

**THIS PRINT COVERS CALENDAR ITEM NO. : 13**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Taxis and Accessible Services

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute Contract No. SFMTA-2013-25, Drug and Alcohol Testing Services for Taxicab Drivers with Energetix Corporation for drug and alcohol testing services for an amount not to exceed \$4,500,000 and a total contract term of three years, with two options to extend the term for one-year, which may be exercised at the discretion of the Director of Transportation.

**SUMMARY:**

- The SFMTA is responsible for the regulation of the San Francisco taxi industry to protect safety and service quality. This includes qualifying and licensing permit holders, monitoring regulatory compliance, and administering discipline for regulatory violations.
- California Government Code Section 53075.5 requires drug and alcohol testing for taxicab drivers.
- Under the contract, Energetix will administrate drug and alcohol testing of all eligible taxicab drivers and applicants under the following circumstances: pre-permit, annual permit re- certification, post-accident and reasonable suspicion.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract with Energetix Corporation

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_ 10/13/15

SECRETARY \_\_\_\_\_ 10/13/15

**ASSIGNED SFMTAB CALENDAR DATE:** October 20, 2015

**PURPOSE**

The purpose of this item is to seek authorization for the Director of Transportation to execute Contract No. SFMTA-2013-25, Drug and Alcohol Testing Services for Taxicab Drivers with Energetix Corporation for drug and alcohol testing services for an amount not to exceed \$4,500,000 and a total contract term of three years, with two options to extend the term for one-year, which may be exercised at the discretion of the Director of Transportation.

**GOAL**

Goal 1: Create a safer transportation experience for everyone.

Objective 1.3: Improve the safety of the transportation system.

Goal 2: Make transit, walking, bicycling, taxi, ridesharing, and carsharing the preferred means of travel.

Objective 2.1: Improve customer service and communications.

Objective 2.3: Increase use of all non-private auto modes.

Goal 3: Improve the environment and quality of life in San Francisco.

Objective 3.2: Increase the transportation system's positive impact to the economy.

Objective 3.4: Deliver services efficiently.

Goal 4: Create a workplace that delivers outstanding service.

Objective 4.4: Improve relationships and partnerships with our stakeholders.

**DESCRIPTION**

SFMTA's Taxis and Accessible Services Division is responsible for the regulation of the private businesses that make up the San Francisco taxi industry, including qualifying and licensing permit holders, monitoring regulatory compliance and administering discipline for regulatory violations.

As part of that mandate, SFMTA's Taxis and Accessible Services strives to ensure that the San Francisco taxicabs remain a safe public transportation alternative.

**BACKGROUND:**

California Government Code Section 53075.5 requires drug and alcohol testing for taxicab drivers. Section 53075.5 further mandates that all testing comply with regulations in Parts 40 and 382 of Title 49 of the Code of Federal Regulations (CFR).

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With approval of this item and an associated policy, San Francisco will implement a drug and alcohol testing program for taxicab drivers, as every other major metropolitan jurisdiction in California has done.

The SFMTA recognizes that the cost of a drug test payable by the taxi driver would be a burden in the current motor vehicle for hire economy. For this reason, the SFMTA has opted to cover the costs of pre-permit and annual renewal testing for taxicab applicants and drivers.

The contractor will provide the following types of drug tests for taxicab drivers:

- New permit issuance (paid for by SFMTA)
- Permit renewal (paid for by SFMTA)
- Reasonable suspicion (paid for by taxi companies)
- Post-accident (paid for by taxi companies)
- Optional return-to-duty testing (paid for by drivers)
- Optional follow-up testing (paid for by drivers)

The drivers will be screened for marijuana, cocaine, opiates, amphetamines/methamphetamines including ecstasy and MDMA, and phencyclidine (PCP).

The contractor will also provide alcohol breath tests when required for post-accident, reasonable suspicion, optional return-to-duty, and optional follow-up testing.

The contractor will be responsible for conducting training of taxi company management regarding the program and specific reasonable suspicion testing, as well as training for SFMTA Taxi Services staff.

The contractor will provide services using seven testing sites all located within San Francisco. At least one proposed testing site will be available 24 hours a day, seven days a week.

## **EVALUATION PROCESS**

On May 2, 2014, the SFMTA issued a Request for Proposals (RFP) for Drug and Alcohol Testing Services for Taxicab Drivers. The scope of work for the RFP was written as follows:

The SFMTA seeks the services of a Third Party Administrator to provide drug and alcohol testing services for San Francisco taxicab drivers. This is a new contract for services that are not currently being provided. The drug and alcohol program will be considered non-Department of Transportation (DOT), but will be substantially similar to the requirements contained in 49 CFR Parts 40 and 382. The TPA shall perform its tasks in compliance with all applicable medical standards and federal, state and local government safety codes, laws, and regulations related to drug and alcohol testing.

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Six bidders submitted proposals on July 3, 2014. The bidders were:

- Energetix
- No Drugs, Inc.
- Norton Medical Industries
- Compliance Oversight Solutions Ideal
- Accurate C&S
- RN Expertise

The SFMTA assembled an evaluation panel of two SFMTA employees and two taxi industry managers. The panel scored the written proposals, and moved two of the proposers, Energetix Corporation and No Drugs, Inc., forward for oral interviews. After the oral interviews, Energetix Corporation emerged as the highest-ranked proposer.

Energetix has listed San Francisco Medical Clinics as the LBE it will use for urine collection and breath testing.

## **PUBLIC OUTREACH**

In a continuing effort to remain open and transparent to the industry, staff discussed and elicited feedback regarding this program over the course of several years. Once the contractor was selected, the SFMTA began more focused outreach efforts. This was the subject of several Color Scheme meetings in July and August of 2015. The matter went before the Taxi Task Force on August 12, 2015. The SFMTA also held a special open meeting on August 20, 2015 where Energetix appeared in person to answer all taxi industry questions.

The unedited audio of the meeting was posted on taxi industry blogs for all interested parties to hear. The SFMTA expects to continue its outreach efforts related to this program.

The taxi industry's primary concern related to the use of prescription medical marijuana. Many in the industry believe that a positive test for marijuana should be excused if the driver is able to present a prescription for medical marijuana. However, as mentioned above, state law requires that testing comply with federal testing regulations. The federal regulations (49 CFR§40.137(e) (2)) do not recognize marijuana as having a legitimate medical explanation for a positive drug test. For this to change, state law would have to be amended.

The other concern relates to the imposition of stricter standards on taxicab drivers than exist for Transportation Network Company (TNC) drivers. At this time, TNC drivers are not tested for drugs or alcohol. Many in the industry would like pressure put on TNC drivers to abide by the same rules, which include drug and alcohol testing for their drivers.

Because the California Public Utilities Commission has authority and jurisdiction over TNC drivers, the SFMTA is unable to impose a drug testing requirement on those companies and individuals despite its feeling that such a requirement should exist.

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The SFMTA believes that a drug testing program for taxicab drivers demonstrates that taxicabs may be considered safer than other motor vehicles for hire.

### **ALTERNATIVES CONSIDERED**

The alternative to implementing this program would be to remain with the status quo, which would keep San Francisco out of compliance with state law as it relates to drug and alcohol testing of taxicab drivers.

### **FUNDING IMPACT**

This contract will be paid out of operating funds at a maximum cost of \$900,000 per year for three years, with two separate one-year renewal options. The FY 2016 Operating Budget includes funding for this program. The FY 2017 and 2018 operating budget will need to include funding for the 2<sup>nd</sup> and 3<sup>rd</sup> years of this program.

### **ENVIRONMENTAL REVIEW**

The San Francisco Planning Department concurred with the SFMTA's determination that the entering of a contract between SFMTA and Energetix for third party administration of taxicab driver drug and alcohol tests is not a "project" for purposes of environmental review under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of regulations Section 15060(c).

The Planning Department's concurrence is on file with the Secretary to the SFMTA Board of Directors.

### **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

Approval for this agreement was obtained when the Civil Service Commission approved Contract number 49011-13/14 on February 3, 2014, and modified on July 20, 2015.

The City Attorney has reviewed this calendar item.

### **RECOMMENDATION**

Staff recommends that the Board authorize the Director of Transportation to execute Contract No. SFMTA-2013-25, Drug and Alcohol Testing Services for Taxicab Drivers with Energetix Corporation for drug and alcohol testing services for an amount not to exceed \$4,500,000 and a total contract term of three years, with two options to extend the term for one-year, which may be exercised at the discretion of the Director of Transportation.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The SFMTA's Taxicab and Accessible Services Division is responsible for the regulation of the private businesses that make up the San Francisco taxi industry, including qualifying and licensing permit holders, monitoring regulatory compliance and administering discipline for regulatory violations; and,

WHEREAS, California Government Code Section 53075.5 requires drug and alcohol testing for taxicab drivers; and,

WHEREAS, On May 2, 2014, the SFMTA issued a Request for Proposals for Drug and Alcohol Testing Services for Taxicab Drivers and received proposals from six bidders on July 3, 2014; and,

WHEREAS, An evaluation committee scored the proposals and after the selection process, Energetix Corporation emerged as the highest-ranked proposer; and,

WHEREAS, On August 20, 2015, the San Francisco Planning Department concurred with the SFMTA's determination that the Contract No. SFMTA-2013-25 entitled "Agreement Between The City And County of San Francisco And Energetix Corporation for Drug and Alcohol Testing Services for Taxicab Drivers," is not a "project" for purposes of environmental review under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(c); now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2013-25, Drug and Alcohol Testing Services for Taxicab Drivers with Energetix Corporation for drug and alcohol testing services for an amount not to exceed \$4,500,000 and a total contract term of three years, with two options to extend the term for one-year, which may be exercised at the discretion of the Director of Transportation.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 20, 2015.

\_\_\_\_\_  
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. 7<sup>th</sup> floor  
San Francisco, California 94103**

**Contract between the City and County of San Francisco and  
Energetix Corporation  
For Drug and Alcohol Testing Services for Taxicab Drivers**

**Contract No. SFMTA-2013-25**

This Agreement is made this \_\_\_\_ day of \_\_\_\_\_, 2015, in San Francisco, State of California, by and between: Energetix Corporation, 87 Saint Paul's Road North, Hempstead, NY 11550-1131 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

**Recitals**

- A. The SFMTA wishes to secure the provision of drug and alcohol testing services for taxicab drivers.
- B. A Request for Proposals ("RFP") was issued on May 2, 2014, and City selected Contractor as the highest-ranked proposer.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.
- D. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 49011-13/14 on February 3, 2014.

Now, THEREFORE, the parties agree as follows:

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

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

**2. Term of the Agreement.** Subject to Section 1, the initial term of this Agreement shall be from July 1, 2015 to June 30, 2018. The SFMTA shall have the option to further extend the term of this Agreement for up to two, one-year periods, for a maximum five-year term from July 1, 2015 to July 30, 2020, subject to approval of the Civil Service Commission. The Director of Transportation or his designee shall have the authority to exercise any optional term extension at his or her sole discretion.

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

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

**5. Compensation.** Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the SFMTA's Director of Transportation, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. The amount of this Agreement for the initial three-year term as set forth in Section 2 shall not exceed Two Million, Seven Hundred Thousand Dollars (\$2,700,000). The amount for each optional one-year term extension exercised at the Director of Transportation's or his designee's discretion shall be \$900,000. In no event shall the total amount of this Agreement, should all options be exercised, exceed Four Million, Five Hundred Thousand Dollars (\$4,500,000) for the maximum five-year term of the Agreement. The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

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

**7. Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

**8. Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

**9. Reserved. (Disallowance)**

**10. Taxes.**

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

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

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

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

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

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

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

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

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

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

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

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

authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorney's fees, arising from this section.

## **15. Insurance.**

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

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

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

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

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

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

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

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

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

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the

effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

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

g. **Reserved**

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

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

**17. Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

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

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

**19. Liquidated Damages.** . By entering into this Agreement, Contractor agrees that in the event a drug or alcohol test is cancelled due to an error by Contractor or one of its subcontractors, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of One Hundred Dollars (\$100) for such a cancelled test is not a penalty, but is a reasonable estimate of the loss that City will incur due to the cancellation of the test, 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 such cancelled test(s).

**20. Default; Remedies.**

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

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

8. Submitting False Claims; 10. Taxes; 15. Insurance; 24. Proprietary or Confidential Information of City; 30. Assignment; 37. Drug-Free Workplace Policy; 53. Compliance with Laws; and 57. Protection of Private Information.

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

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

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to

any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

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

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

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8. Submitting False Claims; 10. Taxes; 11. Payment Does Not Imply Acceptance of Work; 13. Responsibility for Equipment; 14. Independent Contractor; Payment of Taxes and Other Expenses; 15. Insurance; 16. Indemnification; 17. Incidental and Consequential Damages; 18. Liability of City; 24. Proprietary or Confidential Information of City; 26. Ownership of Results; 27. Works for Hire; 28. Audit and Inspection of Records; 48. Modification of Agreement; 49. Administrative Remedy for Agreement Interpretation; 50. Agreement Made in California; Venue; 51. Construction; 52. Entire Agreement; 56. Severability; and 57. Protection of Private Information.

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

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

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

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

To City: Jarvis Murray  
SFMTA | Taxis  
One South Van Ness Ave. 7<sup>th</sup> Floor  
San Francisco, CA 94103-5417

E-mail: [Jarvis.Murray@sfmta.com](mailto:Jarvis.Murray@sfmta.com)

To Contractor: William Kerekes  
Energetix Corporation  
87 Saint Paul's Rd. N.  
Hempstead, NY 11550-1131

E-mail: [nrgtx@yahoo.com](mailto:nrgtx@yahoo.com)

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

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

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

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

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

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

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

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

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

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

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received base an Adverse Action on an applicant’s or potential applicant for employment, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise

rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

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

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

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

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

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

a. **The LBE Ordinance.** Contractor shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. **Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of

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

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

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

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

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

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

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

registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2 (b) of the San Francisco Administrative Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **44. Requiring Health Benefits for Covered Employees.**

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

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

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

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

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each

Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

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

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

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

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

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

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

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

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

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

#### **45. First Source Hiring Program.**

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

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

therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

**b. First Source Hiring Agreement.**

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

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

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

(3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer’s proprietary information.

(4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for

documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

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

(6) Set the term of the requirements.

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

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

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

c. **Hiring Decisions.**

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

d. **Exceptions.**

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

e. **Liquidated Damages.**

Contractor agrees:

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

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

(3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance

programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

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

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

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

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

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

(6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

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

f. **Subcontracts.**

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

**46. 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.

**47. 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.

**48. Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the SFMTA to submit to the SFMTA Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

**49. Administrative Remedy for Agreement Interpretation.**

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

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

**50. 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.

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

**52. Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."

**53. 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.

**54. 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.

**55. Reserved. (Supervision of Minors)**

**56. 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.

**57. Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

**58. Reserved.**

**59. Reserved. (Food Service Waste Reduction Requirements)**

**60. Reserved. (Slavery Era Disclosure)**

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

**62. Large Vehicle Driver Safety Training Requirements.**

a. 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 available for download at [www.SFMTA.com/largevehicletrainingstandards](http://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.

b. 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.

d. Contractor must acknowledge that it has read and understands these requirements by executing the "Acknowledgement of Large Vehicle Driver Safety Training Requirements" below.

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

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>CITY</b></p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Edward D. Reiskin<br/>Director of Transportation</p> <p><b>AUTHORIZED BY:</b></p> <p><b>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</b></p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____<br/>Roberta Boomer, Secretary<br/>SFMTA Board of Directors</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera<br/>City Attorney</p> <p>By: _____<br/>Robin M. Reitzes<br/>Deputy City Attorney</p> | <p><b>CONTRACTOR</b></p> <p>Energetix Corporation</p> <p>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.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>I acknowledge that I have read and understand Section 62: Large Vehicle Driver Safety Training Requirements.</p> <hr/> <p>William Kerekes<br/>President<br/>87 Saint Paul's Rd. N.<br/>Hempstead, NY</p> <p>City Vendor Number: 57410</p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges

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

**1. Description of Services**

Contractor shall provide drug and alcohol testing services for San Francisco taxi drivers. The drug and alcohol program will be considered non-Department of Transportation (DOT), but will be substantially similar to the requirements contained in 49 CFR Parts 40 and 382, as they may be amended during the term of this Agreement. Contractor shall perform its tasks in compliance with all applicable medical standards and federal, state and local government safety codes, laws, and regulations related to drug and alcohol testing.

**A. Types of Testing**

1. **Drug Tests.** The Contractor shall provide the following types of drug tests for taxi drivers:

- a. new permit issuance (paid for by SFMTA)
- b. permit renewal (paid for by SFMTA)
- c. reasonable suspicion (paid for by taxi companies)
- d. post-accident (paid for by taxi companies)
- e. optional return-to-duty (current drivers or taxi companies will pay for return-to-duty tests)
- f. optional follow-up (current drivers or taxi companies will pay for follow-up tests)

2. **Alcohol Tests.** The consultant shall also provide alcohol breath tests.

3. **Forms and Procedures.** Each testing type shall be conducted on a non-DOT chain of custody and/or alcohol testing form. The procedures shall conform to 49 CFR Parts 40 and 382, as applicable.

**B. Collection Site Location; Mobile Unit or Transport to Collection Facility**

Contractor shall provide services using the following collection sites, all of which are located within the City and County of San Francisco:

Concentra Medical Center  
2 Connecticut St. #1  
San Francisco, CA 94107

Concentra Medical Center  
26 California St  
San Francisco, CA 94104

California Pacific Med Center  
Castro and Duboce  
Suite 160A South Tower  
San Francisco, CA 94114

Accurate Drug Testing  
275 5th St  
San Francisco CA 94103

Quest Diagnostics – drug only  
2198 15th St  
San Francisco CA94114

Quest Diagnostics – drug only  
2201 Post St  
San Francisco CA 94115

Lab Corp  
2300 Sutter St  
San Francisco CA 94115

At a minimum, one proposed collection site must be available for testing on a 24-hour basis, seven days a week. Other sites shall be available for testing during normal business hours.

Following are the current business addresses of existing taxi company facilities within San Francisco:

ABC Cab, 999 Pennsylvania Avenue  
Alliance Cab, 2270 McKinnon Avenue  
American Taxi Cab, 120 Willow Street  
Citywide, 2060 Newcomb Avenue  
Comfort Cab, 1340 25th St.  
Crown Cab, 85 Industrial Street, #B  
Desoto Cab, 555 Selby Street  
Eco Cab, 120 Willow Street  
Fog City Cab, 979 Bryant Street  
Gold Star Cab, 1150 22<sup>nd</sup> St.  
Green Cab, 3031 Mission St.  
Lucky Cab, 98 Pennsylvania Avenue  
Luxor Cab, 2230 Jerrold Avenue  
Max Cab, 1 Ave of Palms, Suite 120  
National Cab, 2270 McKinnon Avenue  
Regents Cab, 98 Pennsylvania Avenue

SF Super Cab, 979 Bryant Street  
SF Taxi Cab, 1340 25<sup>th</sup> St.  
Town Taxi, 999 Pennsylvania Avenue  
USA Cab, 2060 Newcomb Avenue  
Veterans Cab, 2270 McKinnon Avenue  
Vina Cab, 999 Pennsylvania Avenue  
Yellow Cab, 1200 Mississippi Street

The SFMTA reserves the right to amend, add to, or delete from this list during the term of this Agreement by letter to Contractor.

### **C. Testing Protocol**

Contractor's staff shall be on call 24 hours a day, 365 days a year to assist the SFMTA and designated taxi company(ies) with post-accident testing, reasonable suspicion or other urgent testing situations. The Contractor will make all arrangements with the collection site to ensure its availability for testing.

Contractor shall provide either a mobile collection facility or transportation to a collection facility 24 hours a day, 365 days a year for post-accident and reasonable suspicion testing.

Contractor shall engage all required collection personnel. Urine Drug Collectors (UDC) personnel shall meet all certification and training requirements described in 49 CFR Part 40 Subpart C. The UDC shall use equipment authorized under, and follow all collection procedures described in, 49 CFR Part 40 Subparts C, D, E, and I. As mentioned above, the only exception is that all urine screens shall be conducted using a non-DOT chain-of-custody form.

Breath Alcohol Technicians (BAT) shall meet all certification and training requirements described in 49 CFR Part 40 Subpart J. The ATP shall use equipment authorized under, and follow all procedures described in, 49 CFR Part 40 Subparts J, K, L, M, and N. All breath testing shall be conducted using a non-DOT alcohol testing form.

Contractor shall provide all specimen collection supplies needed for urine collection, including:

1. Specimen collection and bottle containers
2. Non-DOT custody and control (COC) forms pre-printed with account information
3. Pre-printed return envelopes for the collector to mail a copy of the COC form to the Medical Review Officer (MRO)
4. Specimen shipping box to protect the sample during shipping
5. Courier overnight shipping envelope for sending specimens to the designated laboratory that has been certified by the U.S. Department of Health and Human Services (DHHS)
6. The initial supply of testing materials, to be shipped directly to the designated collection site(s)

Contractor shall provide the collection site(s) with detailed instructions concerning the establishment of designated taxi company's account, including:

1. The designated taxi company name, address, phone numbers and authorized contacts
2. The names, addresses, and phone numbers of testing laboratory and MRO
3. Specimen shipping instructions
4. Instructions on how to order additional testing supplies
5. Instructions on the disbursement of testing paperwork
6. Billing instructions

The Contractor shall act as a liaison between SFMTA and designated taxi company(ies) and the collection site(s) on an on-going basis and shall monitor the quality and performance of the collection site(s).

#### **D. Laboratory & MRO Services**

Contractor shall enter into agreements with all DHHS-certified laboratories that will perform required drug testing. Each laboratory shall use equipment authorized under, and follow the procedures described in, 40 CFR Part 40 Subpart F.

Contractor shall also engage qualified MROs to perform the services described in 49 CFR Part 40 Subpart G. The MRO shall be a licensed physician (Doctor of Osteopathy or Medicine), and must be knowledgeable and qualified in accordance with 49 CFR Section 40.12. The MRO shall follow the procedures described in 49 CFR Part 40 Subpart G.

Contractor shall also require the laboratory(ies) to ship the initial supply of drug testing materials directly to each of the designated collection sites.

#### **E. Test Panel**

The non-DOT five-panel drug screen, which could be increased to include other drugs should 49 CFR Part 40 be amended during the term of the Agreement, shall be provided for all urine tests. The five-panel drug screen test is as follows:

1. Marijuana (THC)
2. Cocaine
3. Amphetamines/methamphetamines (Ecstasy)
4. Opiates
5. Phencyclidine (PCP)

#### **F. Blind Specimen Tracking & Submission Service**

Contractor shall track the volume of testing completed and submit a percentage of blind specimens to each testing laboratory used for services. The TPA shall automatically provide this service for all of its designated taxi company(ies). Contractor shall provide a report verifying the completion of this testing to the SFMTA on a quarterly basis.

## **G. Substance Abuse Professional (SAP) Referral and Monitoring Services**

Contractor's services shall include locating an appropriate facility and certified personnel to perform SAP evaluations according to 49 CFR Part 40 Subpart O.

Contractor shall verify the SAP's credentials, at least annually, to ensure that the SAP continues to maintain the required certifications to satisfy DOT regulations.

Payment for SAP services will be the responsibility of the drivers.

## **H. Miscellaneous Services:**

The following shall be scheduled should the SFMTA or designated taxi company require these services.

1. Substance abuse program training video for drivers
2. Supervisor post-accident and reasonable suspicion training programs (2 hours). Currently licensed taxi companies in San Francisco are set forth in Section 1.B above and as amended by letter to Contractor. Taxi companies will designate which and how many of their employees will receive this training and will be responsible for payment for such training.
3. Educational brochures and pamphlets concerning drug and alcohol testing, information on various drugs of abuse, and options for substance abuse treatment.
4. Shy bladder and lung evaluations by a qualified physician, as described in 49 CFR Part 40 Subparts I and N.

## **I. Recordkeeping and Confidentiality**

Contractor shall maintain testing records in compliance with all recordkeeping and confidentiality requirements as described in 49 CFR Parts 40 and 382, and provide taxi companies with duplicate records.

## **J. Schedule**

Contractor shall be prepared to commence work within 45 days following execution of this Agreement.

The following tasks and estimated time for each shall constitute a schedule for project implementation. It is assumed that all tasks shall be implemented simultaneously:

- Project Kick-Off: 1 week
- Database Set-Up: 30 days
- Clinic Set-Up: 30 days
- Lab Set-Up: 1 week
- MRO Set-Up: 1 week
- SAP Set-up: 1 week

**Minimum Time Required: 30 days**

**2. Reports**

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

**3. SFMTA Liaison**

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be Jarvis Murray, or his designee.

**4. Assessment of Contractor's Services during Third Year of the Agreement**

The SFMTA will review Contractor's Services during the third year of the Term of the Agreement set forth in Section 2 of the Agreement, at which time the SFMTA will decide whether to continue procuring Contractor's services under the Agreement for the fourth and fifth years of the Agreement, or terminate the Agreement. In no event shall this Section preclude the SFMTA from terminating this Agreement at any time as set forth in Section 21 of the Agreement (Termination for Convenience).

**Appendix B  
Calculation of Charges**

Contractor shall be reimbursed for the provision of Services as set forth in Appendix A of this Agreement according to the following rates:

**1. Initial Test**

The SFMTA will pay Contractor \$55 per driver per year for one annual new permit or permit renewal drug test, to be billed for the month in which the test is performed. Contractor shall otherwise remit monthly invoices for services provided in the previous month as set forth in the Agreement.

**2. Miscellaneous Clinic-based Services**

For other intermittent, as-needed services that are not included in the lump sum annual payment in paragraph 1 above, the City will pay the following rates per services:

| <b>TASK</b>                                                                                                                                             | <b>PRICE PER SERVICE</b>                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| <b>Collection Fees</b>                                                                                                                                  |                                                       |
| Reasonable Suspicion requiring both drug and alcohol tests                                                                                              | <b>\$55 per drug test<br/>\$35 per alcohol test</b>   |
| Post-accident – Normal Hours (7:00 A.M. to 6:00 P.M., depending when the collection site(s) are open) requiring both drug and alcohol tests             | <b>\$55 per drug test<br/>\$35 per alcohol test</b>   |
| Post-accident – After Hours – Before collection site opens and after it closes, at accident site or at Concentra, requiring both drug and alcohol tests | <b>\$150 per drug test<br/>\$150 per alcohol test</b> |
| <b>Laboratory Fees</b>                                                                                                                                  |                                                       |
| Urine Screen Review                                                                                                                                     | <b>\$15 per review</b>                                |
| Split Specimen                                                                                                                                          | <b>\$125 per test</b>                                 |
| <b>Stand-Alone</b>                                                                                                                                      |                                                       |
| Blind Specimen Cost                                                                                                                                     | <b>No Charge</b>                                      |

| <b>TASK</b>                                                                                                                                                                                                                                                     | <b>PRICE PER SERVICE</b>                                                                                                                                                              |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Medical Review Officer Services</b>                                                                                                                                                                                                                          |                                                                                                                                                                                       |
| Urine Screen Review                                                                                                                                                                                                                                             | <b>\$10 per review</b>                                                                                                                                                                |
| Shy Lung Review (by Physician)                                                                                                                                                                                                                                  | <b>\$100 per review</b>                                                                                                                                                               |
| Shy Bladder review (by Physician)                                                                                                                                                                                                                               | <b>\$100 per review</b>                                                                                                                                                               |
| <b>Stand-Alone</b> (Responsibility of Taxi Company or Driver)                                                                                                                                                                                                   |                                                                                                                                                                                       |
| Substance Abuse Professional Services (following a positive test), which include the following: <ul style="list-style-type: none"> <li>• Initial evaluation, monitoring and return-to-duty evaluation</li> <li>• Monitoring following return-to-duty</li> </ul> | <b>\$600 per client caseload</b>                                                                                                                                                      |
| Return-to-Duty and Follow-up (following a positive test or refusal to test, and rehabilitation)                                                                                                                                                                 | <b>\$70 per drug test</b><br>(= \$55 per drug test +<br><b>\$15 per same gender staff-observed specimen collection</b> )<br><b>\$35per alcohol test</b><br>(if required or requested) |
| <b>Training (lump sum per training session)</b><br>(Responsibility of Taxi Company)                                                                                                                                                                             |                                                                                                                                                                                       |
| Supervisor Post-accident/Reasonable Suspicion Training                                                                                                                                                                                                          | <b>\$250 per live session</b><br><b>\$50per DVD per taxi company</b>                                                                                                                  |
| <b>Testimony (hourly rate)*</b><br>(Responsibility for Payment is Person/Entity Who Paid for Underlying Test)                                                                                                                                                   |                                                                                                                                                                                       |
| Medical (MRO/Lab)<br>Technical (all other staff)                                                                                                                                                                                                                | <b>\$200/hr.</b><br><b>\$100/hr.</b>                                                                                                                                                  |

\* Assumed to be telephone testimony. If the witness is required to appear personally, travel costs shall be paid according to the City's then current travel expense policy.