach activities. Operator shall make staff available to represent itself and to assist each Participating City during any informal or formal public review processes, including presentations to community groups or any public hearings. Each Participating City and Operator shall agree upon a clear process for Site selection and community outreach that may include, but is not limited to:

**20.2.1** Briefings for elected officials, community boards, business improvement districts ("BIDs"), and other community organizations and stakeholders;

**20.2.2** Open houses, informational forums, or equipment demonstrations;

**20.2.3** Online crowd sourcing tool to collect input on the Program and Station locations;

**20.2.4** Receipt of written input from stakeholders;

**20.2.5** Presentations to relevant stakeholders including, but not limited to BIDs, elected officials, civic and community organizations, large property holders, block associations, city agencies, and public authorities, of all technically viable vetted Station location options;

**20.2.6** Community workshops to provide education about the program and hand-on forums for the public to discuss and suggest Station sites;

**20.2.7** Receipt of detailed feedback on potential Station Sites from all stakeholders;

**20.2.8** Planning work to synthesize input for all sources;

**20.2.9** Presentations and briefings to stakeholders on draft final Station Site Plans;

**20.2.10** Postings online by Operator of draft final and final Station Site Plans; and

**20.2.11** Site-specific in-person notification.

## **SECTION 21.0      AD-HOC SITE SELECTION PROCESS**

**21.1** Ad-Hoc Station siting may be required in, but not limited to, the following situations:

**21.1.1** Temporary Station De-Installation for a period of longer than 15 business days requiring a replacement Station location to be selected for Re-Installation.

**21.1.2** Permanent Station relocation.

**21.1.3** Infill to address unmet demand or to address a request of the community or a Participating City.

**21.2** Each Participating City and Operator shall agree upon a clear process of ad-hoc Station siting and selection. This process will include the Participating City and Operator convening regularly scheduled meetings to discuss De-Installations, Re-Installations, Adjustments, and Infill. These meetings will include, but will not be limited to, a review of all available sites in the area where ad-hoc siting is occurring.

**21.2.1** If the ad-hoc Site selection process is initiated in response to an Operator request to permanently relocate a Station, Operator shall:

(a) Produce metrics to assess Station productivity. Metrics may include, but are not limited to overall Program Density and geographic extent, Station Usage, maintenance reports, and history of public comments; and

(b) Provide the Participating City with a minimum of 3 months of metric data and any resulting analysis supporting the proposed Station relocation.

**21.3** Ad-Hoc Stations count toward meeting Program Density Requirements.

## **SECTION 22.0 CONSTRUCTION AND TECHNICAL REQUIREMENTS**

**22.1** Operator shall have displayed (a) on each Station and each Bicycle within the Program Area, a unique identifying number that shall be tracked by Operator and made available to MTC and the Participating Cities, and (b) on the handlebars of each Bicycle within the Program Area, safety instructions, including bicycle rules.

**22.2** During installation of a Station, Operator shall undertake appropriate efforts, in conformance with all applicable rules and regulations, to insure safety and to prevent accidents at its work sites, including, if necessary, the placing and maintenance of proper guards, fences, barricades, security personnel and bollards at the curb and suitable and sufficient lighting.

**22.3** Operator shall provide, install and maintain, during the installation of a Station, appropriate traffic markings and devices as may be reasonably required by the Participating Cities for on-street locations pursuant to this Agreement.

**22.4** Operator shall participate in the Underground Service Alerts program (<http://usanorth811.org>) to automatically get alerts when utilities are doing work that may affect the Stations.

**22.5** All traffic control, warning and guidance devices employed by the Operator during Station installation must conform to the California Manual on Uniform Traffic Control Devices (MUTCD). Operator is further responsible for complying with all applicable city, state, and federal codes, rules and regulations.

**22.6** In San Francisco, for all Station installations, Operator should follow the rules and guidance detailed in SFMTA's Regulations for Working in San Francisco Streets (the Blue Book), interfering as little as possible with pedestrian, bicycle, transit and vehicular traffic. For Station installations that cannot be accomplished in compliance with the Blue Book, Operator will need to apply to the SFMTA for a Special Traffic Permit.

### **SECTION 23.0 STATION DEACTIVATION, DE-INSTALLATION, REINSTALLATION AND ADJUSTMENT**

**23.1** All Station Deactivations, De-Installations, reinstallations and Adjustments shall meet the requirements of this Agreement, unless otherwise agreed to in writing by Operator and each Participating City.

**23.2** Operator shall perform Station Deactivations, De-Installations, reinstallations and Adjustments to accommodate changing conditions, as instructed by each Participating City or, in the event of requests by third parties to Operator, upon a Participating City's approval.

**23.3** Operator shall not perform any Station Deactivations, De-Installations, reinstallations and Adjustments without a Participating City's prior approval.

**23.4** Operator shall have the right to relocate Underperforming Stations so long as Operator notifies the applicable Participating City of the intended relocation, obtains a permit for the new location and complies with the Community of Concern Requirement after giving effect to any relocation.

**23.5** Operator may charge a fee for certain types of Station Deactivations, De-Installations, reinstallations, Adjustments and temporary relocations in accordance with a fee schedule to be maintained by Operator in accordance with Section 24.1.

**23.6** Participating City Discretionary Requests:

**23.6.1** If a Participating City finds that the location of a newly installed Station is unsuitable, the Participating City may, within 30 days of the Station's installation, request that the Station be relocated at Operator's cost.

**23.6.2** For Discretionary Requests made after 30 days following installation of a Station, a Participating City shall pay Operator in accordance with the fee schedule to be maintained by Operator in accordance with Section 24.1. However, during the Term, each Participating City will have the right to require Operator to relocate 10% of the number of Stations installed within such Participating City without paying Operator such fee, net of any prior Station relocations performed without reimbursing Operator, except Emeryville has the right to relocate 3 Stations without paying such fee to Operator. For example, if a Participating

City has 100 installed Stations, then the Participating City has a total of 10 Station relocations without cost to the Participating City, net of any prior Station relocations without cost to the Participating City. If the number of installed Stations increases to 200, then the Participating City has a total of 20 Station relocations without cost to the Participating City. For any additional Station relocations performed at the request of a Participating City, the Participating City will be charged a fee in accordance with such fee schedule for implementing the relocation.

**23.7** Operator, after consulting with each Participating City at Operator's request, shall conduct all necessary planning, design, and outreach prior any De-Installation, reinstallation or Adjustment.

**23.8** Operator, after consulting with each Participating City, at Operator's request, shall conduct Site-specific outreach prior to any De-Installation, reinstallation or Adjustment. Such outreach shall include, for example, but is not limited to:

**23.8.1** Properties fronting to the Station location – outreach shall be made in-person to storefronts, and in-person or via telephone to property management/ownership; and

**23.8.2** Relevant elected officials, BIDs, and community groups – outreach shall be made via letter, email, telephone, or in person.

**23.9** Nothing in this Agreement shall be construed as a waiver or release of the rights of each Participating City in and to the property of each Participating City. In the event that all or part of the property of a Participating City is eliminated, discontinued, closed or de-mapped, any use of such property as a Station location shall cease upon the effective date of such elimination, discontinuance, closing or demapping, unless Operator can obtain the right to continue to use such site from any private owner of such property.

## **SECTION 24.0      FEES**

**24.1** Operator shall maintain a fee schedule for Deactivations, De-Installations, reinstallations, Adjustments and temporary relocations. The fee for Deactivation shall cover the cost of relocating the Station on a temporary basis and of reactivating the Station. The fee for Station De-installation shall cover the cost of relocating the Station on a temporary basis and the cost of reinstalling the Station. The fee schedule provides for CPI Adjustment. Operator shall provide the fee schedule to Participating Cities within five business days of any update.

**24.2** Operator may charge the following parties for Deactivations, Station De-Installations and Station Adjustments:

**24.2.1** Private property owners and their contractors;

**24.2.2** Contractors performing non-emergency work on public property (excluding contractors performing Public Works, which is covered in Section 24.3.1);

**24.2.3** Event producers or organizers of For Profit and Political Special Events (for which Participating Cities will have no responsibility for billing or collecting fees);

**24.2.4** A Participating City for Discretionary Requests by such Participating that exceed the cap for such Participating City set forth in Section 23.6.2.

**24.3** Operator may not charge fees for Station Deactivations, Station De-Installations and Station Adjustments related to:

**24.3.1** Public Works;

**24.3.2** Other Special Events;

**24.3.3** Public Safety Emergencies;

**24.3.4** Discretionary Requests by a Participating City that do not exceed the cap for such Participating City set forth in Section 23.6.2; or

**24.3.5** A relocation of a Station at the election of Operator.

**24.4** Operator shall be solely responsible for charging and collecting fees for Station Deactivation, Station De-Installation and Station Adjustments from the requesting parties.

**24.5** Operator shall perform Station Deactivations, Station De-Installations and Station Adjustments as directed by each Participating City in accordance with the timeframes in Appendix A of the Program Agreement, regardless of whether it has received payment for such work, except in the case of private property owners and their contractors.

**24.6** To the extent practical, each Participating City shall include information about the fee schedule and how to contact Operator on all relevant event and construction permits.

## **SECTION 25.0      NOTIFICATIONS**

**25.1** By the 15<sup>th</sup> of the month, each Participating City will provide a proposed schedule for all instances during the next month where Station Deactivation, Station De-Installation or Station Adjustment will be required.

**25.2** Operator must acknowledge the schedule, in writing, with its plans for each instance at least 4 days before the action occurs.

## **SECTION 26.0      DEACTIVATIONS**

**26.1** Station Deactivations may be done on a temporary basis.

**26.2** Operator shall complete Station Deactivations at least 2 hours before event set-up or work begins.

**26.3** Operator shall reactivate a Station within 24 hours after the event or work ends. Station Deactivations for Public Safety Emergencies shall be reactivated within 72



hours after the end of the emergency condition, as determined by the affected Participating City or Cities.

**26.4** Unless agreed to in writing by the Participating City, Operator shall reactivate a Station in the original location and configuration.

**26.5** Deactivation may require the removal of all Street Treatments as specified by the Participating City.

## **SECTION 27.0      DE-INSTALLATIONS**

**27.1** Station De-Installations may be performed at a specific location on either a temporary or permanent basis.

**27.2** Operator shall complete Station De-Installations in accordance with the timeframe set forth in Appendix A of the Program Agreement, unless otherwise instructed by the Participating City.

**27.3** For all temporary Station De-Installations, Operator shall remove all Street Treatments, but not Street Markings, unless otherwise instructed by the Participating City.

**27.4** For all permanent Station De-Installations, Operator shall remove all Street Treatments, but not Street Markings, unless otherwise instructed by the Participating City. All De-Installations shall include general clean-up at the Station site, including the removal of debris generated by the removal of Street Treatments and Equipment.

**27.5** Operator shall reinstall the Station(s) within 72 hours of the conclusion of the event or work. The time allotted for Station reinstallations may be increased to more than 72 hours, upon request to the Participating City if the Station(s) are Underperforming Stations.

**27.6** Unless agreed to in writing by the Participating City, Operator shall reinstall the Station(s) in the original location and configuration.

**27.7** Whenever Station De-Installations are done to accommodate work or events that are expected to last longer than 2 weeks, Operator shall temporarily reinstall the Station(s) in a new, approved location unless the Participating City provides otherwise in writing.

**27.7.1** The Participating City shall approve the new Station site not less than 48-hours prior to the scheduled Station De-Installation.

**27.7.2** Operator shall temporarily reinstall a Station in a new, approved location within 72 hours of Station De-Installation.

**27.7.3** The time allotted for Station reinstallation may be increased to more than 72 hours, upon request to the Participating City, if a Station is an Underperforming Station.

**27.8** Operator shall provide resources for creation, printing and installation of new Wayfinding Elements and Station Locators for temporary or permanent Station reinstallations in new location(s) with a planned duration greater than 120 days.

**27.9** Operator shall install all Street Treatments within 5 business days of the Station reinstallation.

**27.10** Operator shall install all Street Markings if it is estimated that a Station will be in the new location for longer than 4 months.

**27.11** To the best of its ability, each Participating City shall expedite all permitting for Station reinstallation.

**27.12** In cases of temporary Station De-Installations for Participating City paving work which are reinstalled in their original locations, the Participating City, at its cost, shall replace all approved Street Markings, provided that full, complete, accurate site drawings are provided to the Participating City for approval at least 5 business days prior to Station De-Installation (which condition will have been satisfied if accurate Site Plans were submitted in connection with the Site Permit application).

**27.13** For permanent, non- emergency Station reinstallations in a new location, Operator is required to follow the regular permitting process (i.e., the submission of applications, review, notice and hearings, as applicable), except each Participating City shall, to the best of its ability, expedite all permitting for Station reinstallation.

**27.14** For temporary Station relocations of up to 90 days (e.g., to accommodate events or short construction projects), Operator may move Station without following the regular permitting process as long as the event promoter or contractor includes the temporary occupancy of the Station at the new location in the event or construction permit.

**27.15** For temporary Station relocations of 90 days or longer (e.g., to accommodate major construction projects), Operator shall follow the same process described in Section 27.14 to allow for a short-term relocation and then complete the regular permitting process *ex post facto* for the longer term but temporary relocation .

## **SECTION 28.0      ADJUSTMENTS**

**28.1** Station Adjustments may be performed on either a temporary or permanent basis.

**28.2** Station Adjustments shall not result in reductions in or conflicts with Program operability.

**28.3** Operator shall conduct all necessary planning work and outreach prior to making any Station Adjustments. All Station Adjustments are subject to Participating City approval.

**28.4** Participating Cities and Operator shall agree upon a clear process for determining Station Adjustments in compliance with local law. Part of the process will include the Participating Cities and Operator convening regularly scheduled meetings to discuss Station De-Installations, Station reinstallations, Station Adjustments and Infill.

**28.5** For all Station Adjustments:

**28.5.1** Operator shall adjust Street Treatments as necessary to accommodate the new size or configuration within 10 business days of the Station Adjustment.

**28.5.2** Operator shall adjust all Street Markings within 10 business days of the Station Adjustment if it is estimated that the Station will be in the new configuration or size for longer than 4 months.

## **SECTION 29.0      ADVERTISING AND SPONSORSHIP**

**29.1** In consideration of Operator's performance of its obligations under this Agreement, MTC and the Participating Cities hereby grant to Operator the exclusive right throughout the Term, subject to the specifications, terms, reservations and restrictions of this Agreement and to the extent consistent with local law and any applicable advertising restrictions under existing contracts to which a Participating City is bound, (i) to sell and place Advertising and Sponsorship acknowledgments on the Equipment in the Program Area, for the purpose of publicly identifying and associating the Program with one or more Sponsors, and (ii) to collect all revenues generated by such Advertising and Sponsorship activities. Notwithstanding anything to the contrary herein, the effectiveness of the grant of exclusive rights contained in the preceding portion of this Section 29.1 by the City of Oakland, and the grant to Operator of any right to advertise in the public rights-of-way of the City of Oakland, are subject to the adoption by the Council of the City of Oakland of a franchise ordinance pursuant to Article X-Section 1000 of the City Charter of the City of Oakland.

**29.2** Subject to applicable local law, advertising restrictions, and zoning regulations for the Participating City, Operator may install at each Station electronic media (including LCD panels) for public information about the Program, electronic Advertising and Sponsorship acknowledgments (it being noted that use of electronic media, including LCD panels, is specifically subject to Sections 29.7.1 and 29.7.4).

**29.3** Backlighting of printed posters shall be permitted, subject to applicable local law, advertising restrictions, and zoning regulations for the Participating City for property adjacent to the Site (it being noted that use of backlighting is specifically subject to Section 29.7.1).

**29.4** If any material displayed or placed in violation of any provision of this Section 29 is not removed by Operator within 24 hours of notice from MTC or a Participating City, the Participating City shall have the right to remove such material and Operator shall pay to the Participating City all reasonable costs incurred in connection with such removal.

**29.5** General Restrictions on Advertising and Sponsorship applicable to all Participating Cities:

**29.5.1** Operator shall not install, or permit to be installed, on any Equipment, any Tobacco Advertising, Alcohol Advertising, Firearms Advertising or other Prohibited Advertising. Advertising on any Equipment, including electronic media, shall be consistent with guidelines adopted by each Participating City for outdoor advertising as set forth in this Agreement. Operator shall not place any Advertising or Sponsorship acknowledgment matter that is indecent, in obvious bad taste, or demonstrates a lack of respect for public morals or conduct. (The prohibitions and restrictions in Section 29 are referred to collectively as the “Advertising Restrictions”.)

**29.5.2** Operator shall comply with all applicable laws, rules and regulations in force as of the Effective Date and which may hereafter be adopted, to the extent not grandfathered under the law, with respect to Advertising and Sponsorship.

**29.6** Content-related restrictions on Advertising for Berkeley, Oakland and Emeryville:

**29.6.1** Berkeley: Prohibited Advertising in Berkeley includes:

- (a) Advertisements for or promoting the use of tobacco products.
- (b) Advertisements for or promoting the use of alcoholic beverages.
- (c) Any sign depicting physical violence against any person or animal
- (d) Advertising which depicts violence, anti-social behavior or related to illegal behavior.
- (e) Advertising which holds up an individual or groups of people to public ridicule, derision or defames any individual or group, including but not limited to a person’s race, religion, ethnicity, or sexual orientation.
- (f) Advertising which promotes the sale or use of firearms.
- (g) Any display containing any of the following:
- (h) Any statements or words describing explicit sexual acts, sexual organs, or excrement.
- (i) Any nudity (picture or illustration) showing genitals, pubic hair, perineum, anuses, or anal regions of any person or animal, or any portion of the breast, at or below the areola thereof, of any female person.

(j) Explicit sexual acts, including depictions of sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, masturbation or lewd exhibition of the genitals, whether any of the above conduct is depicted or described as being performed among or between members of the same or opposite sex or between humans and animals, or other acts involving any physical contact with a person or animals' genitals, pubic region, pubic hair, perineum, anus, or anal region.

(k) Any display specifically prohibited by law or order of any court of competent jurisdiction.

(l) Any Advertising prohibited by the City Manager of Berkeley.

**29.6.2 Oakland: Prohibited Advertising in Oakland includes:**

(a) Advertising promoting the sale of alcohol, guns/firearms or tobacco.

(b) Advertisements that are known to the Operator to be false, misleading or deceptive; clearly defamatory; obscene or pornographic according to local community standards; in advocacy of unlawful violent action; or all or any combination of the foregoing.

**29.6.3 Emeryville: Prohibited Advertising in Emeryville includes:**

(a) Advertising promoting the sale of alcohol, guns/firearms/ammunition or tobacco.

(b) Advertisements for or promoting the use of alcoholic beverages.

(c) Explicit sexual acts, including depictions of sexual intercourse, oral copulation, anal intercourse, oral-anal copulation, masturbation or lewd exhibition of the genitals.

(d) Any display specifically prohibited by law or order of any court of competent jurisdiction.

**29.7 Advertising Restrictions applicable to Berkeley, San Francisco, San Jose and Emeryville:**

**29.7.1 Berkeley:** Electronic or LCD panels may not be used for Advertising or Sponsorship acknowledgments; and backlighting of printed posters may not be done on blocks zoned exclusively for residential use.

**29.7.2 Berkeley:** Upon written request by the City Manager of Berkeley to Operator, the City Manager of Berkeley has the right to review and approve of Advertising in advance of their placement at each Station.

**29.7.3 San Francisco:** Any Advertising in the public right-of-way, which is subject to the San Francisco’s approval and conformance with local law.

**29.7.4 San Jose:** Advertising in the public right-of-way is prohibited.

**29.7.5 Emeryville:**

(a) Advertising in any public right-of-way is prohibited.

(b) The City Manager has the right to review and approve Sponsorship acknowledgements in advance of their placement.

(c) In Emeryville, the phrase “Sponsored by (name of Sponsor)” must be used, unless the name of the Sponsor is apparent from the logo or other graphics, in which case, only the words, “Sponsored by” may be used.

(d) Electronic or LCD panels may not be used for Sponsorship acknowledgements, and may only be used for information about the status of bike share facilities. A dimmer switch shall be installed as part of all illuminated sign installations, and the signs shall be dimmed to the satisfaction of the Director of Community Development if the Director determines the illumination to be too bright. Backlighting is prohibited in residential zones, as defined in the City’s Municipal Code.

**29.8 Advertising and Sponsorship Recognition Restrictions applicable to Specific Equipment:**

**29.8.1 Stand-Alone Sponsorship Stand:** Each Station shall have a Stand-Alone Sponsorship Stand having 2 Sponsorship Panels. Each Stand-Alone Sponsorship Stand shall be no higher than 84 inches and each Sponsorship Panel shall be no wider than 42 inches. On one Sponsorship Panel, there will be Wayfinding Elements. On the other Sponsorship Panel, Operator may:

(a) Install Sponsorship recognition, which may be static or digital as long as it complies with local regulations.

(b) San Jose: no commercial Advertising shall be installed on Sponsorship Stand.

(c) San Francisco: the Stand-Alone Sponsorship Stand shall not include any Advertising .

(d) Berkeley: the Stand-Alone Sponsorship Stand may not be digital.

(e) Emeryville: the Stand-Alone Sponsorship Stand shall not be digital and shall not include any Advertising.

**29.8.2 Kiosks:** Each Station shall have one Kiosk. For each Kiosk, Operator may:

- (a) Install Sponsorship recognition graphics.
- (b) San Jose: no commercial Advertising shall be installed on Kiosks or Kiosk panels.
- (c) San Francisco: the Kiosk panel shall not provide any Advertising .
- (d) Berkeley: the Kiosk panel may not be digital.
- (e) Emeryville: the Kiosk may not contain any Advertising and may not be digital.

**29.8.3 Docks:** For each Dock, Operator may:

- (a) Install Sponsorship recognition graphics, provided that such graphics may not exceed 1.5 feet squared per side; and permit one Sponsor.
- (b) San Jose: no commercial Advertising shall be installed on Docks.

**29.8.4 Bicycles:** For each Bicycle, Operator may:

- (a) Install Sponsorship recognition graphics, provided that such graphics may not exceed 2.5 feet squared per side;
- (b) Install Sponsorship recognition graphics on the following elements of the Bicycle (but on no other elements):
  - (i) Baskets;
  - (ii) Back and front mudguards; and
  - (iii) Bicycle frame.
- (c) San Jose: no commercial Advertising shall be installed on Bicycles.
- (d) San Francisco: no Advertising shall be installed on Bicycles.
- (e) Emeryville: no Advertising shall be installed on Bicycles.

**29.8.5 Other Assets:** Subject to compliance with each Participating City's permitting requirements to the extent applicable to the following assets, Operator may additionally utilize the following assets for Advertising or Sponsorship recognition placements,

except that to the extent any of the following assets are displayed on Kiosks, Docks or Bicycles, such assets shall be subject to the restrictions set forth above:

- (a) Membership swipe cards and keys;
- (b) User receipts;
- (c) Maintenance vehicles;
- (d) Staff uniforms;
- (e) Launch campaign literature;
- (f) Media partnerships;
- (g) Website;
- (h) Mobile applications;
- (i) Printed maps and materials;
- (j) Registration packets and Program newsletters;
- (k) Safety campaigns;
- (l) Bike counters;
- (m) Wayfinding signs;
- (n) Water Dispensers;
- (o) Station air pumps and bike tool kits; and
- (p) Such other assets as may be approved by MTC and the

Participating City.

**SECTION 30.0      MERCHANDISING, LICENSING, AND INTELLECTUAL PROPERTY**

**30.1** If Operator and/or any of its affiliates, business partners or sublicensees desires to use , during the Term, the trademarks, logos, service marks, and other intellectual property rights of MTC and/or the Participating Cities, then prior to any such use Operator and its affiliates, business partners, and sublicensees, as applicable, shall enter into a non-exclusive license agreement with MTC and/or any of the Participating Cities to use, during the Term, such trademarks, logos, service marks, and other intellectual property rights.



## **SECTION 31.0      MARKETING**

**31.1** During each calendar year of the Term, Operator shall offer not less than one safety training class every other quarter in each Participating City, except:

**31.1.1** If pursuant to Section 3.3 a Participating City expands the number of Bicycles by at least 20% compared to the number of Bicycles on the previous January 1 or if it commences participation in the Program after not participating in the Program on the previous January 1, then Operator shall offer one safety training class per quarter in such Participating City during the first 4 quarters following such expansion or commencement; and

**31.1.2** Without duplication of any safety training classes under Section 31.1.1, if a Participating City elects to expand the Program within its borders pursuant to Section 3.3 of this Agreement, then Operator shall offer one safety training class per quarter in such Participating City during the first 4 quarters following such expansion.

**31.2** Operator shall create a marketing plan for the Program, subject to approval by MTC, which approval will not be withheld so long as the plan is not in bad taste, offensive, obscene or derogatory to MTC or any Participating City. Following such approval, Operator shall market the Program in accordance with such plan. The marketing budget and the allocation of such budget shall be determined by Operator, in its sole discretion. The marketing plan shall include, at a minimum, demonstrations, events, social media outreach, programs, partnerships and other efforts to educate residents of the Participating Cities about bike share, to launch the Program and to grow membership and ridership in a financially sustainable manner.

**31.3** A portion of Operator's marketing plan will include marketing and outreach to low-income communities, disadvantaged communities, and communities for which English is not the native language, shall be subject to the approval of MTC and the Participating Cities, shall comply with local requirements regarding language access for each Participating City, shall comply with local standards for decency and not be offensive to the general public. MTC retains the non-exclusive right to conduct marketing and outreach to low-income neighborhoods and limited English proficiency neighborhoods. Operator's marketing activities shall not violate the Advertising Restrictions.

## **SECTION 32.0      GRANT OF EXCLUSIVE RIGHTS**

**32.1** Exclusive Rights and Exceptions. The Participating Cities hereby grant to Operator the exclusive right to operate a bike share program in the public rights-of-way in the Participating Cities during the Term, with the exception of (i) non-automated non-self-service (i.e., renting a bike requires direct in-person human interaction) bike rental operations, (ii) electric scooter sharing program, and (iii) automated (i.e., renting a bike requires no direct in-person human interaction) roundtrip bike share operations (i.e., where the renter is required to return the bike to the same location from which it was rented).

**32.2** Waiting Period. Operator has the exclusive right to operate a bike share program with e-assist or electric bikes ("E-Bikes") in the public rights-of-way in the Participating Cities until June 30, 2016. Prior to June 30, 2016, no Participating City shall

do any of the following: conduct a procurement, solicit or request proposals, solicit operators, or commence negotiations with another operator for E-Bikes or announce the intent to have a point-to-point E-Bike share system in public rights-of-way.

**32.3** Right of First Offer. If at any time during the Term but after June 30, 2016, a Participating City intends to issue a Request for Proposals or initiate another type of procurement (each of the foregoing, a “Solicitation”) to operate a bike share program with E-Bikes, then prior to issuance of such Solicitation, such Participating City shall offer to Operator the opportunity to operate bike share program with E-Bikes. Following such offer, Operator and such Participating City shall negotiate in good faith the terms of such program. If within 3 months following such offer, Operator and such Participating City are unable to reach agreement on the terms of such program, then such Participating City shall have the right to issue a Solicitation, and Operator shall have the right to respond to such Solicitation, pursuant to the procurement rules applicable in said Participating City.

**32.4** Notwithstanding anything to the contrary herein, the effectiveness of the grant of exclusive rights to use the public rights-of-way of the City of Oakland as set forth in this Section 32 is subject to the adoption by the Council of the City of Oakland of a franchise ordinance pursuant to Article X-Section 1000 of the City Charter of the City of Oakland; and the effectiveness of the grant of rights to use the public rights-of-way of the City of Berkeley as set forth in this Section 32 is subject to the adoption by the City Council of the City of Berkeley of a franchise ordinance pursuant to Article XII, Section 75 of the Charter of the City of Berkeley.

## **SECTION 33.0      RIGHTS RESERVED TO THE PARTICIPATING CITIES**

**33.1** The Participating Cities hereby withholds authorization from MTC to make any and all of the following decisions or take any and all of the following actions under the Program Agreement, and any other decisions or actions that are expressly and specifically reserved to the Participating Cities under the Program Agreement: The decision to expand the program within the borders of a Participating City as provided in Section 3.3 of the Program Agreement.

**33.2** Decisions and actions to be taken by a Participating City under this Agreement are expressly and specifically reserved to such Participating City.

## **SECTION 34.0      RESOLUTION OF DISPUTES BETWEEN OPERATOR AND THE PARTICIPATING CITIES UNDER THIS AGREEMENT**

**34.1** In the event of a dispute between Operator and MTC and/or a Participating City arising under this Agreement or with respect to the Program, such dispute shall be addressed and resolved as follows (the “Dispute Resolution Process”):

**34.2** MTC’s Program Manager and the Participating City’s Program Manager, as applicable, assigned to the Program and Operator’s General Manager of the Program, or their respective delegates, shall meet, within 10 days after receipt by one disputing party of notification from the other party(ies) of such dispute, to negotiate in good faith in order to try to resolve such dispute (the date of the first such meeting, or the expiration of such 10-

day period if the meeting is not timely held, being the “Initial Meeting Date”). If such persons fail to resolve such dispute within 15 days after the Initial Meeting Date, then the Executive Director of MTC and/or the equivalent executive-level personnel of the Participating City (and in the case of San Francisco, the Executive Director of the SFMTA), as applicable, and the President of Bikeshare Holdings shall meet promptly and negotiate in good faith in order to resolve such dispute. If such persons fail to resolve such dispute within 30 days after the Initial Meeting Date, then such dispute shall be subject to mediation under Section 34.3. As used in this Section 34.2, a meeting may be held in person, by conference call or by video conference. By agreement of the parties to such dispute, any of the deadlines set forth in this Section 34.2 may be extended or shortened. The process described in this Section 34.2 shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

**34.3** Unless the parties to the dispute otherwise agree, mediation shall be administered by the American Arbitration Association (the “AAA”) in accordance with its Commercial Rules, or similar service. A request for mediation shall be made in writing, delivered to the other disputing part(ies) and filed with the applicable mediation service. Any disputing party may submit such request. The disputing parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in San Francisco. The disputing parties shall be represented by individuals of their choosing. Settlement agreements entered into by the disputing parties shall be binding on such parties and enforceable against such parties in a State or Federal Court of competent jurisdiction sitting in San Francisco County, and such parties shall comply with the terms of any such settlement agreement. The mediation process shall be confidential and treated as a compromise negotiation for purposes of federal and state rules of evidence.

**34.4** If mediation fails to resolve a dispute, then the exclusive forum for resolving such dispute shall be any State or federal court sitting in San Francisco County, California, except as otherwise provided in the last sentence of Section 14.5.

**34.5** As used in this Agreement, “final resolution” of a dispute or a dispute being “finally resolved” means that (a) the parties to the dispute have entered into a settlement agreement to resolve such dispute, or (b) if a party to the dispute has initiated a judicial proceeding to contest such dispute, that a final-non-appealable order of a court of competent jurisdiction has been issued for such dispute.

## **SECTION 35.0      ASSIGNMENT BY OPERATOR**

**35.1** Operator has the same right to assign this Agreement, including the rights, benefits and obligations of Operator hereunder, as Operator has to assign the Program Agreement. If a Recognized Lender or its designee succeeds to Operator’s interest under the Program Agreement in accordance with the terms thereof, such Recognized Lender or its designee shall automatically succeed to Operator’s interest under this Agreement. This Agreement shall be binding upon and inure to the benefit of the Operator named herein and the respective permitted successors and assigns of the Operator named herein.

## **SECTION 36.0      INSURANCE**

**36.1** Minimum Coverages. The insurance requirements specified in this section shall cover Operator's own liability and the liability arising out of work or services performed under this Agreement by any subconsultants, subcontractors, suppliers, temporary workers, independent contractors, leased employees, or any other persons, firms or corporations that Operator authorizes to work under this Agreement (hereinafter referred to as "Agents"). Operator shall, at its own expense, obtain and maintain in effect at all times during the life of this Agreement the following types of insurance against claims, damages and losses due to injuries to persons or damage to property or other losses that may arise in connection with the performance of work under this Agreement.

**36.2** Operator shall include in every subcontract the requirement that the Agent maintain adequate insurance coverage with appropriate limits and endorsements to cover the risks associated with work to be performed by the Agent. To the extent that an Agent does not procure and maintain such insurance coverage, Operator shall be responsible for any and all costs and expenses that may be incurred in securing such coverage or in fulfilling Operator's indemnity obligation under Section 13.2 as to itself or any of its Agents in the absence of such coverage.

**36.3** In the event Operator or its Agents procure excess or umbrella coverage to maintain certain requirements outlined below, these policies shall also satisfy all specified endorsements and stipulations, including provisions that Operator's or its Agent's insurance, as the case may be, be primary without right of contribution from MTC.

**36.3.1** Workers' Compensation Insurance with Statutory limits, and Employer's Liability Insurance with a limit of not less than \$1,000,000 per employee for injury by disease and \$1,000,000 for injury for each accident, and any and all other coverage of Operator's employees as may be required by applicable law. Such policy shall contain a Waiver of Subrogation in favor of MTC. Such Workers' Compensation & Employer's Liability may be waived, if and only for as long as Operator is a sole proprietor or a corporation with stock 100% owned by officers with no employees.

**36.3.2** Commercial General Liability Insurance for Bodily Injury and Property Damage liability, covering the operations of Operator and Operator's officers, agents, and employees and with limits of liability which shall not be less than \$1,000,000 combined single limit per occurrence with a general aggregate liability of not less than \$2,000,000, and Personal & Advertising Injury liability with a limit of not less than \$1,000,000. Such policy shall contain a Waiver of Subrogation in favor of MTC. MTC and its commissioners, directors, officers, representatives, agents and employees are to be named as additional insureds. In addition, the entities listed in Section 36.12 and their respective commissioners, directors, officers, representatives, agents and employees are also to be named as additional insureds. Such insurance shall be primary and contain a Separation of Insureds Clause as respects any claims, losses or liability arising directly or indirectly from Operator's operations.

**36.3.3** Business Automobile Insurance for all automobiles owned (if any), used or maintained by Operator and Operator's officers, agents and employees, including but not

limited to owned (if any), leased (if any), non-owned and hired automobiles, with limits of liability which shall not be less than \$1,000,000 combined single limit per accident.

**36.3.4** Umbrella Insurance in the amount of \$4,000,000 providing excess limits over Employer's Liability, Automobile Liability, and Commercial General Liability Insurance. Such umbrella coverage shall be following form to underlying coverage including all endorsements and additional insured requirements.

**36.3.5** Errors and Omissions Professional Liability Insurance for errors and omissions and the resulting damages, including, but not limited to, economic loss to MTC and having minimum limits of \$5,000,000 per claim. Such policy shall contain cyber risk coverages including network and internet security liability coverage, privacy liability coverage and media coverage. The policy shall provide coverage for all work performed by Operator and any work performed or conducted by any subcontractor/consultant working for or performing services on behalf of Operator. Operator may delegate the obligation to maintain Errors and Omissions Professional Liability Insurance to an Agent, but the failure of such Agent to maintain such insurance shall not relieve Operator of its obligation to maintain such insurance.

**36.3.6** Property Insurance. Property Insurance covering Operator's own business personal property and equipment to be used in performance of this Agreement, materials or property to be purchased and/or installed on behalf of MTC (if any), and builders risk for property in the course of construction (if applicable). Coverage shall be written on a "Special Form" policy that includes theft, but excludes earthquake, with limits at least equal to the replacement cost of the property. Such policy shall contain a Waiver of Subrogation in favor of MTC.

**36.4** Acceptable Insurers. All policies will be issued by insurers qualified to do business in California and with a Best's Rating of A-VIII or better.

**36.5** Self-Insurance. Operator's obligation hereunder may be satisfied in whole or in part by adequately funded self-insurance, upon evidence of financial capacity satisfactory to MTC.

**36.6** Deductibles and Retentions. Operator shall be responsible for payment of any deductible or retention on Operator's policies without right of contribution from MTC. Deductible and retention provisions shall not contain any restrictions as to how or by whom the deductible or retention is paid. Any deductible or retention provision limiting payment to the Named Insured is unacceptable.

**36.7** In the event that MTC is entitled to coverage as an additional insured under any Operator insurance policy that contains a deductible or self-insured retention, Operator shall satisfy such deductible or self-insured retention to the extent of loss covered by such policy, for any lawsuit arising from or connected with any alleged act of Operator, subconsultant, subcontractor, or any of their employees, officers or directors, even if Operator or subconsultant is not a named defendant in the lawsuit.

**36.8** Claims Made Coverage. If any insurance specified above is written on a “Claims-Made” (rather than an “occurrence”) basis, then in addition to the coverage requirements above, Operator shall:

**36.8.1** Ensure that the Retroactive Date is shown on the policy, and such date must be before the date of this Agreement or the beginning of any work under this Agreement;

**36.8.2** Maintain and provide evidence of similar insurance for at least three (3) years following the expiration or termination of this Agreement, including the requirement of adding all additional insureds; and

**36.8.3** If insurance is cancelled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the commencement of any work hereunder, Operator shall purchase “extended reporting” coverage for a minimum of three (3) years after the expiration or termination of this Agreement.

**36.9** Failure to Maintain Insurance. All insurance specified above shall remain in force until the expiration or termination of this Agreement. . Operator must notify MTC if any of the above required coverages are non-renewed or cancelled. The failure to procure or maintain required insurance and/or an adequately funded self-insurance program will constitute a material breach of this Agreement.

**36.10** Certificates of Insurance. Prior to commencement of any work hereunder, Operator shall deliver to MTC Certificates of Insurance verifying the aforementioned coverages. Such certificates shall make reference to all provisions and endorsements referred to above and shall be signed on behalf of the insurer by an authorized representative thereof.

**36.11** Disclaimer. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Operator are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Operator pursuant hereto, including, but not limited to, liability assumed pursuant to Section 16 .

**36.12** Additional Insureds. The following entities are to be named as Additional Insureds under applicable sections of this Section 36 and as Indemnified Parties pursuant to Section 13.2 of this Agreement.

**36.12.1**Metropolitan Transportation Commission (MTC)

**36.12.2**City of Berkeley

**36.12.3**City of Oakland

**36.12.4**City of San Francisco

**36.12.5**City of Emeryville

**36.12.6**City of San Jose

## **SECTION 37.0      FREE MEMBERSHIPS**

**37.1** Operator shall provide the City of Berkeley with 10 Regular Annual Memberships (with membership keys) free of Annual Membership Fees (the “Free Memberships”) for the Term, subject to compliance with the following conditions:

**37.1.1** The Free Memberships shall be used only by employees of the City of Berkeley and only for the conduct of official business of the City of Berkeley.

**37.1.2** Prior to an employee’s initial use of a Bicycle under a Free Membership, such employee shall sign Operator’s standard waiver form and returned the signed waiver to Operator.

**37.1.3** As a condition precedent to Operator’s delivery to the City of Berkeley of the membership keys for the Free Memberships, (a) the City of Berkeley shall submit to Operator written procedures to be applied by the City of Berkeley for ensuring compliance with Sections 37.1.1 and 37.1.2, which written procedures shall be subject to Operator’s reasonable satisfaction, and (b) the City of Berkeley and Operator shall agree on an acceptable method for payment to Operator of all amounts due Operator under this Section 37 (other than Section 37.1.4).

**37.1.4** The City of Berkeley shall defend, indemnify and save harmless Operator from and against all Liabilities resulting from, or arising out of, (a) the use of the Free Memberships by any person other than an employee of the City of Berkeley in the conduct of official business of the City of Berkeley, or (b) the failure of an employee of the City of Berkeley to sign and return Operator’s standard waiver form as required by Section 37.1.2.

**37.1.5** The City of Berkeley shall be responsible for usage fees if any usage exceeds the Initial Ride Period at the rate charged by Operator to Regular Annual Members.

**37.1.6** The City of Berkeley shall be responsible for the fees for damaged, lost, stolen or otherwise unreturned Bicycles at the rate charged by Operator to Regular Annual Members. Such fees shall not be subject to waiver.

**37.1.7** The City of Berkeley shall promptly report any loss or theft of membership keys and be responsible for the cost of replacing membership keys at \$25 per key (including taxes) for each key that needs to be replaced.

**37.2** Operator shall accommodate the request of any other Participating City for Free Memberships, so long as Operator and such Participating City, each acting reasonably, are able to agree on the number of Free Memberships for such Participating City, which in no event shall be more than 10 Free Memberships, and on the terms and conditions for the use of the Free Memberships.


IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

METROPOLITAN TRANSPORTATION COMMISSION

By:   
Name: Steve Heminger  
Title: Executive Director



BAY AREA MOTIVATE, LLC

By:   
Name: Jay Walder  
Title: President and Chief Executive Officer


WITNESS THE EXECUTION OF this agreement ON THE DATE WRITTEN BELOW EACH SIGNATURE:

CITY OF BERKELEY


By:  for Dan Williams  
INTERIM City Manager

DATE: 12/18/15


Countersigned by:

  
Deputy CITY AUDITOR  
DATE: \_\_\_\_\_

Approved as to Form:

  
Deputy City Attorney  
DATE: 12/16/15

Attest:

  
Dep City CLERK  
DATE: 12/21/15

CITY OF OAKLAND

By:  \_\_\_\_\_  
City Administrator

Approved as to Form:

 \_\_\_\_\_  
Senior Deputy City Attorney

**CITY OF EMERYVILLE**

Carolyn Lehr  
Carolyn Lehr  
City Manager

Approved as to Form:

By: Michael A. Guina  
Michael A. Guina  
City Attorney

**CITY & County of San Francisco**

**San Francisco Municipal Transportation Agency**

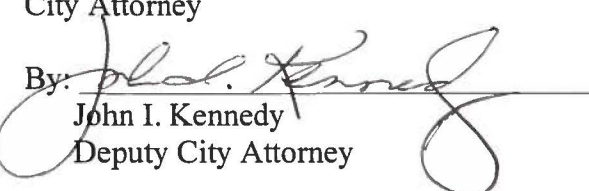


Edward D. Reiskin  
Director of Transportation

Approved as to Form:

Dennis J. Herrera  
City Attorney

By:

  
John I. Kennedy  
Deputy City Attorney

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS

Resolution No: 15-163

Adopted: NOVEMBER 17, 2015

Attest: R. Boomer  
Roberta Boomer, Secretary  
SFMTA Board of Directors

Board of Supervisors  
Resolution No: 503-15

Adopted: December 8, 2015


Attest: Peggy Nenun  
Clerk of the Board  
for Angela Calvillo

**"CITY"**

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal corporation

  
\_\_\_\_\_  
JON CALEGARI  
Deputy City Attorney

By   
\_\_\_\_\_  
Name: Julie Edmonds-Mares  
Title: Deputy City Manager

## **APPENDIX A, COST OF EQUIPMENT**

### EXPANSION OF PROGRAM WITHIN THE ORIGINAL PARTICIPATING CITIES:

- Cost to purchase new Equipment: As set forth in the New Equipment Price Schedule below. The prices set forth in such schedule are subject to PPI Adjustment.
- Cost to install new Equipment (including site planning and drawings): \$4,000 per Station, subject to CPI Adjustment.
- Cost to operate and maintain the Equipment: \$100 per Dock per month, except for a new Station that is not more than 0.25 miles from an existing Station, in which case the cost is \$0.

| New Equipment Price Schedule   |              |                            |  |  |
|--------------------------------|--------------|----------------------------|--|--|
| Station Size (No. of Bicycles) | No. of Docks | Cost (Excluding Sales Tax) |  |  |
| 8                              | 15           | \$ 47,166.98               |  |  |
| 10                             | 19           | \$ 55,503.56               |  |  |
| 12                             | 23           | \$ 63,840.15               |  |  |
| 14                             | 27           | \$ 72,176.74               |  |  |
| 16                             | 31           | \$ 80,513.33               |  |  |
| 18                             | 35           | \$ 88,849.92               |  |  |
| 20                             | 39           | \$ 97,186.51               |  |  |



**METROPOLITAN  
TRANSPORTATION  
COMMISSION**

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***Memorandum***

TO: Commission

DATE: May 20, 2015

FR: Executive Director

RE: Bike Share Expansion Contract: Motivate International, Inc. and MTC Resolution  
Nos. 3925, Revised and 4035, Revised

**Background**

On April 8, 2015, staff presented a bike share expansion proposal from Motivate International, Inc. (Motivate) to the Administration Committee which, if approved, would provide 7,000 bikes in Berkeley, Emeryville, Oakland, San Francisco, and San Jose by 2017 without the need for public funding. While the Committee voted to refer the item to the full Commission in May, staff was directed to report back to the Committee on several issues, including funding alternatives for pilot cities on the Peninsula and other potential expansions of the bike share program.

During the April Committee discussion, there was concern expressed about what options may be available to new communities that become interested in bike share in the future. A similar concern was raised by the Bay Area Air Quality Management District (BAAQMD) Board, which voted to support the transfer of the pilot program and assets to MTC with the request that we commit \$4.5 million in funding to expand bike share to emerging communities beyond the five cities included in the Motivate proposal (see attached letter). The Committee also asked for more detail in the following areas: (1) how the proposal would ensure compliance with the American with Disabilities Act; (2) substantiation of the sole source justification; and (3) options and timing for investing the more than \$16 million in federal and state funds that would not be needed to expand bike share should the Commission authorize a contract with Motivate.

**Motivate Proposal Revisions**

Staff followed up on these items with a report to the Administration Committee at its May 13, 2015 meeting, including a revised term sheet, for review in advance of consideration of approval at the May Commission meeting to enter into an agreement with Motivate. The revised term sheet is attached for approval, with changes made between the April and May Committee meetings highlighted. No substantive changes have been made since the May 13, 2015 Committee meeting.

In addition to revising the terms of a potential agreement with Motivate, staff has been working with BAAQMD, pilot program agencies, and proposed expansion cities to identify the required components of cooperative agreements between MTC and cities. Such agreements would provide the link between Motivate and participating expansion cities and will serve to define the organizational structure of the program, confirm the implementation roles and responsibilities of each party, and establish policy and operational details of the program.



### **Funding**

As described at the Administration Committee meetings in April and May, private funding of the expansion in the five cities means that public funds originally intended for bikes and stations can instead be reprogrammed. The \$19.1 million that the Commission approved from 2012 to 2014 for the pilot and the continuation and expansion of Bay Area Bike Share includes both federal Congestion Mitigation and Air Quality Improvement (CMAQ) and state Active Transportation Program (ATP) funds, as summarized in the table below.

| <b>Program</b>                  | <b>Fund Source</b> | <b>Unreimbursed Amount<br/>(\$ in millions)</b> |
|---------------------------------|--------------------|-------------------------------------------------|
| STP/CMAQ Cycle 1: Pilot         | CMAQ               | \$2.7                                           |
| STP/CMAQ Cycle 1: Expansion     | CMAQ               | \$2.7                                           |
| STP/CMAQ Cycle 2: Expansion     | CMAQ               | \$6.0                                           |
| Regional ATP Cycle 1: Expansion | ATP                | \$7.7                                           |
| <b>Total</b>                    |                    | <b>\$19.1</b>                                   |

The ATP funds have strict timely use of funds as well as competitive process selection requirements. Therefore, to avoid loss of those funds and in line with the Programming and Allocations Committee referral, staff recommends that \$7.7 million be allocated to ready-to-go contingency ATP projects, per MTC Resolution No. 4132, Revised.

Staff further recommends directing \$4.5 million for capital costs associated with bike share expansion in emerging communities. Staff would conduct a call for projects to solicit interest from communities in a timeframe to allow expansion to begin after installation of the 7,000-bike expansion. This funding level would support, at a minimum, the acquisition of an additional 750 bikes, roughly the size of the current pilot, in emerging communities. In addition, staff is recommending that \$0.5 million in CMAQ funds be provided to the city of San Mateo to advance its bicycle and pedestrian program as an alternative to implementing bike share as was originally planned in the pilot phase.

Staff is proposing that the remaining \$6.4 million be subject to the broader discussion of priorities for OBAG2 as the Commission considers a draft framework next month at the Programming and Allocations Committee meeting.


### **Recommendation**

Staff recommends that the Commission authorize the Executive Director or his designated representative to negotiate and enter into a contract with Motivate based on the summary of terms in Attachment A, to deliver, own, and operate a bike share system of 7,000 bikes in the cities of Berkeley, Emeryville, Oakland, San Francisco, and San Jose. Staff also recommends that the Commission authorize the Executive Director or his designated representative to negotiate and enter into cooperative agreements with participating cities and agencies consistent with the terms for the installation of the proposed bike share system.

Staff further recommends that the Commission direct staff to take action to operate the pilot program through June 2016 for cities that are not included in Motivate's expansion proposal and to return to the Commission with a strategy to invest \$4.5 million in bike share beyond the five cities in the Motivate proposal by the end of 2015.

Finally, staff recommends that the Commission redirect \$11.4 million in STP/CMAQ funds as follows:

| <b>Project/Program</b>             | <b>Amount</b> | <b>Implementing Resolution</b>                  |
|------------------------------------|---------------|-------------------------------------------------|
| Bike Share in Emerging Communities | \$4.5 million | Resolution No. 3925, Revised                    |
| San Mateo Bike/Ped Program         | \$0.5 million | Resolution No. 3925, Revised                    |
| OBAG2 – TBD                        | \$6.4 million | Resolution Nos. 4035, Revised and 3925, Revised |

  
\_\_\_\_\_  
Steve Heminger

**Attachments:** Attachment A: Contract Authorization and Term Sheet; MTC Resolution No. 3925, Revised, MTC Resolution No. 4035, Revised; and Letter from Bay Area Air Quality Management District Board.

REQUEST FOR COMMISSION APPROVAL  
Summary of Proposed Contract

|                                         |                                                                                                                                                                                                                                                                                                                                                        |
|-----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Work Item No.:                          | 1125                                                                                                                                                                                                                                                                                                                                                   |
| Consultant:                             | Motivate International, Inc.<br>New York, NY                                                                                                                                                                                                                                                                                                           |
| Work Project Title:                     | Sole Source Bike Share Expansion                                                                                                                                                                                                                                                                                                                       |
| Purpose of Project:                     | Deliver, install, and operate a 7,000-bike bike share system.                                                                                                                                                                                                                                                                                          |
| Brief Scope of Work:                    | Implement a bike share system of at least 7,000 bikes and associated stations, including purchase, delivery, and installation of bikes and stations, ongoing operations and maintenance, customer service, and program marketing, at no public cost.                                                                                                   |
| Project Cost Not to Exceed:             | \$0<br>Total approved contract amount based on this action = \$0                                                                                                                                                                                                                                                                                       |
| Funding Source:                         | N/A                                                                                                                                                                                                                                                                                                                                                    |
| Fiscal Impact:                          | Funds in FY 2014-15 to be reprogrammed.                                                                                                                                                                                                                                                                                                                |
| Motion by Commission:                   | That the Executive Director or his designee is authorized to negotiate and enter into a contract with Motivate International, Inc. for zero cost to deliver, implement, and operate a bike share system of at least 7,000 bikes and associated stations as more fully described in the Executive Director's May 20, 2015 Memorandum to the Commission. |
| Metropolitan Transportation Commission: | <hr/> Dave Cortese, Chair                                                                                                                                                                                                                                                                                                                              |
| Approved:                               | Date: May 27, 2015                                                                                                                                                                                                                                                                                                                                     |

## Attachment A

### Motivate-MTC Proposed Term Sheet

This term sheet is intended to be used to facilitate discussions between the Metropolitan Transportation Commission (“MTC”) and Motivate International Inc. (“Motivate”) in order to develop a contract for the acquisition, launch and operation of a bike share system in the Bay Area.

| Contract Topic      | Contract Terms                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|---------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Equipment Ownership | <p>If required by the FHWA, Motivate will be obligated to purchase the equipment initially acquired with federal funds according to the terms of the FHWA agreement.</p> <p>As currently outlined in the FHWA agreement, any item with a current per-unit FMV of less than \$5,000 will be transferred to Motivate at no cost. For items with a current per-unit FMV of more than \$5,000, the purchase price will be based on the share of federal funding for the project multiplied by the equipment’s FMV, as established by past sales of comparable equipment.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| System Size         | <p>7,000-7,055 bikes total</p> <ul style="list-style-type: none"> <li>• 4,500 in SF</li> <li>• 1,000 in San Jose</li> <li>• 1,400 in East Bay (850 in Oakland, 100 in Emeryville, 400 in Berkeley, 50 TBD based on additional system planning analysis)</li> <li>• Between 100 and 155 to be determined: <ul style="list-style-type: none"> <li>- If Mountain View, Palo Alto, and Redwood City all decide to agree with Motivate and continue bike share, Motivate will provide 155 bikes among the three cities.</li> <li>- If one or two of the three pilot cities listed above decide to continue bike share, Motivate will provide enough bikes to maintain a 2:1 dock to bike ratio with the docks currently stationed in each city. If this is less than 100 bikes, Motivate will deliver enough bikes to another city to reach a program total of at least 7,000.</li> <li>- If none of the three pilot cities listed above decides to continue bike share, 100 bikes to be determined among SF, San Jose, and the East Bay.</li> </ul> </li> </ul> |
| Launch Dates        | <p>Sites representing 25% of the total bikes for San Jose, East Bay and San Francisco should be approved and permitted by December 30, 2015. Motivate will install these bikes by June 1, 2016.</p> <p>Sites representing an additional 15% of bikes for San Jose, East Bay and SF should be approved and permitted by April 30, 2016. Motivate will install these bikes by October 1, 2016.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |



| Contract Topic              | Contract Terms                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Launch Dates<br>(continued) | <p>Sites representing the remaining 60% of bikes for the East Bay should be approved and permitted by July 30, 2016. Motivate will install these bikes by January 1, 2017.</p> <p>Sites representing an additional 30% of bikes for San Jose and SF should be approved and permitted by November 30, 2016. Motivate will install these bikes by April 1, 2017.</p> <p>Sites for the remaining bikes in San Jose and SF should be approved and permitted by May 31, 2017. The remainder of bikes shall be installed no later than November 1, 2017.</p> <p>Delays in receiving permitted and approved sites by specified dates will result in extension of the installation dates in an amount equal to the delay.</p> <p>The above dates are based on completion of the contract with the MTC by July 31, 2015. If Motivate is negotiating in good faith and the contract signing occurs after July 31, 2015, the above dates will be extended by a duration equal to the difference between the contract signing date and July 31, 2015.</p> |
| Term                        | <p>10 year term, reduced to 5 years if Motivate does not achieve the aggregate bike target numbers described above (includes provisions for force majeure and siting issues) or if Motivate is in persistent and material breach of its contractual obligations as of the time renewal is considered in the fourth year.</p> <p>The contract may be extended for two additional five-year terms upon mutual agreement of the MTC and Motivate. If Motivate is in substantial compliance with the terms of the contract, MTC will engage in good faith negotiations to renew the contract on substantially equivalent terms one year prior to the expiration of the current term.</p> <p>MTC will provide notification of non-renewal no later than six months prior to the end of the term. If neither party provides notice of non-renewal by six months, the contract should be extended for five years on the same terms.</p>                                                                                                              |
| Exclusivity                 | <p>During the Term of this Agreement, Motivate shall have the exclusive right to operate a bike sharing program that utilizes public property and public right of way anywhere within San Francisco, Berkeley, Oakland, San Jose and Emeryville.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |

| Contract Topic          | Contract Terms                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Exclusivity (continued) | <p>The exclusivity provision does not apply to an existing pilot electric bike share program, facilitated by City CarShare and planned for Berkeley and San Francisco. The approximately 90 electric bikes at 25 planned stations will be available only to members of City CarShare.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| System Buy-In           | <p>San Jose, San Francisco, Berkeley, Emeryville, and Oakland may contribute public funding for additional bikes and stations that are interoperable with the existing system. Costs to cities for purchasing, installing and operating the equipment is as follows:</p> <ul style="list-style-type: none"> <li>• Capital Equipment: Aggregate pricing for bike share solution as specified in the Air District contract + 10%. Adjusted annually by the producer price index.</li> <li>• Installation: \$4,000 per station, including site planning and drawings, growing at CPI.</li> <li>• Operations and maintenance of the equipment: \$100 per dock per month, growing at CPI <ul style="list-style-type: none"> <li>- Operations and maintenance costs will be \$0 for new equipment installed in the contiguous service area.</li> </ul> </li> <li>• Motivate is obligated to maintain equipment purchased by the cities in a state-of-good repair throughout the term. At the end of the term, Motivate shall return the equipment to the city in good working order acknowledging that there is expected to be normal wear and tear from use.</li> </ul> <p>San Mateo and existing pilot cities other than San Francisco and San Jose that want to continue and/or expand existing system operations after the expiration of the BAAQMD contract can develop a new service agreement with Motivate using their own sources of funds. Costs to cities for purchasing, installing and operating the equipment is as follows:</p> <ul style="list-style-type: none"> <li>• Existing equipment upgrade cost: \$12.50 per dock per month, growing at PPI.</li> <li>• New capital equipment: Aggregate pricing for bike share solution as specified in the Air District contract + 10%. Adjusted annually by the producer price index.</li> <li>• Installation of new equipment: \$4,000 per station, including site planning and drawings, growing at CPI</li> <li>• Operations and maintenance of the equipment: \$100 per dock per month, growing at CPI. <ul style="list-style-type: none"> <li>- Price is reduced to \$75 per dock, adjusted by CPI, if an average of 1 ride per bike per day citywide occurs for a 12 month period</li> <li>- Price is reduced to \$50 per dock, adjusted by CPI, if an average of 1.5 rides per bike per day citywide occurs for a 12 month period</li> </ul> </li> </ul> |



| Contract Topic               | Contract Terms                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| System Buy-In<br>(continued) | <ul style="list-style-type: none"> <li>- Price is reduced to \$0 per dock, adjusted by CPI, if an average of 3 rides per bike per day citywide occurs for a 12 month period</li> <li>• Motivate is obligated to maintain equipment purchased by the cities in a state-of-good repair throughout the term. At the end of the term, Motivate shall return the equipment to the city in good working order, acknowledging that there is expected to be normal wear and tear from use.</li> <li>• Cities are able to raise sponsorship to offset the costs of purchasing and operating the bike share system in their locality. Local sponsorship packages may include recognition of the sponsor on one side of one ad panel on the station. System naming rights, bike branding, and other branding of physical assets will be determined by Motivate in conjunction with title sponsor and in compliance with local advertising regulations. Local sponsors cannot be in the same category as the title sponsor, unless approved by Motivate.</li> <li>• Motivate will operate the current configurations of stations and docks, following the expiration of the BAAQMD contract, with enough bikes to provide a 2:1 ratio of bikes to docks, at no cost until December 31, 2015.</li> <li>• MTC will pay \$100 per dock per month to Motivate from January 1, 2016 through June 30, 2016 to maintain operations in the pilot cities.</li> <li>• Cities must decide whether or not to continue and/or expand bike share by May 31, 2016. Motivate will begin relocating equipment in cities that decide not to continue in July 2016.</li> </ul> <p>Subsequent to deployment of 7,000 bikes within San Francisco, San Jose, Oakland, Berkeley and Emeryville, other cities in the MTC region that want to participate in the regional bike share system can develop a service agreement with Motivate using their own sources of funds. Costs to cities for purchasing, installing and operating the equipment is as follows:</p> <ul style="list-style-type: none"> <li>• New capital Equipment: Aggregate pricing for bike share solution as specified in the Air District contract + 10%. Adjusted annually by the producer price index.</li> <li>• Installation: \$4,000 per station, including site planning and drawings, growing at CPI</li> <li>• Operations and maintenance of the equipment: \$130 per dock per month, growing at CPI.</li> <li>- Price is reduced to \$97.50 per dock, adjusted by CPI, if an average of 1 ride per bike per day citywide occurs for a 12 month period</li> </ul> |

| Contract Topic               | Contract Terms                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
|------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| System Buy-In<br>(continued) | <ul style="list-style-type: none"> <li>- Price is reduced to \$65 per dock, adjusted by CPI, if an average of 1.5 rides per bike per day citywide occurs for a 12 month period</li> <li>- Price is reduced to \$0 per dock, adjusted by CPI, if an average of 3 rides per bike per day citywide occurs for a 12 month period</li> <li>• Motivate is obligated to maintain equipment purchased by the cities in a state-of-good repair throughout the term. At the end of the term, Motivate shall return the equipment to the city in good working order, acknowledging that there is expected to be normal wear and tear from use.</li> <li>• Cities are able to raise sponsorship to offset the costs of purchasing and operating the bike share system in their locality. Local sponsorship packages may include recognition of the sponsor on one side of one ad panel on the station. System naming rights, bike branding, and other branding of physical assets will be determined by Motivate in conjunction with title sponsor and in compliance with local advertising regulations. Local sponsors cannot be in the same category as the title sponsor, unless approved by Motivate.</li> </ul> <p>In addition, Motivate has the right to contract with private entities that want to provide funding for stations and bikes that are situated on privately-owned property.</p> |
| Pricing                      | <p>\$149 annual pass that can be increased no more than CPI + 2% annually.</p> <p>Annual pass can be paid in 12-monthly installments of no more than \$15.00</p> <p>All other pricing can be set at Motivate's discretion.</p> <p>Motivate will offer a discounted pass set at 40% of the annual price. The discount will be available to customers who are eligible and enrolled in Bay Area utility lifeline programs. If participation in the discounted program is below expectations, Motivate and MTC may mutually agree on other eligibility criteria so long as the eligibility is determined by a third-party.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Revenue Share                | <p>User Revenue: 5% of user revenue above \$18,000,000 earned by Motivate (in accordance with GAAP) in any year will be paid to MTC. Amounts owed will be paid within 120 days of the end of the calendar year.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |



| Contract Topic                    | Contract Terms                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Revenue Share<br>(continued)      | <p>Sponsorship Revenue: 5% of sponsorship revenue in excess of \$7,000,000 earned by Motivate (in accordance with GAAP) in any year will be paid to MTC. Amounts owed under the sponsorship revenue share agreement in years 1-5 will be deferred and paid in equal installments in years 6-10. For years 6-10, amounts owed under the sponsorship revenue share agreement will be paid within 120 days of the end of the calendar year.</p> <p>The revenue share hurdle will be adjusted for CPI starting in year 2.</p>                                                                                                                                                                                                                                                                                                     |
| Brand Development and Sponsorship | <p>Motivate is responsible for identifying sponsors and developing system name, color, logo and placement of system assets. MTC, in consultation with the cities, will have approval rights over title sponsorship and branding.</p> <p>Motivate will abide by cities' existing guidelines and restrictions with regards to outdoor advertising. Motivate will not choose sponsors that are in age-restricted categories (alcohol, tobacco or firearms), products banned by the local government, or deemed offensive to the general public. Rejection of proposed sponsors by municipalities are limited to the grounds above.</p>                                                                                                                                                                                           |
| Advertising                       | <p>Motivate will have the right to sell advertising on physical and digital assets. Advertising on physical assets are subject to local restrictions on outdoor advertising.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| Siting                            | <p>Motivate to develop site locations, which will be prioritized based on demand. Motivate will also use city analyses and recommendations already developed where possible.</p> <p>If a city does not approve a proposed site location, they must provide an alternative within one-block.</p> <p>Motivate to provide a 20% minimum placement in communities of concern system-wide. Participating cities may designate other areas for 20% minimum placement instead of communities of concern.</p> <p>Motivate will work together with cities on community engagement and outreach as part of the station siting process, including necessary business associations and city meetings.</p> <p>Motivate can relocate or resize underperforming stations while maintaining minimum placements in communities of concern.</p> |

| <b>Contract Topic</b> | <b>Contract Terms</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Siting (continued)    | <p>Motivate will hire planning and engineering firms to minimize the cities' costs and resources related to planning. Motivate will discuss staff time requirements with each city and determine ways to reduce demands on staff. If staff time exceeds estimates due to errors or omissions or by Motivate or its contractors, Motivate will reimburse cities for reasonable and documented direct staff time related to these issues.</p> <p>Cities to provide estimates on costs of permits within seven days of signing term sheet. If costs of permits are significant, Motivate will seek a waiver on permit costs given the public benefits of the project. If Motivate and Cities cannot reach agreement on a waiver, Motivate may consider reimbursing actual direct costs incurred by the city to provide the permit (e.g., a field visit by an inspector).</p>                                                                                                                                                                                                                                      |
| Security Fund         | <p>Motivate will provide \$250,000 into a Security Fund account controlled by MTC prior to the installation of the first new station. The Security Fund shall serve as security for the faithful performance by Motivate of all obligations under the contract.</p> <p>MTC may make withdrawals from the Security Fund of such amounts as necessary to satisfy (to the degree possible) Motivate's obligations under this Agreement that are not otherwise satisfied and to reimburse the MTC or cities for costs, losses or damages incurred as the result of Motivate's failure to satisfy its obligations.</p> <p>MTC shall not make any withdrawals by reason of any breach for which Motivate has not been given notice and an opportunity to cure in accordance with the Agreement.</p> <p>If funds are withdrawn from the Security Fund, Motivate will be required to replenish the Security Fund to an amount equal to \$250,000 on a quarterly basis.</p> <p>Interest in account accrues to Motivate.</p> <p>90 days after the end of the term, any remaining funds will be returned to Motivate.</p> |
| Liability             | <p>Motivate shall defend, indemnify and hold MTC and its officers and employees harmless, to the fullest extent permitted by law, etc. Similar indemnities for cities.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| Default               | <p>Termination and default clauses include the option to require Motivate to remove equipment, assign or transfer equipment and IP to a third party. IP assignment is limited to the extent needed for a third-party to maintain and operate the system.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |

| Contract Topic               | Contract Terms                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
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| Data                         | <p>All data owned by Motivate. Cities granted a non-exclusive, royalty free, perpetual license to use all non-personal data.</p> <p>Monthly Reports shall be provided for each of the above KPIs and other system data, to be determined.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| Responsibilities of Motivate | <p>Brand development, station siting, design, permitting, purchase of equipment and software, installation of bikes and stations, station relocation, equipment replacement, bike share safety training, monthly operating meetings with MTC and cities, marketing, sales and sponsorship, operations and maintenance of system including customer service.</p> <p>Station relocation by public agencies will require reimbursement of costs incurred by Motivate. However, if a newly installed station is found to be unsuitable by a city for its location, the city may request within 30 days of installation the relocation of a station at Motivate's cost. The number of available free station moves is equal to 10% of the installed station base less any prior moves. For example, if a city has 100 stations installed, they have a total of 10 free station moves less any free station moves used to date. If the system grows to 200 stations, they then have 20 station moves less any station moves used to date.</p> |
| Site Design and Planning     | <p>Motivate will hire a planning and engineering firm with experience in the specific locality to do surveying, site design and permit submission. Motivate will solicit input from each city to help determine its planning and engineering partners.</p> <p>Motivate will hire a community relations firm to assist with organizing and hosting community meetings and to conduct outreach to local residents and businesses.</p> <p>Motivate will use commercially reasonable efforts to subcontract the work to DBEs where possible.</p> <p>Each municipality should provide a point of contact to coordinate the community engagement efforts and the permitting process.</p>                                                                                                                                                                                                                                                                                                                                                      |
| Marketing                    | <p>MTC, in consultation with the cities, has final approval of marketing plans and activities.</p> <p>MTC, in consultation with the cities has approval over marketing and outreach plans for low-income communities, non-native English speaking populations, and disadvantaged communities. Motivate must do outreach and marketing in Spanish, Chinese and Vietnamese. MTC retains the ability to conduct outreach and</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

|                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                                | <p>program support in low-income and Limited English Proficiency neighborhoods.</p> <p>Motivate's other marketing activities must comply with MTC and local standards for decency and not offend the general public. Motivate will not advertise or promote any products in prohibited categories (tobacco, alcohol, etc.).</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Contract Topic</b>                                                          | <b>Contract Terms</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| Parking Meter Revenue                                                          | Motivate must make best effort to avoid taking metered parking spaces. If a city requires reimbursement of lost parking meter revenue for a given site, the city must also provide an alternative site location within one city block that is not sited in metered parking areas. Motivate can choose to locate in either site.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| KPIs                                                                           | <p>Key Performance Indicators:</p> <ol style="list-style-type: none"> <li>1. Rebalancing: no station will remain full or empty for more than 3 consecutive hours between 6AM and 10PM.</li> <li>2. Bicycle Availability: the number of bikes available for rent on an average, monthly basis shall be at least 90% of all bikes in service.</li> <li>3. Station Deactivation, Removal, Relocation, and Reinstallation: as notified by MTC, perform the necessary action within the number of days in the established schedule for each task.</li> <li>4. Station/Bike Maintenance, Inspection &amp; Cleaning: check each bike and station at least once per month and resolve each issue within a given time frame.</li> <li>5. Program, Website, and Call Center Functionality: the system, website, and call center shall each be operational and responsive 24/7, 365 days a year.</li> </ol> <p>Liquidated damages related to KPIs may not exceed 4% of annual user revenue for the year.</p> |
| Transition of Project from Bay Air Quality Management District (BAAQMD) to MTC | Subject to Air District Board approval, BAAQMD, MTC and Motivate will cooperatively develop a plan to effectuate the transfer of the project from the BAAQMD to MTC. The plan will provide for the implementation of new pricing, the continuation of existing memberships, the transfer of system data, the transfer of assets, and any other provision to ensure a seamless transfer and provide Motivate with the ability to operate the system under the MTC contract.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Resolution of Terms with BAAQMD                                                | <p>Resolution includes:</p> <ul style="list-style-type: none"> <li>• Motivate will settle all outstanding claims with the Air District for the amount of \$150,000.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |

| Contract Topic                                 | Contract Terms                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Resolution of Terms with BAAQMD (continued)    | <ul style="list-style-type: none"><li>• Air District agrees to release funds withheld for billed expenses and to pay all legitimate past and documented unbilled expenses totaling \$582,872 less the \$150,000 settlement amount.</li><li>• On a go-forward basis, Motivate will be paid for all eligible reimbursable costs per month to the maximum amount of one twelfth of the Annual Operations Fee, or \$136,638.67 per month. Cost caps within categories will not be relevant.</li><li>• This agreement will resolve prior SLA claims and any other prior potential claims that could be asserted through the date of Settlement</li></ul> |
| Americans with Disability Act (ADA) Provisions | In implementing and operating the bicycle sharing system, Motivate shall comply with all applicable requirements of the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, and all other applicable federal, state and local requirements relating to accessibility for persons with disabilities, including any rules or regulations promulgated thereunder. Such compliance shall extend to the location and design of system equipment and related facilities as well as the system website and any mobile application for the system.                                                                              |



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Cc:** [Major, Erica \(BOS\)](#)  
**Subject:** FW: San Francisco Chamber of Commerce Support of CU Priority Processing and Reduced Fees  
**Date:** Monday, March 9, 2020 6:31:00 PM  
**Attachments:** [Chamber CU Priority Processing Support Letter.pdf](#)

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**From:** Emily Abraham <eabraham@sfchamber.com>  
**Sent:** Monday, March 9, 2020 11:14 AM  
**Cc:** Amelia Linde <alinde@sfchamber.com>; Jay Cheng <jcheng@sfchamber.com>  
**Subject:** San Francisco Chamber of Commerce Support of CU Priority Processing and Reduced Fees

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supervisors, Planning Commission, and Small Business Commission,

The San Francisco Chamber of Commerce would like to offer our support of Ordinance 200214 "Planning Code - Conditional Use Review and Approval Process - Priority Processing and Reduced Application Fee for Certain Uses of Commercial Space."

Please see attached for our letter of support.

Have a wonderful day,

Emily Abraham

**Emily Abraham**

Public Policy Manager  
SF Chamber of Commerce



235 Montgomery St., Ste. 760, San Francisco, CA 94104  
tel: 415.352.4520 • fax: 415.392.0485  
sfchamber.com • twitter: @sf\_chamber

March 9, 2020

Board of Supervisors, Planning Commission, and Small Business Commission  
San Francisco City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA

Re: Planning Code - Conditional Use Review and Approval Process - Priority  
Processing and Reduced Application Fee for Certain Uses of Commercial Space

Dear Supervisors and Commissioners,

On behalf of the San Francisco Chamber of Commerce, I am writing in support of the recently introduced legislation to expedite and reduce fees for Conditional Use permits. The SF Chamber feels this is a positive, impactful, and much-needed step in the right direction for alleviating the burdens on the small business community.

With a changing economy, it is imperative that we continue to find ways to streamline permitting for small businesses looking to thrive in San Francisco. Allowing for an expedited process for conditional use permits will allow for such flexibility. Further, the increasing cost of doing business in the City has greatly impacted small business, and we are thrilled to see the City take steps to alleviate burdens where possible.

On behalf of the hundreds of small business members the Chamber represents, we thank Supervisors Peskin, Ronen, Fewer, and Haney for sponsoring this legislation and support its passage.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney Fong", written over a circular stamp.

Rodney Fong  
President & CEO

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Subject:** FW: "Affirmatively Furthering Fair Housing" Rule  
**Date:** Monday, March 9, 2020 6:11:00 PM

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**From:** Eihway Su <esinsf@yahoo.com>  
**Sent:** Monday, March 9, 2020 6:00 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** "Affirmatively Furthering Fair Housing" Rule

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To the SF Board of Supervisors,

San Francisco needs more housing for those who are economically disadvantaged. If we don't help those on the bottom, they end up impacting the rest of the city with the problems of the homeless and mentally ill. It is for us all that we need to support housing for those who have the hardest time retaining it, and it is the right thing to do to help those who are less fortunate.

Eihway Su  
170 Parnassus Ave., #2,  
SF CA 94117



**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Subject:** FW: For the March 10 CTA meeting - LRV agenda item  
**Date:** Monday, March 9, 2020 4:16:00 PM

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**From:** sfrobink@aol.com <sfrobink@aol.com>  
**Sent:** Monday, March 9, 2020 2:25 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** For the March 10 CTA meeting - LRV agenda item

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Commissioners:

I am writing primarily to discuss transverse seating on the new LRVs. I appreciate that the MTA added a few extra transverse seats to the new LRVs, but I have some concerns.

For the 1st 50 cars, the two seats added in the back are shown on the graphic as red seats. They need to be colored blue to show that disabled people can ask for them. Four single blue seats on the other side are not enough seats for the large numbers of disabled and fragile riders. We will also need access to the other two.

For the 101 cars, the extra four seats added in the back are shown as red and facing the other way. They need to be colored blue and turned around. I understand there may be an interference with the articulation section, so if possible, to put them back to back then so at least two will face forwards.

For the retrofit of the 68 cars, I know short people are upset about their feet not reaching the floor nor having enough structures to hold onto. I know people are upset with the bench seats. I know people would like some transverse seats, and they are scheduled to get the same 4 plus 2 transverse seats, so would it be possible to fix the 68 cars first for everyone before ordering the rest?

I think MTA decisions about seating have been done wrong. The initial vote in 2013-14 for the bench cars was 54-44%. The MTA planned car seating for the 54% and ignored the needs and wishes of the 44%, thus resulting in many unhappy riders and modifications having to be done.

I did my own research. I interviewed around 100 riders to hear their opinions about the bench cars, Half the riders liked the bench cars and half didn't. The 50 disapproving riders gave me 5 reasons why they didn't like the cars (short people were unhappy, didn't want to stand, didn't like the benches, wanted forward seats, got motion sickness sitting sideways). Disabled people also self-disclosed many health condition reasons why they needed to sit in forward seats (sciatica, back pain, back surgeries, motion sickness, pregnant women, etc).

I interviewed another 400 riders after the MTA came out with its plans. Again, half the riders approved of the bench cars and half didn't. This time I asked the disapproving half if they preferred to sit sideways or forwards, and the answer was 50/50, indicating a quarter of the riding public prefers to sit in transverse seats.

What are the implications of the riders' responses? First, a lot of people have disabilities or are fragile and need to ride in transverse seats. Second, a lot of the public prefers them for a more comfortable ride.

Interactions are probably going to be difficult between these two groups when disabled/fragile people ask for the few transverse seats which much of the healthy public prefers!

Additionally, there are a lot of riders who do not speak English. We will not be able to communicate with each other about our seating needs and this is going to be a problem..

I also attended and testified at several meetings of the three Muni advisory groups - the CTA, MTA and disability groups. I never witnessed any concern shown by any advisory group member for the needs of disabled and fragile riders for transverse seats. They should have been concerned enough to make further inquiry.

There has been a Muni and BART car design in operation that would have worked for both standees and those needing to sit! It has 12 double transverse seats down one side and 4 single transverse seats on the other side, with a smaller number of longitudinal seats. It has a 4-foot-wide aisle for standees. It seems to work fine. This should have been the design model for the change in cars since it accommodates both standees and those needing to sit in transverse seats.

The lack of adequate numbers of transverse seat in the new LRVs is a serious access and health issue! Disabled and fragile people may not be able to ride if there are no seats for them. They may be riding on the floor, like me, against a support wall. They may get injured standing or sitting in a sideways seat. I am ending this letter with dismay. I have no idea how the public is going to be able to handle riding in rail cars with not enough transverse seats for them! We need them back!

Sincerely,

Robin Krop  
disabled Muni rider

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Subject:** FW: 3000 kids attend Lowell public school why are they open when private schools and colleges are closed for two weeks....?  
**Date:** Friday, March 13, 2020 6:44:00 PM

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-----Original Message-----

From: Aaron Goodman <amgodman@yahoo.com>  
Sent: Thursday, March 12, 2020 7:59 AM  
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
Subject: 3000 kids attend Lowell public school why are they open when private schools and colleges are closed for two weeks....?

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Just a question since the limit on gatherings is 1000 people....

Ag D11

Sent from my iPhone

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Subject:** FW: Cancel ALL events for god's sake  
**Date:** Friday, March 13, 2020 6:42:00 PM

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**From:** Frederika Zipp <frederika.zipp@gmail.com>  
**Sent:** Thursday, March 12, 2020 1:57 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** Cancel ALL events for god's sake

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

The mayor's announcement yesterday regarding the cancellation of events for crowds over 1000 persons is pitiful. Please get with the times (and the proven record of other countries in dealing with the Coronavirus) - cancel ALL events. Keep us safe and healthy!!!!

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Subject:** FW: coronavirus  
**Date:** Monday, March 9, 2020 6:32:00 PM

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-----Original Message-----

From: Edward Uzzle <rekh@frontiernet.net>  
Sent: Saturday, March 7, 2020 10:44 PM  
To: Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
Cc: Fewer, Sandra (BOS) <sandra.fewer@sfgov.org>; MandelmanStaff, [BOS] <mandelmanstaff@sfgov.org>; Haney, Matt (BOS) <matt.haney@sfgov.org>; Mar, Gordon (BOS) <gordon.mar@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; Preston, Dean (BOS) <dean.preston@sfgov.org>; Safai, Ahsha (BOS) <ahsha.safai@sfgov.org>; Ronen, Hillary <hillary.ronen@sfgov.org>; Stefani, Catherine (BOS) <catherine.stefani@sfgov.org>; Walton, Shamann (BOS) <shamann.walton@sfgov.org>; Yee, Norman (BOS) <norman.yee@sfgov.org>  
Subject: coronavirus

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Greetings

Dear Madam/Sir:

I'm concerned about the Coronavirus outbreak. Especially in Northern California. My 21 year old daughter is planning on attending the Eric Nam concert on March 10, 2020 at the Warfield theater. Any particular reason why the up coming concert(s) aren't being cancelled or postponed? This is extremely irresponsible considering the above group is coming from Oregon; a known hotspot, coupled with the fact that the coronavirus is now in the "community spread" faze of it's growth in San Francisco. I urge whomever has the power to cancel or at least postpone this up coming concert, act accordingly.

I currently live in Sacramento California. The virus is spreading here as well. The Elk Grove School District just announced that it's schools will be closed March 7th through the 13th. If there is anything one or all of you can do, please help.

Regards,

Edward Uzzle

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Subject:** FW: Public Comment: Proposing a Special "One City One Book" in the Time of Coronavirus  
**Date:** Friday, March 13, 2020 6:42:00 PM

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**From:** Thomas Busse <tjbussesf@gmail.com>  
**Sent:** Friday, March 13, 2020 3:26 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>; Peskin, Aaron (BOS) <aaron.peskin@sfgov.org>; CON, Controller (CON) <controller.con@sfgov.org>  
**Cc:** City Librarian, City Librarian (LIB) <citylibrarian@sfpl.org>; Audrey Cooper <acooper@sfchronicle.com>; Marie Ciepiela <marie.ciepiela@friendssfpl.org>  
**Subject:** Public Comment: Proposing a Special "One City One Book" in the Time of Coronavirus

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

To Members of the Board of Supervisors:

Getting past the front page of today's Chronicle (a full page feature about Northern Irish spirits and the Golden Gate Bridge), the problem of school closures and "social distancing" is sure to provoke a reaction. I want to inject a solution. San Francisco should push and reinvigorate the Public Library's "One City One Book" program (a better name would be "OneBookSF"). It's the type of unexpected thing San Francisco could do as purely a local issue of social connectedness.

Of course, I have just the title: Sheldon Watts 1997 "**Epidemics and History: Disease, Power, and Imperialism.**" It is one of those great histories that challenged everything I thought I knew. This experience - of opening ones mind - is the essence of the paradigm shift. A disease is really a disease construct - an invisible idea. When the paradigm shifts, what was unseen or in the shadows becomes an apparition. Yet it has always been there, hiding in plain sight. Intelligence has become aware, only the relationship has changed. Watt's book is ultimately a collection of fables: "The Plague" "The Great Leprosy Hunt" "Smallpox in the New World and Old" "Syphilis Old and New" etc. Today, these fables are still being written.

Some excerpts focusing on Leprosy in the time of San Francisco's Namesake:

*Historians who are unwilling to attribute this "leprosy" epidemic to a collective delusion similar to the seventeenth-century fantasy about the ability of old ladies to interfere with the workings of the weather through witchcraft, generally attribute the "rise in the number of lepers" (itself a fallacious concept) to changes in the physical and economic environment. This explanation is based on the orthodox historical understanding that in the late tenth and eleventh centuries the West finally broke through its post-Roman pattern of civil, economic, and demographic decline.*

*In the week before Good Friday ... a plot involving hundreds of lepers had just been discovered. This fantasy held that the leprous heads of leprosy houses had met and decided to even scores with the*

*people of France by causing them all to become lepers...Given the urgency of the situation, it was decided to torture leper suspects. Using infallible inquisition techniques that only dead men can resist, the authorities learned that the Jewish community was paymaster to the lepers and that outside funding was coming in from a mythic Muslim sultan of Bablyon and the king of Granada.*

Watts's account of Bubonic Plague and Tamberlane also puts into historically-informed perspective the type of yellow journalism still practiced at the Examiner, which ran a headline on 3/12 "Mongolians in S.F. are Optimistic About the Future," effectively mocking its readers. What comes down from on high is not news, but rather social constructs. Witness, for example, the Book of Esther. I myself have wondered about the gathering of crowds in churches and why preachers skip the obvious lessons about Jesus and the Lepers, but then I learned about a Dept. of Homeland Security program that trains ministers in preaching compliance with marital law. Luckily, this Sanctuary City does not participate in JATO. Not to mention we can all rest assured Gavin is there, Governing, and we all know how he can give a seven and a half hour state of the City address without looking around and observing the state of the city.

I also recommend picking up Watts's book in hard copy - consider it a "test of emergency supply distribution systems." We all have a complex relationship with news - one that is increasingly virtual and ephemeral, worthy of an Ingsoc memory hole. Luckily, modern disinfection techniques suggest the library of a leper won't be taken away and burned - or will it? I myself have had strange forebodings of another kind of virus: one that zaps everyone's wiffi and bricks everyone's phones, a sort of psyop in the time of quarantine. With the public library already closed and the SFPL "purge" still a living memory, the historically-informed wisdom of non-elites holding private collections of books seems all the wiser.

**From:** [Board of Supervisors, \(BOS\)](#)  
**To:** [BOS-Supervisors](#)  
**Subject:** FW: Strong Recommendations for Virus  
**Date:** Monday, March 9, 2020 4:12:00 PM

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**From:** SANDY WEIL <sweil46117@aol.com>  
**Sent:** Monday, March 9, 2020 3:34 PM  
**To:** Board of Supervisors, (BOS) <board.of.supervisors@sfgov.org>  
**Subject:** Strong Recommendations for Virus

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Dear Board of Supes and Mayor Breed:

We can't be like Italy and wait too long. This virus is multiplying rapidly.  
We MUST take preventative methods to slow it down NOW!

**The medical field is OVERWHELMED already.**

> **Shut schools for two weeks minimum starting this Weds or Thurs to let parents prepare.**

> Until then **have teachers and students be outside as much as possible**

**In the school yards,** holding classes. There is no rain, until Sunday,  
And only for one day. As little inside contact as possible.

> **Designate one school in each district for medical staff children and essential staff children to continue to attend.**

Again, have those kids outside away from each other and teaching staff as much as possible.

> WE MUST BE PROACTIVE NOW! No more waiting and seeing.

**The virus will multiple faster and faster as people do not know they have it.**

> Recommend **all restaurants and stores to start up delivery services to keep their businesses running.**

**Including Walgreen's and others.**

> **Recommend libraries be used as sights as food pantries** for people who don't have money to stock up

On dried goods, paper towels, toilet paper, hand soap. Collaborate with Food bank NOW!!!!!! Food bank to make

Boxes for people to P/U. Notify wealthy people in this city to donate immediately to Foodbank.

> Recommend all gyms hold classes outside, or have organized walks or runs. No sharing equipment.  
No being inside close quarters -



Remember it can spread 6 ft with a sneeze or cough and people don't need to show symptoms  
Or even know that they may have it!

**> This all must start this week. WE MUST SIGNIFICANTLY REDUCE OUR SOCIAL EXPOSURE BIG TIME.**

> Lets show the rest of the country we have the vision to take the lead with this IN ADVANCE, NOW  
So we can help PROTECT OUR MEDICAL STAFF & HOSPITALS from chaos!

These is not extreme. This is not crazy.

This is PANDEMIC, STRATEGIC ACTIONS needed IMMEDIATELY.

You MUST ACT NOW!

And update your press release page.

I WANT A REPLY - because this will be on you and every other politician  
that is in wait and see mode. PREVENTION is what is needed immediately.  
Too many people are going out and gathering in small restaurants etc.

Sincerely,  
Sandy Weil