

**City and County of San Francisco
Municipal Transportation Agency
1 South Van Ness Avenue
San Francisco, California 94103-1267**

Agreement between the City and County of San Francisco and

[insert name of contractor]

This Agreement is made this **[insert day]** day of **[insert month]**, 2008, in the City and County of San Francisco, State of California, by and between: **[insert name and address of contractor]**, hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Municipal Transportation Agency (“SFMTA”).

Recitals

WHEREAS, the San Francisco Municipal Transportation Agency (“SFMTA” or “Department”) wishes to grant certain advertising rights on SFMTA properties; and,

WHEREAS, a Request for Proposal (“RFP”) was issued on **[insert date]**, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

Now, THEREFORE, the parties agree as follows:

1. DEFINITIONS

1.1. Advertisement. Any combination of numerals, letters, words, models, banners, emblems, insignia, symbols, devices, lights, trademarks, service marks, sounds, textures, odors or other perceptible representation intended to call attention to any person, firm, group, organization, place, commodity, product, service, business, profession, enterprise or industry.

1.2. Advertising Contract. A contract between Contractor and its advertisers, clients, customers or agents to display or distribute Advertisements on Advertising Space.

1.3. Advertising Space. Any surface or portion thereof that is subject to this Agreement and is approved by SFMTA for the placement of Advertisements.

1.4. Agreement. This contract, all referenced Exhibits to this contract, the RFP and the Proposal, in that order of precedence, all of which are incorporated by reference in this Agreement as though fully set forth.

1.5. Annual Revenue Share. The amount payable to SFMTA as determined by applying the revenue share percentage listed in Table 6.1.3 to the Gross Revenues for the previous Fiscal Year.

1.6. Calendar Year. The period of time beginning January 1 and ending December 31 of a particular year.

1.7. Carryover Contract. Any Advertising Contract that is assigned to Contractor by City as of the Effective Date of this Agreement until the expiration of the original term of the Advertising Contract, and any Advertising Contract entered into by Contractor with an expiration date later than the termination of this Agreement.

- 1.8. City.** The City and County of San Francisco, a municipal corporation.
- 1.9. Consumer Price Index, CPI.** Consumer Price Index distributed by the Bureau of Labor Statistics (BLS) for the Consolidated Metropolitan Statistical Area (CMSA) covering San Francisco - Oakland - San Jose.
- 1.10. Contract Year.** The period of time beginning July 1 and ending June 30 of a particular year.
- 1.11. Days.** Unless otherwise specified, all references to the term "Days" refer to calendar days.
- 1.12. Director.** The Director of Transportation of the San Francisco Municipal Transportation Agency or his or her designee.
- 1.13. Effective Date.** [July 1, 2009].-
- 1.14. Fiscal Year.** July 1 through June 30.
- 1.15. Graffiti.** Any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, Structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, Shelters, Kiosks, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).
- 1.16. Gross Billings.** All billings from the sale of Advertising Space or time by Contractor to its advertisers.
- 1.17. Gross Revenues.** Total amounts received annually by Contractor in connection with the rights granted and duties performed under this Agreement.
- 1.18. Infrastructure.** All infrastructure required to be constructed, installed or maintained pursuant to this Agreement, including but not limited to advertising display frames, displays, racks, space frames, decals, advertising boards, projection equipment or any device that is for the purpose of displaying Advertisements.
- 1.19. MAG.** The minimum annual guarantee payment required by Section 6.1.3 of the Agreement.
- 1.20. Monthly Payment.** An amount equal to 60% of Gross Billings for the preceding calendar month or the MAG, whichever is higher.
- 1.21. Party; Parties.** The Parties to this Agreement are SFMTA and Contractor.
- 1.22. Proposal.** The proposal submitted by Contractor in response to the City's Request for Proposals, dated [insert date of proposal].
- 1.23. Records.** All documents created, received or maintained by Contractor in connection with performance under this Agreement, including, but not limited to, books, accounts, invoices, maintenance and service logs, database information, contracts, construction documents, payroll information, maintenance and service logs and other documents, whether or not kept in electronic format.
- 1.24. Request for Proposals, RFP.** The Request for Proposals issued by the City on August 22, 2008, attached hereto and incorporated by reference as though fully set forth.

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

1.26. Total Required Payments. The amounts that Contractor is required to pay to SFMTA pursuant to Sections 6.1.1 through 6.1.3 of this Agreement.

1.27. Vehicles. Municipal Railway diesel buses, electric trolley buses, alternative fuel buses, historic streetcars, light rail vehicles, and cable cars used for public transit.

2. TERM OF THE AGREEMENT

The term of this Agreement shall be from July 1, 2009 to June 30, 2019. The SFMTA may, in its sole discretion, exercise two five-year options to extend this Agreement to June 30, 2024 and June 30, 2029, respectively.

3. GRANT OF ADVERTISING RIGHTS AND PRIVILEGES; LIMITATIONS

3.1. Rights Granted

City hereby grants to Contractor the exclusive right to place such advertising as may be authorized from time to time by City on and in Advertising Space subject to this Agreement. The rights granted by this Section 3 are subject to the condition that Contractor, in the exercise of the rights herein granted, will make best efforts sell Advertising Space and time to advertising clients. City warrants and represents only that Contractor shall have the exclusive right to place such advertising as may be authorized under this Agreement; City does not warrant or represent that any particular level of advertising, or advertising on all available Advertising Spaces, will be permitted under this Agreement.

3.2. License Granted

In conjunction with the rights granted by this Section 3, and subject to all provisions of this Agreement and applicable law, the SFMTA grants to Contractor a license to install, maintain, repair or replace Infrastructure as necessary for the placement of advertising on Advertising Space subject to this Agreement, including Advertising Space in or on Vehicles when such vehicles are not in use, transit stations, buildings and facilities, and to access such properties for the purpose of installation, maintenance, repair or replacement of Advertisements or Infrastructure, subject to any access restrictions communicated to Contractor in writing by SFMTA.

3.3. Rights Retained

Contractor acknowledges that City intends to, and hereby does, retain and reserve all advertising rights that are not specifically granted by this Agreement, and that City may exercise such retained and reserved rights through a source other than Contractor. The rights retained and reserved by City include, but are not limited, to:

- 3.3.1** The right to place Advertisements on any SFMTA property that is not expressly made part of this Agreement;
- 3.3.2** The right to license or otherwise provide for the use of any trade name, trademark, or other identifying device or symbol used, owned, licensed or registered by City;
- 3.3.3** The right to display poster advertisements in Muni Metro stations, except for the rights granted herein to Contractor for the sale of transit information display advertising; provided, that nothing herein shall affect any rights Contractor has as a result of any prior contractual relationship with Bay Area Rapid Transit District;
- 3.3.4** The right to install electronic information displays with advertising in the Muni Metro stations and at Muni cable car stops and terminals;
- 3.3.5** The right to grant concessionaires the authority to advertise in Muni Metro stations, and on or in items sold by them on such premises;

- 3.3.6** The right to obtain corporate sponsorships of special events, exhibitions and individual vehicles provided that such advertising when posted does not obstruct Contractor's advertising;
- 3.3.7** Exclusive of all commercial advertising space referred to in this Agreement, the right, at SFMTA's expense, to place on Vehicles and within transit stations and other structures related to its transit system, informative material, including, but not limited to, timetables, "take-one" brochures, service notices, additional signs and other displays designed to encourage the use of its transit system. SFMTA reserves exclusive use of all 11" x 17" frames mounted on the rear-facing side of the bulkhead panel behind the operator's position, and, in articulated Vehicles, two additional 11" x 17" frames located near the trailer portion of the Vehicle. Such informative material shall be displayed in a manner that does not interfere with Advertisements placed by Contractor. SFMTA shall not sell such space to advertisers either directly or through any intermediary; and
- 3.3.8** The right to terminate the rights to any Advertising Space granted to Contractor pursuant to this Agreement upon which no Advertisement has been displayed for a period of 60 Days. Such partial termination shall require 60 Days' written notice by SFMTA, during which time Contractor may avoid partial termination by demonstrating to SFMTA that it has sold Advertisements on the subject Advertising Space prior to the date of SFMTA's notice of partial termination, or may provide SFMTA with a copy of an Advertising Contract for that Advertising Space with a term that begins no later than the 60th Day from the date of the SFMTA's notice of partial termination.
- 3.4.** Initially Authorized Advertising

In accordance with the exclusive advertising rights granted in this Section 3, City hereby authorizes advertising as set forth below.

3.4.1. Vehicle Advertising

SFMTA initially authorizes Contractor to use the spaces on the Vehicles listed in Exhibit A for Vehicle advertising, subject to change in the sole and exclusive discretion of Director. The City reserves the right to negotiate with the Contractor the use of other Vehicles for advertising at a future date.

(a) Vehicle Count and Description

For Vehicle advertising, subject to change in the sole and exclusive discretion of Director, City initially authorizes Contractor to use the spaces on the Vehicles listed on Exhibit A. The City reserves the right to negotiate with the Contractor the use of other Vehicles for advertising at a future date. SFMTA will provide to Contractor an updated "Fleet Inventory Report" on or about the first day of the month following the increase or decrease of Vehicle fleet by 200 Vehicles or more.

(b) Wraps

Vehicles may be wrapped so long as side windows are not covered. All Vehicle wrap Advertisements are subject to policies adopted by the SFMTA Board of Directors regarding wrap advertising. The SFMTA currently does not have a policy on wrapping side windows of Vehicles, but should it adopt such a policy during the term of this Agreement, such policy shall govern the authorization and limitations of Vehicle wrap advertising. Wrap advertisements shall not damage the Vehicles, their paint schemes or decal applications. Contractor shall reimburse City for any damage to Vehicles by reason of the application of any wrap Advertisements.

(c) Guaranteed Space on Vehicles

In each contract month, SFMTA shall have the right to the exclusive use of no more than 15% of Advertising Spaces on the exterior of Vehicles. SFMTA retains the right to use all interior Advertising Space on Vehicles unless Contractor has sold the space. Contractor shall install, maintain and remove interior Advertisements for the SFMTA free of charge.

3.4.2. Transit Information Displays

Contractor may utilize available Advertising Space and time on SFMTA transit information displays, including the Platform Display Sign System (PDSS). For PDSS advertising, City authorizes Contractor to use display Advertisements on all PDSS equipment situated in Muni Metro stations as described below.

(a) PDSS Description

The Advertising Space available on the PDSS consists of two types of displays. The first type is an electronic display that utilizes light emitting diodes to transmit moving or flashing illuminated messages across an area that measures 2 inches by 36 inches. The second type of display is fixed and non-electrical, measuring 2 inches by 36 inches in size and occupying an opening located directly beneath the electronic display. Each PDSS unit has two such openings available for the display of fixed, non-electrical advertising.

(b) PDSS Advertising Space and Time

The electronic Advertising Space and time available on the Muni Metro PDSS will vary, since priority will be given to emergency messages, destination messages, operational messages (including, but not limited to, notices to passengers about changes in routes, schedules and fares, as well as procedures for loading and off-loading passengers safely), and time clock information. Although City cannot guarantee that PDSS Advertisements will be displayed as scheduled, City will in good faith attempt to run all scheduled Advertisements. City shall have no liability for failure to run any such scheduled Advertisements.

(c) PDSS Equipment and Maintenance

Contractor shall maintain PDSS terminal equipment in its San Francisco office as specified by SFMTA. Contractor agrees, at its own cost and expense but using designated SFMTA personnel, to perform all maintenance work on the PDSS terminal equipment located in its offices, except to the extent said maintenance work is performed by the manufacturer pursuant to warranty. Contractor agrees to provide promptly all regular and special maintenance as specified in the PDSS owner's manual and as directed by authorized SFMTA maintenance personnel.

(d) PDSS Ownership

Contractor acknowledges City's ownership of the PDSS and all its components, and waives any right, title or interest therein. Upon termination of PDSS rights granted hereunder and within 24 hours after request by City, Contractor agrees to return the PDSS terminal equipment and all its components to City in the same condition as when received, ordinary wear and tear excepted. If Contractor is unable to return the PDSS terminal equipment and all components to City in the same condition as received, ordinary wear and tear excepted, Contractor shall pay to City an amount equal to the cost of obtaining new replacement equipment, and Contractor may keep the original equipment.

3.5. Unsold Space

3.5.1. City's Use of Unsold Space

By the first day of each month, Contractor shall provide a projection of all unsold Advertising Space anticipated over the next 60 Days to SFMTA in an electronic format. Notwithstanding the provisions of Sections 3.1 and 3.4.1(c) of this Agreement, the City has the first option to use, for a minimum of 14 Days, any Advertising Space, at no charge to the City and for any public purpose, that has not been sold by Contractor. The City will be responsible for providing all printed posters ready for posting by Contractor. The SFMTA shall notify Contractor of the City's intention to use the unsold Advertising Space at least 30 Days prior to the date on which the City's use would begin. If Contractor is unable to deliver unsold Advertising Space for any reason after being notified of the City's intention to use unsold Advertising Space, and if the printed materials are time sensitive and cannot be reused, Contractor shall

reimburse the City for all printing and design costs expended in anticipation of the City's use of that Advertising Space.

3.5.2. Contractor's Use of Unsold Space

To the extent that the City does not exercise its option to use unsold Advertising Space in accordance with Section 3.5.1, Contractor may use, at its sole cost and expense, available unsold Advertising Space: 1) for its own advertisements and promotion designed to increase the sale of Advertising Space, or 2) to display public service announcements provided by non-profit public, educational, and charitable organizations.

3.5.3. Trades, Discounts and Space or Time Bonuses

Contractor may barter or trade Advertising Space and/or time on unsold Advertising Space or time under the following conditions:

- (a) Contractor must secure the prior written approval of the Director for each barter or trade.
- (b) Contractor is prohibited from receiving compensation for such transactions except as otherwise expressly authorized by this Agreement.
- (c) No Advertising Space or time bonus, discount or allowance shall be permitted without the prior written approval of the Director unless all the following conditions are met:
 - (i) The transaction must result in a direct financial benefit to SFMTA, and may not relate in any way to the sale of advertising on or with other transit systems or properties;
 - (ii) Contractor is prohibited from receiving any consideration or commission for any such Advertising Space or time bonus, discount or allowance other than payments from which City receives a cash percentage in accordance with Section 6 of this Agreement;
 - (iii) Each such space or time bonus, discount or allowance, together with the term and/or schedule of display, shall be clearly itemized with appropriate footnotes in Contractor's Advertising Contracts or on an equivalent form approved by the Director.

SFMTA may actively solicit trades, and Contractor shall cooperate with SFMTA in any such endeavor.

3.5.4. Public Service Announcements

Contractor shall have the right, at its own discretion, to display certain public, educational, charitable and editorial displays free of charge or at reduced rates in any Advertising Spaces not contracted for use by paid advertisers and not being used by the SFMTA or Contractor pursuant to this Section 3. In the event that Contractor collects revenues hereunder solely to cover direct costs for labor and materials for carding, installation, maintenance, and removal of such displays, such amounts shall not be included in the Gross Billings used to compute the percentage payment. Such freely donated or discounted advertising shall not, however, reduce the MAG payments hereunder.

3.5.5. Advertising Space Subject to Change

Contractor acknowledges and agrees that the available Advertising Space may vary from time to time for various reasons.

3.5.6. Transportation Priority

Contractor acknowledges and agrees that advertising, and the grant of advertising rights provided for in this Agreement, are incidental to the SFMTA's transportation business, which may undergo changes affecting the advertising rights granted. SFMTA will have no liability to Contractor for any change in its

routes, in the number of transit vehicles operated by it, in ridership, or for any other change affecting the level or scope of advertising authorized by SFMTA.

3.5.7. Use of Advertising Space

Contractor may not use Advertising Space for any purpose other than those expressly provided in this Agreement.

3.5.8. No Damage to City Property

Contractor and its subcontractors may not damage City property. The use of exterior advertising display frames or similar hardware and adhesive decals such as "Control-TAC" or its equivalent shall not damage the paint schemes or decal applications of Vehicles, or any surface of any Advertising Space. If in the course of its activities under the Agreement Contractor or any of its employees or subcontractors damages any property belonging to City, Contractor shall compensate the City for the full extent of its losses resulting from the damage. At City's option, City may require Contractor to repair any such damage.

3.5.9. Nuisances

Contractor shall conduct its activities under this Agreement in a manner that does not constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to City, or to the public.

4. OWNERSHIP, INSTALLATION AND MAINTENANCE

4.1. Installation and Ownership Rights

Contractor, at its own expense, shall:

4.1.1. Furnish all new Infrastructure of the size currently in use, or of a size and type as may be agreed upon by City and Contractor, as is required either to replace presently existing Infrastructure, to add to the existing Infrastructure or to construct new Infrastructure in new locations. Contractor shall reimburse City for any such Infrastructure installed at City's expense by a factory supplier of new or rebuilt Vehicles or other supplier. Contractor hereby acknowledges and agrees that City owns and has full title to any and all Infrastructure including, but not limited to, that which is now or hereafter affixed to any Vehicle or any other SFMTA property subject to this Agreement.

4.1.2. Place all Advertisements in a clean, safe, and first-class condition, and shall maintain or replace Advertisements as needed.

4.1.3. Erect all Infrastructure and insert all Advertisements in accordance with any schedule approved by SFMTA, or if no schedule is approved, whenever possible at hours of minimum passenger, visitor and employee activity within SFMTA facilities.

4.2. Maintenance

Contractor shall continuously maintain Infrastructure in a clean, safe, and first-class condition during the entire term of this Agreement, and shall maintain or replace all Infrastructure as needed.

4.3. Inspection and Clean-up

Contractor must inspect each Advertisement at least once per week. Contractor shall make more frequent inspections if conditions warrant. In the course of each inspection of an Advertisement, Contractor shall remove all Graffiti, stickers, posters, dust and dirt from each Advertisement.

4.4. Repair

Except as otherwise provided in this Section, within 48 hours of notification by the public or by City or discovery by Contractor, Contractor shall repair any damage, including, but not limited to, damage from vandalism or Graffiti, found on any Advertisement or advertising Infrastructure. Contractor shall repair, replace or remove, as appropriate, any damage to an Advertisement or Infrastructure that is of a hazardous

nature, including but not limited to broken glass or protruding edges, within 24 hours of notification to or discovery by Contractor.

4.5. Removal of Advertisements

Contractor agrees to remove Advertisements as expeditiously as practical after the expiration of each Advertising Contract, and in no event later than 30 Days after expiration of any such Advertising Contract, so that no continuation or over posting of such Advertising Contract results in any loss of revenues to be generated under this Agreement except as provided for in Section 3.5.3.

4.6. Use of City Forces

If City at any time should elect to perform installation and maintenance and repair responsibilities through its own personnel on a permanent basis, then the Contractor will assign those responsibilities to City within 60 Days after the SFMTA has given written notice of such election. In that event, in addition to all other payments required hereunder, Contractor shall pay City at the time of the annual reconciliation the lower of (1) City's actual labor, materials and administrative costs for performing such installation and maintenance responsibilities for the Contract Year, or (2) Contractor's installation and maintenance costs for the last 12-month period during which Contractor performed these activities.

4.7. Maintenance Plan

Contractor shall perform maintenance in accordance with the standards of this Agreement and the terms of the maintenance and installation plan attached as Exhibit [TBD].

4.8. Remedies for Failure to Maintain or Repair

In the event that Contractor fails to repair or maintain Advertisements within the time specified by SFMTA, SFMTA may, in its sole discretion, cause the repair or maintenance of said Advertisements or Infrastructure. Contractor shall pay SFMTA for its actual costs, including overhead costs, within 10 Days following receipt by Contractor of an invoice.

5. CONTENT OF ADVERTISEMENTS

5.1. Advertising Policy

The SFMTA Board of Directors has adopted an Advertising Policy that prohibits certain types of advertising. See Exhibit [TBD]. The Contractor agrees to comply with the advertising standards set forth in such policy. The SFMTA Board of Directors may unilaterally amend the policy, and SFMTA will provide to Contractor notice of any such amendments. Contractor is permitted to display only those Advertisements that are in compliance with SFMTA's policy. Upon written demand by the Director, Contractor agrees to promptly remove any Advertisements that are in violation of SFMTA's policy to the extent permitted by state or federal law.

5.2. Disclaimers

Contractor shall install a decal on each Advertisement that reads: "The views expressed in any advertisement do not necessarily reflect the views of the Municipal Transportation Agency." SFMTA will provide the decals and determine the locations on the vehicles where the decals shall be placed.

5.3. Complaints

Contractor shall install a decal on each Advertisement indicating that a member of the public may dial 3-1-1 to report any complaint about the physical condition of the Advertisement. The design of the decal and the location of the decal on the Advertisement will be subject to the prior approval of City. Each decal must provide unique identifying information for the Advertising Space for the purpose of easy identification of the Advertising Space that is the subject of a complaint or report. Current decals shall be replaced as needed to ensure accuracy and readability.

5.4. Design Considerations and Use of Materials

5.4.1. General Considerations

It is the intent of both City and Contractor to provide an advertising program that is effective and aesthetically pleasing and that will be beneficial to both Parties. The parties accordingly agree (A) to maintain throughout the term of this Agreement a continual liaison and exchange of plans and information to assure the successful implementation of the Agreement, and (B) to use materials and technology presently available or subsequently developed for all exterior and interior Advertisements that will enhance the appearance and image of SFMTA Vehicles, transit system and facilities and that will not detract from the transit system's color scheme and logo or damage the surface of Advertising Spaces, including the Vehicles' paint scheme or decal applications. City shall have the right to determine the number, type, and method of attachment and location of all advertising Infrastructure.

5.4.2. Experimental Displays

Contractor may experiment with new advertising materials, displays and designs whenever possible. SFMTA and Contractor shall coordinate on the type and extent of such experimental projects, and their schedule and term; however, Contractor shall not proceed with such experimental projects until authorized by SFMTA. During the term of these projects, the sales and inventory value of such experimental displays shall not be used to recalculate the MAG, unless and until the SFMTA authorizes any such display on a non-experimental basis. Revenue from these displays may, however, be used as a credit towards meeting the MAG.

5.4.3. Cable Car and Historic Displays

All advertising on cable cars and historic vehicles shall be in conformity with the character, style, and design of such Vehicles, and be subject to the approval of the Director. No Advertisements may be placed on the outside of historic vehicles.

6. PAYMENTS

6.1. Payments by Contractor to City

During the term of this Agreement, Contractor shall pay to City the amounts listed below, without any deduction or offset whatsoever. Payments shall be made electronically in accordance with wiring or other remittance instructions provided in writing by City.

6.1.1. Administrative Payments

No later than 30 Days after the Effective Date and no later than July 1 of each year thereafter during the term of the Agreement, Contractor shall pay SFMTA a minimum of \$500,000 ("base rate"), as escalated each year by the percentage change in the most recently published 12 month average CPI.

6.1.2. Marketing Support

No later than 30 Days after the Effective Date and no later than July 1 each year thereafter during the term of the Agreement, Contractor shall contribute \$250,000 to the SFMTA, plus \$400,000 in media and/or services, either provided directly to the SFMTA or purchased for the use of the SFMTA, as escalated each year by the percentage change in the most recently published 12 month average CPI of the Bay Area.

6.1.3. Minimum Annual Guarantee (MAG)

Based on the minimum Gross Revenues in the previous Fiscal Year, Contractor shall pay to the SFMTA, in 12 equal installments due on the first business day of each month, the greater of:

- (a)** The MAG amount set forth in Table 6.1.3 below; or
- (b)** 60% of the Contractor's annual Gross Revenues earned in connection with the rights to advertise provided in this contract.

Contractor shall pay the MAG amount unless the Gross Revenues in the previous fiscal year meet or exceed the amounts set forth in Table 6.1.3.

Table 6.1.3: MAG Amount and Revenue Share Percentage

Fiscal Year	MAG	Revenue Share
2009-10		<u>60%</u>
2010-11		<u>60%</u>
2011-12		<u>60%</u>
2012-13		<u>60%</u>
2013-14		<u>60%</u>
2014-15		<u>60%</u>
2015-16		<u>60%</u>
2016-17		<u>60%</u>
2017-18		<u>60%</u>
2018-19		<u>60%</u>
2019-20*		<u>60%*</u>
2020-21*		<u>60%*</u>
2021-22*		<u>60%*</u>
2022-23*		<u>60%*</u>
2023-24*		<u>60%*</u>
2024-25*		<u>60%*</u>
2025-26*		<u>60%*</u>
2026-27*		<u>60%*</u>
2027-28*		<u>60%*</u>
2028-29*		<u>60%*</u>
<u>Total</u>		
*Assumes that the option(s) to extend the contract are exercised by the SFMTA		

6.1.4. Annual Revenue Share

By **[July 1]** of each year, Contractor shall provide the SFMTA with documentation of its Gross Revenues and Total Required Payments for the previous Fiscal Year as part of the Summary Report required by Section 8.2. Contractor shall apply the revenue share percentage designated in Table 6.1.3 above to the Gross Revenues for the previous Fiscal Year to determine the SFMTA’s Annual Revenue Share. If the Annual Revenue Share exceeds the Total Required Payments made to the SFMTA pursuant to subsections 6.1.1 through 6.1.3, Contractor shall pay the SFMTA any difference between the Total Required Payments made and the Annual Revenue Share by **[July 1]**. In the event this Agreement terminates for any reason before the completion of a Fiscal Year, Contractor shall submit the documentation required by this subsection and any final payment required by this subsection within 60 Days of termination.

6.2. Late Payments

Payments from Contractor that are not paid when due will bear interest compounded daily from and after the date said payment was due until the date paid at the prime rate plus three percent. Acceptance of a late payment by SFMTA will not constitute a waiver of Contractor’s default with respect to the overdue amount, nor prevent SFMTA from exercising any of the other rights and remedies granted under this Agreement or by law. SFMTA shall have no responsibility to notify Contractor of payments not received by the due dates.

6.3. Verification of Revenue

In each Contract Year covered by this Agreement, a verification of sales and revenues reported to City by Contractor shall be made by a certified public accounting firm selected by City. City may assign the verification function to the Audits Division of the San Francisco Controller's Office. The cost of such verification shall be shared equally by City and Contractor. If it is determined as a result of any such

verification that there has been a deficiency in percentage payments as required by this Agreement, then such deficiency shall become immediately due and payable with interest at 10%, or the maximum lawful rate, whichever is higher, from the date when said payment should have been made. If Contractor's accounting reports for any contract month shall be found to have understated Gross Billings or revenue by more than 2% and City is entitled to any additional percentage payment as a result of said understatement, then Contractor shall pay, in addition to the interest charges above, all of the costs and expenses of such audit.

7. CARRYOVER CONTRACTS

7.1. Beginning of Term

As of the Effective Date of this Agreement, SFMTA will transfer to Contractor the rights to all Carryover Contracts it has acquired from CBS Outdoor, Inc., along with copies of those Contracts. Following such transfer, Contractor shall pay to CBS Outdoor, Inc., when and as received from the advertisers, 20% of the gross income received from such Carryover Contracts for a period of no greater than 180 Days following the Effective Date of this Agreement. Contractor agrees that CBS Outdoor, Inc. is a third party beneficiary with a right to enforce against Contractor only the payment obligation imposed by this Section 7.

7.2. End of Term

The Parties agree that under limited circumstances, it might be advantageous both to City and to Contractor to permit Contractor, during the term of this Agreement, to enter into Carryover Contracts. Contractor shall not enter any contracts related to performance under this Agreement that extend beyond the termination date of this Agreement without written approval from the City. Contractor shall immediately assign and transfer, and does assign and transfer, to SFMTA any Carryover Contract in effect upon expiration of this Agreement, and such Carryover Contracts thereupon shall become the property of SFMTA. Following such transfer, City (or City's designee) shall pay to Contractor, when and as received, 20% of the gross income received from such Carryover Contracts except when said gross income is received (A) from a Carryover Contract that has expired and been renewed, or (B) more than 180 Days following expiration of this Agreement.

City shall not be responsible for payment to Contractor of Contractor's portion of the gross income after City assigns the Carryover Contracts to a designee provided that the designee makes Contractor a third party beneficiary with a right to enforce the payment obligation against the designee. Contractor agrees that the existence of any Carryover Contract will not in any way extend the term of this Agreement. Contractor agrees that it will use its best efforts in good faith to enter into Advertising Contracts and maximize revenues until the final day of the Agreement.

8. REPORTS, INSPECTION AND REVIEWS

8.1. Annual Financial Statement

On or before the first day of the third calendar month following the close of Contractor's fiscal year, Contractor shall submit to City three copies of Contractor's annual financial statement prepared by an independent public accountant.

8.2. Summary Report

On or before the first day of the third calendar month following the close of Contractor's fiscal year, Contractor shall submit to City a Summary Report detailing total Advertisement sales, revenues, expenditures, documentation of Gross Revenues and Total Required Payments for the previous Fiscal Year, and the number of Advertising Contracts by type of Advertising Space.

8.3. Annual Inspection of Records

By September 1 for the City's prior Fiscal Year, Contractor shall make available at its place of business in San Francisco or the surrounding area for inspection by City of the following information:

8.3.1. The total revenues, earnings before income tax, depreciation, amortization and profit from advertising operations, both on a cash and accrual basis.

8.3.2. Comparable financial information and statistics relating to Contractor's Advertising Contracts for transit vehicles with other public or transit agencies in the Bay Area or other large metropolitan areas.

8.4. Sales Activity Report

A "Sales Activity Report " on the form attached hereto as **Exhibit B, Item (1)**, or an equivalent form approved by Director shall be prepared by Contractor and submitted to the Director on or before the 20th day of the following month.

8.5. Account Activity Summary by Display Location and Type

An "Account Activity Summary by Display Location and Type," on the form attached hereto as **Exhibit B, Items (2) and (3)**, or an equivalent form as approved by the Director, shall be prepared monthly by Contractor and submitted to the Director on or before the 20th day of the following month. This summary shall include the following:

8.5.1. Advertising by Category

A percentage allocation of Gross Billings by Contractor's top five categories of advertisements (e.g., fashion, automotive, media, and beverage) and three categories of advertising clients. The three client categories shall be (1) commercial/national accounts; (2) commercial/local accounts; and (3) other accounts. SFMTA may request new or additional categories during the term of this Agreement.

8.5.2. Bay Area-Wide Transit Contracts

If Contractor represents other transit properties in the San Francisco Bay Area (defined by the U.S. Bureau of Census as the San Francisco-Oakland and the San Jose Standard Metropolitan Statistical Areas), any Advertising Contract written for Bay Area-wide distribution and posting shall be identified as such on the face of such Advertising Contract. For all such Advertising Contracts, Contractor shall supply City with the amount of total billings, as well as the percentage of total billings allocated to City and the other transit properties.

8.5.3. Copies of Contracts

On or before the 20th day of each month, Contractor shall submit to SFMTA, on a form equivalent to **Exhibit B-4**, a copy of each Advertising Contract billed by the Contractor during the preceding month. On each such Contract, Contractor shall indicate the account type of each advertiser (*i.e.*, commercial/national; commercial/local; SFMTA/City; or non-profit public service announcement), and if the sale is for Bay Area-wide distribution, the allocation to SFMTA and the other Bay Area transit properties.

8.5.4. Maintenance and Service Logs

Contractor shall maintain accurate electronic maintenance and service logs describing the dates and locations of all routine inspections conducted of Advertisements, Infrastructure and Advertising Spaces as required by this Agreement, as well as the date, the location and the nature of any maintenance or service activity conducted by Contractor. If the maintenance or service is conducted in response to a complaint by the public, the log shall include the date and the nature of the complaint to which the Contractor has responded.

8.5.5. Client/Campaign Report

For each new client and for each advertising campaign for a new or existing client, Contractor shall provide a report detailing the location(s) of the campaign, the type(s) of Advertising Space and Advertisements to be utilized, and photographs of the Advertisements after they are placed.

8.5.6. Media Trade Reports

Contractor shall supply SFMTA with quarterly reports of media trade transactions authorized by Section 3.5.3 showing:

- (a) the cumulative total of consideration received for barter or trades received by City since contract inception through the end of the previous quarter;
- (b) A list of new trade offers for the quarter, showing amounts accepted by the City.

8.5.7. Schedule of Rates and Charges

On or before the first business day of each Calendar Year, Contractor shall provide to SFMTA a complete "Schedule of Rates and Charges" for all advertising charges under this Agreement, together with a similar schedule of rates for any other San Francisco Bay Area transit system for which Contractor has a transit advertising agreement. Each such schedule shall include a range (minimum and maximum) of all standard rates and charges for each type of Advertising Space and time available for rental, all time and quantity purchase discounts, discounted rates and charges for civic, charitable, non-profit and public service organizations, all fees and direct costs for labor and materials for carding, installation, maintenance, and removal of advertising, and terms, conditions and manner of payment by advertisers. Any changes in rates and charges during the Contract Year shall be submitted in writing to the SFMTA, not later than 15 days from the effective date of such change. In the event of any dispute relating to rates and charges, such dispute shall be resolved by the Director, whose decision shall be final and conclusive, unless arbitrary and capricious.

9. SUBMITTING FALSE CLAIMS; MONETARY PENALTIES

Pursuant to San Francisco Administrative Code § 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

10. TAXES

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

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

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

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

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

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

11. QUALIFIED PERSONNEL

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City’s reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City’s request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement. Contractor shall provide an experienced local sales force with the capability to acquire national advertising accounts, and adequate production personnel to assure the utmost in design, construction, placement and maintenance of Advertisements and Infrastructure, as well as a fully staffed business office in San Francisco.

12. RESPONSIBILITY FOR EQUIPMENT

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

13. INDEPENDENT CONTRACTOR

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is

obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

14. PAYMENT OF TAXES AND OTHER EXPENSES

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

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

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. INSURANCE; BONDING; SECURITY DEPOSIT

15.1. Requirement to Provide Financial Guarantees

Upon the Effective Date of this Agreement, Contractor shall provide, and shall maintain for the time periods specified herein, financial instruments and funds described in this Section 15 as security to ensure Contractor's performance of all terms and conditions of this Agreement and to compensate for any damage to City property and/or other actual costs to City for Contractor's violation of the terms of this Agreement, as further described below.

15.2. Performance Bond

15.2.1. Amount of Bond

Contractor agrees that within five Days after notification from the SFMTA that the all required City agencies have approved this Agreement, Contractor will deliver to the City a performance bond, which may be renewable annually, in the amount of \$7,000,000 to guarantee Contractor's performance obligations under this Agreement. If Contractor fails to deliver the initial performance bond within five Days, or fails to notify City annually of the renewal of the bond within five Days before each anniversary of the Effective Date, City will be entitled to cancel this Agreement. Contractor shall maintain the performance bond during the term of this Agreement. In the event this Agreement is assigned, as provided for in Section 30, City will return or release the performance bond not later than the effective date of the assignment, provided that the assignee has delivered to City an equivalent performance bond, as determined by City. Notwithstanding anything to the contrary herein, in no event shall Surety's aggregate liability exceed the penal sum of the applicable bond amount; provided, however, that this limitation shall not affect Contractor's liability under this Agreement.

15.2.2. Extensions of Agreement

If the SFMTA exercises the option to extend the Agreement as provided in Section 2, then no later than the first Day of the extended term Contractor must provide a performance bond in the amount of \$10,000,000 for the duration of any extension of the term of this Agreement.

15.2.3. Sureties

Bonding entities on the performance bond must be legally authorized to engage in the business of furnishing performance bonds in the State of California. All bonding entities must be satisfactory to City. During the period covered by the Agreement, if any of the sureties upon the bond become insolvent or, in the opinion of the City, unable to pay promptly the amount of such bond to the extent to which the surety might be liable, Contractor, within 30 Days after notice given by the City to Contractor, must by supplemental bond or otherwise, substitute another and sufficient surety approved by City in place of the surety becoming insolvent or unable to pay. If Contractor fails within such 30 Day period to substitute another and sufficient surety, City may deem Contractor to be in default in the performance of its obligations hereunder and upon the said bond. The City, in addition to any and all other remedies, may terminate the Agreement or bring any proper suit or proceeding against moneys then due or which thereafter may become due to Contractor under the Agreement. The amount for which the surety will have justified on the bond and the moneys so deducted will be held by SFMTA as collateral for the performance of the conditions of the bond.

15.3. Letter of Credit

15.3.1. Requirements

In addition to the performance bond, within 14 Days after receiving notification from the SFMTA that the all required City agencies have approved this Agreement, Contractor shall provide to City and shall maintain, throughout the term of this Agreement and for 90 Days after the expiration or termination of this Agreement or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs later, a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, in the amount of \$3,000,000. The letter of credit must have an original term of one year, with automatic renewals of the full amount throughout the term of the Agreement. If Contractor fails to deliver the letter of credit as required, City may deem Contractor to be in default in the performance of its obligations hereunder. City, in addition to all other available remedies, may terminate the Agreement. The letter of credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Director of Transportation of the San Francisco Municipal Transportation Agency on behalf of the City and County of San Francisco.

15.3.2. Financial Institution

The letter of credit must be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution must (a) be a bank or trust company doing business and having an office in the City and County of San Francisco, (b) have a combined capital and surplus of at least \$25,000,000, and (c) be subject to supervision or examination by federal or state authority and with at least a Moody's A rating.

15.3.3. Extensions of Agreement

If the SFMTA exercises the option to extend the Agreement as provided in Section 2, then no later than the first Day of the extended term Contractor must provide a new letter of credit in the amount of \$5,000,000 for the duration of any extension of the term of this Agreement.

15.3.4. Demand on Letter of Credit

The letter of credit will constitute a security deposit guaranteeing faithful performance by Contractor of all terms, covenants, and conditions of this Agreement, including all monetary obligations set forth herein. If Contractor defaults with respect to any provision of this Agreement, SFMTA may make a demand under the letter of credit for all or any portion thereof to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty. Such loss or damage may include without limitation any damage to or restoration of City property or property that is required to be constructed, maintained or repaired pursuant to this Agreement, payments to City, and claims for liquidated damages; provided, however, that City will present its written demand to said bank for payment under said letter of credit only after City first has made its demand for payment directly

to Contractor, and five full Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the letter of credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the letter of credit is so used or applied by City, Contractor, within 10 business days after written demand by City, shall reinstate the letter of credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

15.3.5. Expiration or Termination of Letter of Credit

The letter of credit must provide for 60 Days' notice to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business Days prior to its expiration. In the event the City receives notice from the issuer of the letter of credit that the letter of credit will be terminated, not renewed or will otherwise be allowed to expire for any reason during the period from the commencement of the term of this Agreement to 90 Days after the expiration or termination of this Agreement, or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs last, and Contractor fails to provide the City with a replacement letter of credit (in a form and issued by a financial institution acceptable to the City) within 10 Days following the City's receipt of such notice, such occurrence shall be an event of default, and, in addition to any other remedies the City may have due to such default (including the right to terminate this Agreement), the City shall be entitled to draw down the entire amount of the letter of credit (or any portion thereof) and hold such funds in an account with the City Treasurer in the form of cash guarantying Contractor's obligations under this Agreement. In such event, the cash shall accrue interest to the Contractor at a rate equal to the average yield of Treasury Notes with one-year maturity, as determined by the Treasurer. In the event the letter of credit is converted into cash pursuant to this paragraph, upon termination of this Agreement, Contractor shall be entitled to a full refund of the cash (less any demands made thereon by the City) within 90 Days of the termination date, including interest accrued through the termination date.

15.3.6. Return of Letter of Credit

The letter of credit will be returned within 90 Days after the end of the term of this Agreement, provided that Contractor has faithfully performed throughout the life of the Agreement, Contractor has completed its obligations under the Agreement, there are no pending claims involving Contractor's performance under the Agreement and no outstanding disagreement about any material aspect of the provisions of this Agreement. In the event this Agreement is assigned, as provided for in Section 30, City will return or release the letter of credit not later than the effective date of the assignment, provided that the assignee has delivered to the City an equivalent letter of credit, as determined by City.

15.3.7. Excessive Demand

If City receives any payments from the aforementioned bank under the letter of credit by reason of having made a wrongful or excessive demand for payment, City will return to Contractor the amount by which City's total receipts from Contractor and from the bank under the letter of credit exceeds the amount to which City is rightfully entitled, together with interest thereon at the legal rate of interest, but City will not otherwise be liable to Contractor for any damages or penalties.

16. INSURANCE

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

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

16.1.2. Comprehensive General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual

Liability, Personal Injury, Advertising Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations; and

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

16.2. Comprehensive General Liability and Commercial Automobile Liability Insurance policies must provide the following:

16.2.1. Name as Additional Insured the City and County of San Francisco and the San Francisco Municipal Transportation Agency, and their officers, agents, and employees.

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

16.3. All policies shall provide thirty 30 Days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Such notices shall be sent to the following address:

**Director of Transportation
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103**

with a copy to:

**Real Estate Division
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103**

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

16.5. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

16.6. In the event of the breach of any provision of this Section on "Insurance," or in the event any notice is received which indicates any required insurance coverage will be diminished or cancelled, the Director shall have the option, notwithstanding any other provision of this Agreement to the contrary and in addition to other remedies provided for in this Agreement, immediately to declare a material breach of this Agreement and to suspend the further exercise by Contractor of all rights and privileges granted to Contractor under to this Agreement until such time as the Director determines that the required insurance has been restored to full force and effect and that all premiums have been paid for a period satisfactory to the Director.

16.7. Prior to the Effective Date and annually thereafter on the anniversary of the Effective Date Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above.

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

16.9. Upon City's request, Contractor shall provide satisfactory evidence that Contractor has adequately provided for Social Security and Unemployment Compensation benefits for Contractor's Employees.

16.10. Contractor shall comply with the provisions of any insurance policy covering Contractor or the City, and with any notices, recommendations or directions issued by any insurer under such insurance policies so as not to adversely affect the insurance coverage.

17. INDEMNIFICATION

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

18. INCIDENTAL AND CONSEQUENTIAL DAMAGES

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

19. LIABILITY OF CITY

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

20. LIQUIDATED DAMAGES

20.1. Performance Standards

By entering into this Agreement, Contractor agrees that in the event Contractor fails to perform in accordance with the performance standards listed below, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the amounts listed in this Section

20.1 are not penalties, but are reasonable estimates of the loss that City will incur based on the delay or non-performance, established in light of the circumstances existing at the time this contract was awarded.

20.1.1. Maintenance Breaches. City may assess liquidated damages for the following breaches of the maintenance and repair provisions of this Agreement:

(a) Failure to perform maintenance or repair work required to be performed within 24 hours of notification pursuant to Section 4.4: \$1,000 per occurrence per Day until the violation is remedied. The date of notification from the public will be the earliest date of notification, as determined from records of notices received by Contractor under Section 5.3 of this Agreement, or documentation of notification by SFMTA.

(b) Failure to perform maintenance or repair work required to be performed within 48 hours of notification pursuant to Section 4.4: \$500 per occurrence per Day until the violation is remedied. The date of notification from the public will be the earliest date of notification, as determined from records of notices received by Contractor under Section 5.3 of this Agreement or documentation of notification by SFMTA.

(c) Failure to remove Graffiti in accordance with the requirements of this Agreement within 48 hours of notification or discovery: \$500 per occurrence per Day until the violation is remedied. The date of notification from the public will be the earliest date of notification, as determined from records of notices received by Contractor under Section 5.3 of this Agreement or documentation of notification by SFMTA. The date of discovery shall be deemed to be the day scheduled for Contractor's most recent regular inspection.

20.1.2. Annual Reports. Contractor's failure to submit any report with all required information, will subject Contractor to liquidated damages in the amount of \$500 for each Day the report is late, continuing until the report has been submitted with all required information.

20.1.3. Failure to Cure Audit Deficiencies. In the event that Contractor fails to cure an audit deficiency within the time periods imposed by the City under Section 28.4, City may impose liquidated damages not to exceed \$500 per Day per deficiency until the deficiency is cured to the satisfaction of the City.

20.1.4. Failure to Comply with Advertising Policy. In the event that Contractor fails to comply with the SFMTA's advertising policy, the City may impose liquidated damages in the amount of \$5,000 per Day if the Contractor fails to cure the violation within two Days. For purposes of this Section, a "violation" is a failure to comply in the context of a single Advertisement.

20.2. Contractor's Default

In the event of any default resulting in termination, the Parties agree that due to the nature of the breach, City's actual damages would be impracticable and extremely difficult to determine, and that City shall be entitled to the immediate payment of the sum of \$1,500,000 as liquidated damages to compensate the City for actual damages suffered as a result of Contractor's default. Contractor agrees that the amount listed in this Section 20.2 is not a penalty, but is a reasonable estimate of the loss that City will incur based on the termination for default, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's default that results in termination of this Agreement.

20.3. Failure to Pay Liquidated Damages

Contractor agrees that if it fails to remit liquidated damages amounts assessed by City under this Section 20 or under any other section of this Agreement, City may deduct such damages from Contractor's letter of credit provided under Section 15.3 above. Contractor shall restore the letter of credit to its full amount in accordance with Section 15.3.4. Such deductions shall not be considered a penalty, but rather agreed

monetary damages sustained by City because of Contractor's default failure to perform this Agreement in compliance with specified performance standards.

21. DEFAULT; REMEDIES

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

21.1.1. Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 9, 10, 15, 16, 24, 30, 33, 36, 46, or 49.

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

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

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

21.2. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement with 30 Days' written notice, or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

21.3. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21.4. The SFMTA may partially terminate the rights to any Advertising Space granted to Contractor pursuant to this Agreement upon which no Advertisement has been displayed for a period of 60 Days. Such partial termination shall require 60 Days' written notice by SFMTA, during which time Contractor may avoid partial termination by demonstrating to SFMTA that it has sold Advertisements on the subject Advertising Space prior to the date of SFMTA's notice of partial termination, or may provide SFMTA with a copy of an Advertising Contract for that Advertising Space with a term that begins no later than the 60th Day from the date of the SFMTA's notice of partial termination.

22. TERMINATION FOR CONVENIENCE

The City may terminate this Agreement in whole, or from time to time part, whenever the Director shall determine that such termination is in the best interest of the City. Any such termination shall be effected by delivery to Contractor of a notice of termination specifying the extent to which the Agreement is terminated and the date on which termination becomes effective. After receipt of a notice of termination,

Contractor shall (i) stop performance under this Agreement on the date and to the extent specified in such notice, (ii) enter into no additional Advertising Contract relating to Contractor's rights and interests under the portion of the Agreement terminated, (iii) assign to the City in the manner, at the times, and to the extent directed by the Director, all of the right, title, and interest of the Contractor under Advertising Contracts and subcontracts identified by the Director and related to the rights and interests terminated, and terminate all other contracts and subcontracts related to such rights or interests; and (iv) within 30 Days' of the notice of termination, submit to the Director a statement of all outstanding liabilities and claims arising out of such termination of subcontracts, together with such information as may be required by the Director to evaluate such liabilities and claims. The determination of the Director on such liabilities and claims shall be administratively final.

23. RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION

23.1. If Contractor does not cure an Event of Default within 30 Days from the date of a notice of termination, City may terminate this Agreement and assume all Advertising Contracts. Termination of this Agreement by City shall not affect the obligations of the Contractor or the rights of City that accrued prior to such termination, except that as of the date of termination Contractor thereafter shall no longer be entitled to any revenues whatsoever from Advertising Contracts then in force.

23.2. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 9, 10, 12, 13, 16 through 18, 24, 26, 27, 40 through 44, 47, 49.

23.3. Any and all Advertisements that have been placed in Advertising Spaces as of the date of termination of this Agreement shall become the property of City and, at City's discretion, may remain on or in the Advertising Spaces, and Contractor shall not be entitled to possession of such materials. Contractor agrees to execute all documents necessary to give effect to this Section.

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

24. CONFLICT OF INTEREST

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

25. PROPRIETARY OR CONFIDENTIAL INFORMATION OF CITY

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

26. NOTICES TO THE PARTIES

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

To City: **[insert name or title of department contact person, name of department, mailing address, e-mail address and fax number]**

To Contractor: **[insert name of contractor, mailing address, e-mail address and fax number]**

Any notice of default must be sent by registered mail.

27. WORKS FOR HIRE

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

28. AUDIT AND INSPECTION OF RECORDS

28.1. Records. Contractor shall maintain all Records in accordance with generally accepted accounting principles. All Records shall be maintained throughout the term of this Agreement at Contractor's San Francisco office and shall be maintained for five years following termination or expiration of this Agreement in a safe and secure location within the San Francisco Bay Area.

28.2. City's Right to Inspect and Copy. Any duly authorized agent of City shall have the right to examine and/or copy all Records at any time during normal business hours, provided that Contractor shall be allowed at least 48 hours after City identifies Records it wishes to copy to mark any such Records as confidential or proprietary. Records created or maintained in an electronic format shall be available to the City and its agents for examination and/or copying in an electronic format.

28.3. Audits. Contractor will cooperate fully with the performance by City or its agents of Contract Performance and Operations Audits. A Contract Performance Audit may examine any and all aspects of the Contractor's obligations under this Agreement. An Operations Audit may examine the quality and effectiveness of Contractor's organizational Structure, internal controls, financial reporting and business practices. City may require each type of audit no more than once per calendar year. City shall provide Contractor with 15 Days' notice of any audit to be performed under this Section. The State of California or any federal agency having an interest in the subject matter of this Agreement will have the same rights conferred upon City by this Section.

28.4. Findings of Nonperformance. In the event that any audit conducted pursuant to disagreement results in a determination that Contractor has failed to perform any material term of this Agreement, City will issue a written Finding of Nonperformance to Contractor. Such Finding of Nonperformance will include a calculation of liquidated damages for Contractor's failure to perform, using the measure of liquidated damages specified in Section 20. The Finding of Nonperformance shall also include a reasonable period of time for Contractor to cure any listed performance failures that are subject to liquidated damages pursuant to Sections 20.1.2 and 20.1.3. Contractor's failure to cure shall constitute an Event of Default pursuant to Section 21. Liquidated damages may not be assessed in a Finding of Nonperformance for any incident for which liquidated damages have already been assessed pursuant to Section 20. Any failure of City to list any violation of the terms of this Agreement in the Finding of Nonperformance shall not constitute a waiver of the City's right to impose any other right or remedy that it has under this Agreement or applicable law with respect to that violation.

29. SUBCONTRACTING

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

30. ASSIGNMENT

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

31. NON-WAIVER OF RIGHTS

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

32. NONDISCRIMINATION; PENALTIES

32.1. Contractor Shall Not Discriminate

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

32.2. Incorporation of Administrative Code Provisions by Reference

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

33. DRUG-FREE WORKPLACE POLICY

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

34. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in

the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

35. SUNSHINE ORDINANCE

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

36. LIMITATIONS ON CONTRIBUTIONS

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

37. REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES

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

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

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

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

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

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

37.7. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

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

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

38. REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES

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

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

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

38.3. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

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

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

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

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

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

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

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

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

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

39. PROHIBITION ON POLITICAL ACTIVITY WITH CITY FUNDS

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this Section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this Section.

40. PRESERVATIVE-TREATED WOOD CONTAINING ARSENIC

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

41. MODIFICATION OF AGREEMENT

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law.

42. ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

43. AGREEMENT MADE IN CALIFORNIA; VENUE

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

44. CONSTRUCTION

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

45. ENTIRE AGREEMENT

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 41.

46. COMPLIANCE WITH LAWS

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

47. SERVICES PROVIDED BY ATTORNEYS

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

48. SEVERABILITY

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

49. PROTECTION OF PRIVATE INFORMATION

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 21 of the Administrative Code, or debar the Contractor.

50. GRAFFITI REMOVAL

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

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within 48 hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This Section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property.

Any failure of Contractor to comply with this Section of this Agreement shall constitute an Event of Default of this Agreement.

51. FOOD SERVICE WASTE REDUCTION REQUIREMENTS

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount

shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

52. NO THIRD PARTY BENEFICIARIES

Except as expressly provided herein, this Agreement is for the benefit of the signatories to the Agreement only and no other person or entity shall be entitled to rely on, receive any benefit from, or enforce against either party any provision of this Agreement.

53. DISPUTES

Disputes arising in the performance of this Agreement that are not resolved by agreement of the parties will be decided in writing by the Chief Financial Officer of the SFMTA. The decision will be administratively final and conclusive unless, within 10 Days from the date of such decision, the Contractor mails or otherwise delivers a written appeal to the Director. Any appeal must contain the following: (a) a statement of the Contractor's position, (b) a summary of the arguments supporting that position, and (c) any evidence supporting the Contractor's position. The decision of the Director will be administratively final and conclusive. Pending final resolution of a dispute hereunder, the Contractor must proceed diligently with the performance of its obligations under the Agreement. Under no circumstances may the Contractor or its subcontractors stop work due to an unresolved dispute. An alternative dispute resolution process may be used in lieu of the procedures set forth in this Section 53 if the City and contractor agree to such alternative procedures.

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

CITY

CONTRACTOR

By:

[company name]

NATHANIEL P. FORD
Executive Director/CEO
San Francisco Municipal Transportation Agency

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

Approved as to Form:

Dennis J. Herrera
City Attorney

[name of authorized representative]
[title]
[address]
[city, state, ZIP]

By: _____
CHRISTIANE HAYASHI
Deputy City Attorney

City vendor number: **[vendor number]**

Exhibits

Fleet Inventory Report
Reporting Formats
Access Restrictions
Maintenance Plan and Schedule
Advertising Policy