

THIS PRINT COVERS CALENDAR ITEM NO. : 10.6

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Human Resources

BRIEF DESCRIPTION:

Awarding SFMTA Contract No. SFMTA-2018-28-1 for On-site Collection Services to Accurate Collection & Screening Services, for drug and alcohol specimen collection services for the SFMTA Substance Abuse Program, in an amount not to exceed \$1,200,000, and for a five-year term.

SUMMARY:


- Federal Rules require the governing body of a direct recipient of Federal financial assistance from the Federal Transit Administration (FTA) to have a drug and alcohol testing and employee training program in place for employees performing safety-sensitive functions.
- The Federal Rules require Department of Transportation (DOT) drug and alcohol testing programs to follow DOT urine and breath collection procedures, which must be conducted by qualified personnel.
- After issuance of a request for proposals, the SFMTA Substance Abuse Program has selected Accurate C&S Services, the sole proposer, for award of this contract for on-site collection services.


ENCLOSURES:

1. SFMTAB Resolution
2. On-Site Agreement

APPROVALS:

DATE

DIRECTOR  10/9/2018

SECRETARY  10/9/2018

ASSIGNED SFMTAB CALENDAR DATE: October 16, 2018

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PURPOSE

Awarding Contract No. SFMTA-2018-28-1 for On-site Collection Services to Accurate C&S Services, for drug and alcohol specimen collection services for the SFMTA Substance Abuse Program, in an amount not to exceed \$1,200,000, and for a five-year term.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

Strategic Plan Goals:

1. Create a safer transportation experience for everyone in San Francisco.

Create a workplace that delivers outstanding service.

Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

DESCRIPTION

On February 15, 1994, the U.S. Department of Transportation issued regulations requiring recipients of federal assistance to have a drug and alcohol testing and employee training program in place for employees performing safety-sensitive functions. Drug testing of employees is conducted by means of urine collection by a collector qualified according to the requirements of the Federal Rules, while alcohol testing is administered by a certified Breath Alcohol Technician (BAT) using a calibrated Evidential Breath Testing Device (EBT) or a Screening Test Technician using an Alcohol Screening Device that is approved by the National Highway Traffic Safety Administration.

Collection personnel play an integral role in the confidentiality and integrity of the collection process. The collector must understand the DOT urine and breath specimen collection procedures and demonstrate proficiency in DOT urine and breath collection. The service provider for collection services ensures that all collection personnel that conduct DOT drug and alcohol testing for the SFMTA meet the federal requirements and conduct the urine and breath collection process according to DOT procedures.

The SFMTA Substance Abuse program splits collection services into two contracts. One contract is the agreement for off-site collection services at the contractor's place of business (for after-hours testing). The Director of Transportation, under his delegated authority, executed a contract for off-site services to MegaLab Services. The second contract is for on-site collection services, which are done through the use of a recreational vehicle outfitted for DOT-required collections. The subject contract is for Accurate to provide On-Site Collection Services.

The selection process for the on-site collection services contract followed the Request for Proposals (RFP) process. The SFMTA issued an RFP for both on-site and off-site collection services on March 19, 2018. Accurate C&S Services (Accurate) was the sole proposer for the on-site collection services contract. After reviewing Accurate's proposal to ensure that it was responsive and that Accurate was a responsible contractor, SFMTA staff negotiated the final scope of work including all types of FTA required testing and their associated fees with Accurate, which negotiations were completed on July 9, 2018.

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Accurate is the current contractor for on-site testing services, having taken over the contract after the death of the former contractor. Accurate's current contract with the SFMTA ends November 30, 2018, but this new contract will start after funds are certified by the City's Controller.

STAKEHOLDER ENGAGEMENT

Transport Workers Union Local 250-A participated in the RFP process for this contract by including a union representative on the review panel.

ALTERNATIVES CONSIDERED

Another alternative considered was having SFMTA employees conduct collection services. This alternative would require the creation of a very unique job class and introduce multiple difficulties in managing a service that requires large capital and personnel investments. The preferred alternative is to continue providing this service through a vendor.

FUNDING IMPACT

The \$240,000 in funds required for this contract's first year Purchase Order are budgeted in the SFMTA's current year Operating Budget.

ENVIRONMENTAL REVIEW

On September 19, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the proposed contract with Accurate C&S Services for On-site Collection Services is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney has reviewed this calendar item.

The Civil Service Commission approved this contract on May 7, 2018 in PSC #47422 – 17/18.

RECOMMENDATION

Staff recommends that the SFMTA Board award Contract No. SFMTA-2018-28-1 for On-site Collection Services to Accurate C&S Services, for drug and alcohol specimen collection services for the SFMTA Substance Abuse Program, in an amount not to exceed \$1,200,000, and for a five-year term.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Since February 15, 1994, the U.S. Department of Transportation (DOT) has required recipients of federal assistance to have an alcohol and drug testing program and an employee training program in place for employees performing safety-sensitive functions, which requirements are contained in 49 CFR Parts 40 and 655 (the Federal Rules); and,

WHEREAS, The Federal Rules require that the collector understand the DOT urine and breath specimen collection procedures and demonstrate proficiency in DOT urine and breath collection; and,

WHEREAS, On March 19, 2018, the SFMTA issued a Request for Proposals for On-Site and Off-Site Collection Services; Accurate C&S Services (Accurate) was the sole proposer for the contract for on-site collection services; and,

WHEREAS, After reviewing Accurate's proposal to ensure that it was responsive and that Accurate was a responsible contractor, SFMTA staff negotiated the final scope of work and cost with Accurate, which negotiations were completed on July 9, 2018; and,

WHEREAS, On September 19, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the proposed contract with Accurate C&S Services for On-site Collection Services is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now, therefore, be it

RESOLVED, The SFMTA Board of Directors awards Contract No. SFMTA-2018-28-1 for On-Site Collection Services to Accurate C&S Services, for drug and alcohol specimen collection services for the SFMTA Substance Abuse Program, in an amount not to exceed \$1,200,000, and for a five-year term.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 16, 2018.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Agreement between the City and County of San Francisco and
Accurate C&S Services**

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

**Agreement between the City and County of San Francisco and
Accurate C&S Services, Inc.
Contract No. SFMTA-2018-28-1**

This Agreement is made this ____ day of _____, 2018, in the City and County of San Francisco, State of California, by and between Accurate C&S Services, Inc. (Contractor) and the City and County of San Francisco (City), acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

The SFMTA wishes to contract with a firm to provide on-site collection services, one of the program elements required to support its Substance Abuse Program (the Program).

This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on March 19, 2018, pursuant to which City selected Contractor as the highest-qualified scorer.

There is no Local Business Entity (LBE) subcontracting participation requirement for this Agreement.

Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.

Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 47422-17/18 on May 7, 2018.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

“**Agreement**” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.

“**CCO**” means SFMTA Contract Compliance Office.

“**City**” or “the City” means the City and County of San Francisco, a municipal corporation.

1.1 “**CMD**” means the Contract Monitoring Division of the City.

1.2 “**Contract Administrator**” means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

“**Contractor**” or “**Consultant**” means Accurate C&S Services, Inc., 877 Bryant Street, Suite 210, San Francisco, CA 94103.

“**C&P**” means SFMTA Contracts and Procurement.

“**Deliverables**” means Contractor’s work product resulting from the Services that are provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

“**Effective Date**” means the date upon which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

“**Mandatory City Requirements**” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations upon Contractor.

“**Party**” and “**Parties**” mean the City and Contractor either collectively or individually.

“**Project Manager**” means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.

“**Purchase Order**” means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 2.1.

“**Services**” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

“**San Francisco Municipal Transportation Agency**” or “**SFMTA**” means the agency of City with jurisdiction over all surface transportation in San Francisco, as provided under Article VIII A of the City’s Charter.

Article 2 Term of the Agreement

The term of this Agreement shall commence on the later of: (i) October 1, 2018; or (ii) the Effective Date, and expire on September 30, 2023, unless earlier terminated as otherwise provided herein.

Article 3 Financial Matters

Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5 (Modification of this Agreement).

Compensation.

Payment. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B (Calculation of Charges), attached hereto and incorporated by reference as though fully set forth herein. Compensation shall be made for Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed One Million, Two Hundred Thousand Dollars (\$1,200,000). The breakdown of charges associated with this Agreement appears in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not

excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

Withhold Payments. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the electronic address specified in Section 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

Reserved. (LBE Payment).

Getting Paid for Goods and/or Services from the City.

All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

Reserved. (Payment of Prevailing Wages).

Article 4 Services and Resources

Services Contractor Agrees to Perform. Contractor agrees to perform the Services provided for in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond those Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5 (Modification of this Agreement).

Qualified Personnel. Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

Subcontracting.

Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

Contractor does not intend to employ subcontractors.

Independent Contractor; Payment of Employment Taxes and Other Expenses.

Independent Contractor. For the purposes of this Article 4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under

this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

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 Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

Liquidated Damages. By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix A, or in the event there are other serious flaws or failure to follow federal regulations on the part of Contractor, City will suffer actual damages that will be impractical or extremely difficult to determine. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City. Contractor agrees that the chart below is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded.

Service	Liquidated Damages
Specimen Delayed to Laboratory	\$288 per specimen for each day of delay of post-accident, return-to-duty and pre-employment specimens
Failure to keep EBT up to regulatory standards (see 49 CFR Part 40 § 40.233)	\$50 x number of alcohol tests needed to be cancelled due to such failure
Fatal flaw during collection procedure [see 49 CFR § 40.199(b)(1)-(4)]	\$50 per test cancelled as a result of fatal flaw
Collection procedure flaw requiring corrective action or the test will be cancelled [see 49 CFR § 40.203(b), 40.203(d)(1)-(3)]	\$10 per memorandum to file as required by the regulations

Collection procedure flaw requiring corrective action, but does not cause the test to be cancelled [see 49 CFR § 40.208(a)]	\$10 per memorandum to file as required by the regulations
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Article 5 Insurance and Indemnity

Insurance.

Required Coverages. 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:

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

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

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.

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

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

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.

All policies shall be endorsed to provide 30 days’ advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

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.

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.

Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises 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, 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 arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

Limitations. No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities.

Intellectual Property Infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

Article 6 Liability of the Parties

Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (PAYMENT) OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

Liability for 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.

Article 7 Payment of Taxes

Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

Contractor acknowledges 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:

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.

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.

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.

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.

Article 8 Termination and Default

Termination for Convenience

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

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

Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by the SFMTA.

Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

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

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

Completing performance of any Services that the SFMTA designates to be completed prior to the date of termination specified by the SFMTA.

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

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

The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services the SFMTA has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

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

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

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

In no event shall the City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by the SFMTA, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Services covered by Contractor's final invoice; (ii) any claim which the SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and the SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

Termination for Default; Remedies.

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

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

- 3.5 Submitting False Claims.
- 4.5 Assignment
- Article 5 Insurance and Indemnity
- Article 7 Payment of Taxes
- 10.10 Alcohol and Drug-Free Workplace
- 11.10 Compliance with Laws
- 13.1 Nondisclosure of Private, Proprietary or Confidential Information

Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from the SFMTA to Contractor.

Contractor (i) is generally not paying its debts as they become due; (ii) 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; (iii) makes an assignment for the benefit of its creditors; (iv) 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 (v) takes action for the purpose of any of the foregoing.

A court or government authority enters an order (i) 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, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Contractor.

On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, 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: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

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. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

Any notice of default must be sent to the address set forth in Article 11, and in the manner prescribed in Article 11.

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.

Rights and Duties upon Termination or Expiration.

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

3.3.2	Payment Limited to Satisfactory Services
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
13.1	Nondisclosure of Private, Proprietary or Confidential Information

Subject to the survival of the Sections identified in Section 8.4.1 above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall 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.

Article 9 Rights In Deliverables

Ownership of Results. Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of

and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

Works for Hire. If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, 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 shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at http://www.amlegal.com/codes/client/san-francisco_ca.

Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

Reserved.

Nondiscrimination Requirements

Non Discrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate

by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

Minimum Compensation Ordinance. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

Health Care Accountability Ordinance. Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. 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. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

Reserved. (Slavery Era Disclosure)

Reserved. (Working with Minors)

Consideration of Criminal History in Hiring and Employment Decisions

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

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

Reserved. (Public Access to Nonprofit Records and Meetings)

Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

Reserved. (Sugar-Sweetened Beverage Prohibition)

Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

Reserved. (Preservative Treated Wood Products).

Article 11 General Provisions

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

To City: William R. Smith, Substance Abuse Professional
San Francisco Municipal Transportation Agency
One South Van Ness, 6th Floor
San Francisco, CA 94103
Reggie.Smith@sfmta.com

To Contractor: Regina Jones, RN
Accurate C&S Services, Inc.
877 Bryant Street, Suite 210
San Francisco, CA 94103
rjones@accuratemgmt.com

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including

but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

Reserved.

Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1 (Notices to Parties) regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

Dispute Resolution Procedure.

Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

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.

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

Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules 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.

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.

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

Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, including amendments, the RFP, and Contractor's proposal dated April 17, 2018. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, the order of precedence shall be (a) this Agreement and any amendments, (b) the RFP, and (c) the Contractor's proposal.

SFMTA Specific Terms

Large Vehicle Driver Safety Training Requirements.

Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall

successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletrainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

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

Data and Security

Nondisclosure of Private, Proprietary or Confidential Information.

If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and Subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

In the performance of Services, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing 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 or confidential information.

Reserved. (Payment Card Industry (PCI) Requirements).

Reserved. (Business Associate Agreement).

Article 12 MacBride Principles And Signature

MacBride Principles -Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and

understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Edward D. Reiskin Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Accurate C&S Services, Inc.</p> <hr/> <p>Regina Jones, RN</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier number: 26317</p>
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Appendices

- A: Scope of Services
- B: Calculation of Charges

Appendix A Scope of Services

1. Description of Services

Except as expressly directed by the Program Manager or as otherwise provided herein, the furnishing of Collection Services shall conform to Federal drug and alcohol testing requirements contained in 49 CFR Parts 40 and 655, as they may be amended from time to time (DOT and FTA regulations). In addition, all services shall be in conformance with all other applicable state and federal statutes and regulations, including those pertaining to the confidentiality of medical information.

A. Project Manager

Contractor shall assign a Project Manager to the Agreement, subject to the approval of the SFMTA Program Manager, who shall be the primary contact with the SFMTA Program Manager and shall coordinate the furnishing of all specified services. It is expressly understood that any change or substitution in collection site personnel requires written notification and evidence of certification for Breath Alcohol Technician (BAT) and Urine Drug Collector (UDC) to the SFMTA Program Manager.

B. Collection Site Personnel

- (1) Collection site personnel shall be trained by Contractor in procedures designed to comply with 49 CFR Part 40, Subparts C and J, and shall demonstrate proficiency in complying with these procedures prior to serving as collection site personnel for the Contractor. They shall be provided with detailed written instructions for all steps in collection and documentation process, and chain of custody of the specimen for both urine and breath alcohol collections.
- 2) These instructions shall clearly specify that the collection site personnel are responsible for maintaining the integrity of the specimen and breath alcohol collection and transfer process, including the proper utilization of SFMTA-required consent forms. Collection site personnel shall also be trained to ensure the modesty and privacy of the employee and directed to avoid any conduct or remarks that might be construed as accusatory or otherwise offensive or inappropriate.
- 3) Collection site personnel will be properly outfitted for immediate communication by email, phone, and text message with the SFMTA Liaison. Collectors will be sufficiently training in and demonstrate competence at using these communication methods.
- 4) Collection site personnel will be outfitted to transmit physical documents by electronic scanning and have sufficient technical computer skills to send and receive scanned documents, enter data in electronic forms, navigate the internet and construct basic reports in Microsoft Excel or Microsoft Word. Collection site personnel will have ready access to a computer with internet access during scheduled shifts.

C. Collection Sites

The designated collection site shall comply with all requirements specified in 49 CFR Part 40, Subparts D and K.

Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe a particular individual may alter or substitute the specimen to be provided.

No unauthorized personnel shall be permitted in any part of the designated collection site where specimens are collected or stored.

Contractor shall provide for the collection site to be secure at all times. The collection site shall be dedicated to drug and alcohol testing and the portion of the facility used for testing shall be secure at all times.

D. Collection Site Procedures for Urine Drug Testing

Contractor shall comply with the provisions of Part 40 as they may be further amended from time to time. To the extent that amendments to Part 40 differ from the provisions in this Appendix, the amendments to Part 40 will take precedence over these provisions and Contractor will be bound by them as if they were incorporated into these provisions.

Collection procedures should be designed to comply with 49 CFR Subparts D and E, including, but not limited to: a) security of samples and the collection site; b) specimen control; c) completion of Specimen Custody and Control forms; d) completion of SFMTA Consent to Test and Use of Disclosure of Medical Information forms; e) SFMTA employee identification procedures; f) privacy; g) inspection of samples to ensure the integrity and identity of specimens; h) specimen examination and documentation of temperature measurement; i) conditions indicating the need for collection of a specimen by direct observation; j) the procedures to follow for a collection of a specimen by direct observation when warranted under the regulations; k) submission of “expedited” specimens to the laboratory; and l) routine specimen transportation to the laboratory.

E. Shipment of Specimens to Lab

Contractor shall ship specimens to the laboratory on the day of the test, except in those instances where the test was performed after the last shipment has been picked up by the laboratory's courier or on weekends. In those instances, the Contractor shall ensure that the specimen is picked up on the next business day.

F. Collection Under Direct Observation

The circumstances outlined in 49 CFR Section 40.67 shall be the exclusive grounds for believing that an individual may alter or substitute a specimen. The decision to obtain a specimen under direct observation shall be made only after review with the Program Manager or designee.

G. Collection for Breath Alcohol

Collection procedures shall be designed to comply with 49 CFR Part 40, Subparts J, K, L, M, and N, including, but not limited to the following: a) breath alcohol collection shall be administered by a certified Breath Alcohol Technician (BAT) or Screening Test Technician (STT); b) a BAT shall only use an Evidential Breath Testing Device (EBT) and STT shall only use an Alcohol Screening Device (ASD) that is approved by the National Highway Traffic

Safety Administration (NHTSA); c) all EBTs used must be externally calibrated in accordance with the plan developed by the manufacturer of the device for quality assurance; d) BATs and STTs shall only use U.S. DOT Breath Alcohol Testing Forms e) BATs and STTs shall follow all rules in 49 CFR Part 40, Subparts L, M and N, for operation of the EBT or ASD; f) if an initial test is .02 or greater, the BAT or STT shall perform a confirmation test at least 15 minutes, and no later than 30 minutes, after the completion of the screening test.

H. Calibration Checks

Contractor shall submit copies of EBT device calibration checks to the SFMTA with each monthly invoice.

I. Documentation of Employee Refusal to Cooperate

If the employee refuses to cooperate with the collection process (*e.g.*, refuses to provide a complete urine specimen or an inadequate amount of breath, to complete paperwork, or to initial documentation of the specimen collected), the collection site person shall document the non-cooperation on the Custody and Control forms and inform the Program Manager or designee immediately. Collection site personnel may also be asked to write a narrative of the events surrounding the refusal and submit it to the Program Manager.

J. Chain of Custody

Chain of custody standardized forms shall be properly executed by authorized collection site personnel upon receipt of urine specimens and/or breath alcohol collections. In the case that an electronic chain of custody form process is adopted, collection site personnel will execute the electronic standardized process as instructed by the Laboratory instructions dictate.

K. Integrity and Identity of Specimen

The collection site shall take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure and that information on the urine bottle and on the chain of custody form can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that unadulterated specimens are obtained and correctly identified:

1. To deter the dilution of specimens at the collection site, toilet bluing agents shall be placed in toilet tanks so the reservoir of water in the toilet bowl always remains blue. There shall be no source of water (*e.g.*, no shower or sink) in the enclosure where urination occurs.
2. When an individual arrives at the collection site, the collection site person shall request the individual to present photo identification. If the individual does not have proper photo identification, the collection site person shall contact the Testing Coordinator for assistance with contacting the supervisor of the employee for positive identification of the individual. If the individual's identity cannot be established, the collection site person shall not proceed with the collection.
3. Collection site personnel shall request the individual to sign and complete an SFMTA-required consent form.

4. If the individual fails to arrive at the collection site at the assigned time, the collection site person shall contact the Testing Coordinator or Program Manager to advise him or her of the no-show status.
5. The collection site person shall explain the basic collection procedure to the individual, including showing the employee the instructions on the back of the CCF.
6. The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase, remain with the clothes, and that these items are secured. The individual may retain his or her wallet.
7. The individual shall be instructed to wash and dry his or her hands prior to submitting urine sample.
8. After washing hands, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleansing agent or any other materials which could be used to adulterate the specimen.
9. The collection site person shall provide the individual with a collection container.
10. The individual may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy.
11. The collection site person shall note any unusual behavior or appearance on the chain of custody form, as it relates to the collection process only.
12. Upon receiving the specimen from the individual, the collection site person shall transfer the urine from the collection container to the specimen bottle in the presence of the employee.
13. The collection site person shall determine that the specimen contains at least 45 milliliters of urine. If there are less than 45 milliliters of urine in the container, the specimen shall be discarded. If the individual is still unable to provide a complete specimen, the following rules apply:
 - a. The employee shall remain at the collection site and will be provided with no more than 40 oz of water to drink until a new urine specimen can be obtained. Another sample must be taken within three hours. The three hours do not start until the donor has made his/her first attempt.
 - b. The collection site will have in place a procedure to keep track of: 1) the amount of fluid that the donor intakes; and 2) the time allotted for the donor to provide a urine sample.

- c. If the employee cannot provide a complete sample within the three-hour period, the test shall be treated as positive and the collector shall notify the testing coordinator immediately of the situation.
 - d. Upon receipt of information regarding the failure of an employee to provide a sample, the program manager or designee shall contact the MRO. The MRO may refer the individual for a medical evaluation to develop pertinent information concerning whether the individual's inability to provide a urine specimen is genuine or constitutes a refusal to provide a specimen (in pre-employment testing, if the employer does not wish to hire the individual, the MRO is not required to make such a referral).
 - e. Upon completion of the examination, the MRO will report his or her conclusions to the employer in writing.
14. After the urine specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.
 14. The collection site person shall measure the temperature of the urine specimen. The temperature measuring device must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed four minutes.
 15. Immediately after the urine specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the chain of custody form.
 16. Whenever there is reason to believe that a particular individual has altered or substituted the urine specimen, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person.
 17. All urine specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
 18. If the urine specimen is not immediately prepared for shipment, it shall be appropriately safeguarded during temporary storage.
 19. If a test is cancelled due to collector error, Contractor shall perform a new test collection at no charge.

L. Collection Control

To the maximum extent possible, collection site personnel shall keep the individual's specimen bottle within sight both before and after the individual has submitted a urine sample. After the specimen is collected, it shall be properly sealed and labeled. An approved DOT chain-of-custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date shall be documented on an approved DOT chain-of-custody form each time a specimen is handled and every individual

in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

Collection personnel must be familiar with the DOT guidelines identifying “fatal flaws” that should result in a specimen rejection by the laboratory. “Fatal flaws” include a mismatch of identification numbers between the specimen bottle and the chain-of-custody form, , omission of the collector’s name and signature, , insufficient quantity of urine in the primary specimen bottle (the Federal regulation requires a total of 45 ml, 30 ml in the primary specimen and 15 in the secondary specimen), specimen bottle is broken or shows evidence of tampering.

M. Equipment

Contractor must provide documentation on the year, make, model, size and operating condition of equipment and back-up equipment.

N. Records Management

The collection site shall maintain and make readily available to the SFMTA the following material for all urine drug collections: a) records for the training of each collector; b) records related to the collection process; c) collection log book; d) the employer copy of the Chain of Custody and Control Form; e) log of specimen package tracking numbers. Contractor shall provide the Testing Coordinator with copies of the Chain of Custody and Control Form at the end of each testing shift. For tests performed after regular business hours, Contractor shall submit the Form to the SFMTA no later than the next business day.

Contractor may be asked to input collection related data into an online database. Contractor shall enter this data during the collection process or as the SFMTA has directed to allow for timely and accurate data to be made available.

In reference to the collection of breath alcohol, Contractor shall maintain the following documentation: a) alcohol results of 0.02 or greater; b) documentation of refusals to take required alcohol tests; c) calibration documentation for evidential breath testing device; d) records related to the collection process; e) collection log book (if used); f) documentation of breath alcohol technician training; g) records of the inspection and maintenance of each EBT and STT used in employee testing; and h) documentation of the employer's compliance with the quality assurance program (QAP) for the EBT and/or STT it uses for breath alcohol testing under this part.

O. Qualifications

The SFMTA reserves the right to disapprove or approve any employee who is hired to perform a collection for an SFMTA employee.

2. Deliverables

All written Deliverables, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

3. 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.

4. Reports

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

5. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be William R. Smith.

**Appendix B
Calculation of Charges**

Fee per drug/alcohol screen for all services described in the Scope of Services.

Drug Screen	<u>\$72.00</u>
Alcohol Test	<u>\$72.00</u>
Alcohol Test Confirmation Fee	<u>No Charge</u>
On-Site Standby Time per Minute*	<u>\$1.45</u>
Observer of opposite sex of the collector if required to be provided by contractor. Rate per hour during all scheduled testing.	<u>\$30.00</u>

In the event that an individual is unable to provide a specimen/sample for either urine drug screen or breath alcohol, the SFMTA may request either a shy lung evaluation or a shy bladder evaluation from a licensed physician to determine the donor's ability to provide an adequate specimen/sample.

Fee for shy bladder/lung evaluation:	<u>\$90.00</u>
Staff witness testimony:	<u>\$75.00</u>
Expert witness testimony (physician):	<u>\$400.00</u>
Mileage	<u>\$0.00</u>

* Standby time for on-site collection is calculated by taking the total minutes on the job (minimum four hours per scheduled shift) and subtracting from the total time 30 minutes for each random or follow-up test (counted as one test, whether alcohol, drug, or both are given) actually performed, and subtracting 10 minutes for each test other than random or follow-up (counted as one test, whether alcohol, drug, or both are given) actually performed.