THIS PRINT COVERS CALENDAR ITEM NO.: 10.4

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

DIVISION: Taxis, Access & Mobility Services

BRIEF DESCRIPTION:

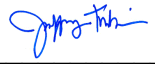
Authorizing the Director of Transportation to execute Contract No. SFMTA-2022-37, Drug and Alcohol Testing Services for Taxicab Drivers, with Energetix Corporation, for an annual amount not to exceed $300,000, and a total contract amount not to exceed $1,500,000; and for a contract term of three years, with options to extend the term for up to two years, which options 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 promote public safety, consumer protection 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 administer drug and alcohol testing services, and provide substance abuse professional evaluation services, if needed, for all eligible taxicab drivers under the following circumstances: pre-permit, annual permit re-certification, post-accident, and reasonable suspicion.
- The objective of the program is to ensure taxi driver fitness for duty and to protect taxicab drivers, passengers, and the public from the risks posed by the use of prohibited drugs and abuse of alcohol.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract with Energetix Corporation
3. Taxi Driver Drug and Alcohol Testing Policy

APPROVALS:		**DATE**
DIRECTOR		March 1, 2023
SECRETARY		March 1, 2023

ASSIGNED SFMTAB CALENDAR DATE: March 7, 2023

PURPOSE

The purpose of this item is to seek authorization for the Director of Transportation to execute Contract No. SFMTA-2022-37, Drug and Alcohol Testing Services for Taxicab Drivers with Energetix Corporation, with a $300,000 annual amount, for a total contract amount not to exceed $1,500,000; and a contract term of three years, with options to extend the contract for up to two additional years, which options may be exercised at the discretion of the Director of Transportation.

GOAL

The project

This action supports the following SFMTA Strategic Plan Goals:

Goal 1: Identify and reduce disproportionate outcomes and resolve past harm towards marginalized communities.
Goal 2: Create a work environment that is responsive, equitable and inclusive
Goal 3: Recruit, hire and invest in a diverse workforce
Goal 4: Make streets safer for everyone
Goal 5: Deliver reliable and equitable transportation services
Goal 7: Build stronger relationships with stakeholders
Goal 8: Deliver quality projects on-time and on-budget.
Goal 9: Fix things before they break, and modernize systems and infrastructure.

This action supports the following SFMTA Transit First Policy Principles:

2. Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

DESCRIPTION

The SFMTA's Taxis, Access & Mobility Services Division (the 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, the Division strives to ensure that 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).

The SFMTA adopted its Taxi Driver Drug and Alcohol Testing Policy in October 2015 (see enclosure).

The prior taxi driver drug and alcohol testing contract with Energetix was approved by the SFMTA Board on October 20, 2015. In 2019, the contract was amended to exercise the option to extend the Agreement to May 31, 2020, and to increase rates. This Director approved the Second Amendment to further extend the contract to September 30, 2021, and, due to SFMTA's limited Substance Abuse Professional (SAP) staff serving Muni transit operators and other covered safety-sensitive employees, the Energetix contract was then allowed to provide for such backup SAP services for the SFMTA's federally required testing program at the same contracted fee. Since September 30, 2021, the SFMTA has paid Energetix for continuing services through a direct payment voucher, so there has been no interruption in services.

The SFMTA recognizes that the cost of a drug test payable by the taxi driver would be a burden in the motor vehicle-for-hire economy and has covered the drug testing costs in the prior contract. As the burden of this cost remains a concern, the SFMTA will continue to cover the costs of pre-permit and annual renewal testing for taxicab applicants and drivers.

In response to the impact of the COVID-19 virus on the San Francisco taxi industry, the SFMTA waived driver permit renewal fees starting with the COVID-19 Shelter-in-Place Order in San Francisco in 2020. Taxi Services requested the waiver of all taxi fees, and A-Card renewal fees were waived for the remainder of the current two-year budget fiscal year (until June 30, 2024). Drug testing is a state requirement and is required for A-Card renewal. Additionally, as of June 2020, the SFMTA began paying for the SAP counseling services for both new positive tests and retroactive positive tests since January 2018, as a compassionate way to support struggling taxi drivers and their path to recovery.

Under this contract, Energetix 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 *3,4-methylenedioxy-methamphetamine* (MDMA), and phencyclidine (PCP).

The Contractor shall also provide alcohol tests in conformity with 49 CFR Part 40. Alcohol tests will be required for reasonable suspicion and post-accident testing. Alcohol tests may be required for return-to-duty and follow-up testing, as determined by the SAP, and at the driver's expense. SAP referral and monitoring services are required for taxi drivers who test positive. The SFMTA may also refer other non-taxi drivers, including transit operators, for SAP services on an as-needed basis. The Contractor's services shall include engaging certified personnel and locating an appropriate local facility to perform SAP evaluations in compliance with 49 CFR Part 40, Subpart O.

The Contractor will be responsible for conducting training of taxi company management regarding the program and in conducting specific reasonable suspicion testing. The Contractor will also provide training to staff of SFMTA Taxi Services regarding the program.

The Contractor shall locate urine and breath collection site(s) within the geographical boundaries of the San Francisco and at the San Francisco International Airport. At a minimum, one proposed collection site must be available for testing on a 24-hour basis, seven days a week. Other sites within the San Francisco Bay Area shall also be made available for testing during normal business hours, since many taxi drivers may reside outside of San Francisco.

EVALUATION PROCESS

On January 12, 2022, 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 wishes to contract with Contractor to provide drug and alcohol testing services for taxicab 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. The TPA [third party administrator] 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.

Three firms submitted proposals on February 14, 2022. The proposers were:

- Energetix
- Accurate C&S
- Zenith Health

Zenith Health was disqualified for not meeting the minimum qualifications.

The SFMTA assembled an evaluation panel of one SFMTA employee, one City employee from a different department, and one taxi/paratransit industry manager. The panel scored the written proposals from the two qualified proposers, Energetix and Accurate C&S. After the panel evaluation of the written proposal, and pricing calculations, Energetix Corporation emerged as the highest-ranked proposer.

The SFMTA initially concluded negotiations on May 25, 2022. Due to significant resource shortages during the COVID pandemic, the SFMTA was not able to award a contract under this RFP in 2022. The SFMTA then provided both responsive proposers the opportunity to confirm or revise the quoted prices in their Fee Proposal submission on January 27, 2023. Based on the recent responses and subsequent scoring, Energetix remains the highest-ranked proposer, with no changes to its score.

Energetix has listed San Francisco medical clinics as local businesses it will use for drug and alcohol testing.

PUBLIC OUTREACH

This SFMTA has notified representatives of the taxi industry about this proposed contract with Energetix, at a recent quarterly taxi meeting on February 28, 2023.

ALTERNATIVES CONSIDERED

The alternative to SFMTA engaging a contractor to provide drug and alcohol testing oversight and management would be to shift the cost and administrative burden onto the taxi industry to comply with the state requirements. Staff does not consider this a viable alternative.

FUNDING IMPACT

This contract will be paid out of operating funds at a maximum cost of $300,000 per year for three years, with options to extend the contract for up to two years, for a maximum of five years. There would be no changes to the current annually budgeted level of funding for these services. The contract will have a total not-to-exceed amount of $1,500,000.

ENVIRONMENTAL REVIEW

The SFMTA determined that the entering of a contract between SFMTA and Energetix for third party administration of taxicab driver drug and alcohol testing and taxicab driver and back-up services as needed for transit operator substance abuse professional services is not a "project" under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment.

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

RECOMMENDATION

Staff recommends that the Board authorize the Director of Transportation to execute Contract No. SFMTA-2022-37, Drug and Alcohol Testing Services for Taxicab Drivers, with Energetix Corporation, for an annual amount not to exceed $300,000, and a total contract amount not to exceed $1,500,000; and for a contract term of three years, with options to extend the term for up to two years, which options 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 Taxis, Access & Mobility Services Division is responsible for the regulation of the San Francisco taxi industry to promote public safety, consumer protection and service quality; this includes 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, The objective of the program is to ensure taxi driver fitness for duty and to protect taxicab drivers, passengers, and the public from the risks posed by the use of prohibited drugs and abuse of alcohol; and,

WHEREAS, On January 12, 2022, the SFMTA issued a Request for Proposals (RFP) for Drug and Alcohol Testing Services for Taxicab Drivers; and,

WHEREAS, In response to the RFP, the SFMTA received two responsive proposals; and Energetix Corporation was the highest-ranked proposer; and,

WHEREAS, Under the proposed contract, Energetix Corporation will administer drug and alcohol testing services, and provide substance abuse professional evaluation services, if needed, for all eligible taxicab drivers under the following circumstances: pre-permit, annual permit re-certification, post-accident, and reasonable suspicion; and,

WHEREAS, The SFMTA, under authority delegated by the Planning Department, determined that the proposed Contract No. SFMTA-2022-37, Drug and Alcohol Testing Services for Taxicab Drivers, does not constitute a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment; and,

WHEREAS, A copy of this determination is on file with the Secretary for the SFMTA Board of Directors; now, therefore be it

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA-2022-37, Drug and Alcohol Testing Services for Taxicab Drivers, with Energetix Corporation, the highest-ranked proposer, for an annual amount not to exceed $300,000, and a total contract amount not to exceed $1,500,000; and for a contract term of three years, with options to extend the term for up to two years, which options 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 March 7, 2023.

_____

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

Agreement between the City and County of San Francisco and

Energetix Corporation

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

Agreement between the City and County of San Francisco and Energetix Corporation Contract No. SFMTA-2022-37

This Agreement is made as of _____, in the City and County of San Francisco (City), State of California, by and between Energetix Corporation, a Delaware corporation (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA wishes to contract with Contractor to provide drug and alcohol testing services for taxicab drivers.

B. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on January 12, 2022, pursuant to which City selected Contractor as the highest-qualified scorer.

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

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

E. The City's Civil Service Commission approved Contract number 42966-21/22 on February 7, 2022.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement. Where any word or phrase defined below, or a pronoun in place of the word or phrase, is used in any part of this Agreement, it shall have the meaning set forth below:

1.1 "**Agreement**" or "**Contract**" means this contract document, including all attached appendices, any future amendments, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 "**CCO**" means the SFMTA Contract Compliance Office.

1.3 "**City**" or "**the City**" means the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency.

1.4 "**City Data**" or "**Data**" means that data as described in Article 13 of this Agreement, which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement, as well as Confidential Information.

1.5 "**CMD**" means the Contract Monitoring Division of the City.

1.6 "**Confidential Information**" means confidential City information including, but not limited to, personally-identifiable information (PII), protected health information (PHI), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.7 "**Contract Administrator**" means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

1.8 "**Contractor**" or "**Consultant**" means Energetix Corporation, 175 Wood Road, Centereach, NY 11720.

1.9 "**C&P**" means SFMTA Contracts and Procurement.

1.10 "**Day**" (whether or not capitalized) means a calendar day, unless otherwise designated.

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

1.12 "**Director**" means the Director of Transportation of the SFMTA or his or her designee.

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

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

1.15 "**Party**" and "**Parties**" mean the City and Contractor, either collectively or individually.

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

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

1.18 "**San Francisco Municipal Transportation Agency**" or "**SFMTA**" means the agency of City with jurisdiction over surface transportation in San Francisco, as provided under Article VIIIA of the City's Charter.

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

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date and expire three years from the Effective Date, unless earlier terminated as otherwise provided herein.

2.2 The City has options to extend the Agreement for up to two years. The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement).

Article 3 Financial Matters

3.1 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 in the form of a Purchase Order, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.3 Compensation

3.3.1 Calculation of Charges. Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed (including goods delivered, if any) in the immediately preceding month, unless a different schedule is set out in Appendix B (Calculation of Charges). Compensation shall be made for goods and/or Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes have been satisfactorily performed. In no event shall the amount of this Agreement exceed One Million, Five Hundred Thousand ($1,500,000). The breakdown of charges associated with this Agreement appears in Appendix B. As described in Appendix B, the City may withhold a portion of payment as retention until the conclusion of the Agreement if agreed to by both Parties. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

3.3.2 Payment Limited to Satisfactory Services and Delivery of Goods. Contractor is not entitled to any payments from City until the SFMTA approves the goods and/or Services delivered under this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. The City may reject goods and/or Services delivered under this Agreement that do not conform to the requirements of this Agreement. In such case, Contractor must replace the non-conforming goods and/or Services without delay and at no cost to the City.

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

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the City's Controller and the SFMTA, and include a unique invoice number and a specific invoice date. City will make payment as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered or Services performed, sales/use tax (if applicable), contract payment terms, and contract price. Invoices that do not

include all required information or contain inaccurate information will not be processed for payment.

3.3.5 Payment Terms

(a) Payment Due Date: Unless the SFMTA notifies the Contractor that a dispute exists, Payment shall be made within 30 Days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted the electronic payment to Contractor.

(b) Reserved. (Payment Discount Terms)

(c) No additional charge shall accrue against City in the event City does not make payment within any time specified by Contractor.

3.3.6 Reserved. (LBE Payment and Utilization Tracking System).

3.3.7 Getting Paid by the City for Goods and/or Services

(a) The City utilizes the Paymode-X® service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to https://sfcitypartner.sfgov.org/pages/training.aspx for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not 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 as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into

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

3.6 Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

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

4.2 Personnel

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

4.2.2 Contractor Vaccination Policy

(a) Covered Employee

A Covered Employee is an employee of a contractor or subcontractor working at a City-owned, -leased, or -controlled facility who:

(i) works in an indoor office workspace where City employees regularly work for more than 4 cumulative hours in a day, more than 15 cumulative hours in a 7-day period, or more than 20 cumulative hours in a 14-day period, or

(ii) regularly works within six feet of one or more City employees, for more than 4 cumulative hours in a day, more than 15 cumulative hours in a 7-day period, or more than 20 cumulative hours in a 14-day period

(iii) For the purpose of this definition, "indoor office workspace" includes open-plan office space and office suites with shared common spaces such as hallways, conference rooms, and break rooms, but does not include separate public space in an office building, such as a bathroom, elevator, or lobby.

Also, for the purpose of this definition, a sole proprietor contractor qualifies as a Covered Employee.

(b) Policy

(i) Contractor acknowledges that it has read the requirements of the 38th Supplement to Mayoral Proclamation Declaring the Existence of a Local Emergency (Emergency Declaration), dated February 25, 2020, and the Contractor Vaccination Policy for City Contractors issued by the City Administrator (Contractor Vaccination Policy), as those documents may be amended from time to time. A copy of the Contractor Vaccination Policy can be found at: https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors.

(ii) A contract subject to the Emergency Declaration is an agreement between the City and any other entity or individual and any subcontract under such agreement, where Covered Employees of the Contractor or Subcontractor work in-person with City employees in connection with the work or services performed under the agreement at a City owned, leased, or controlled facility. Such agreements include, but are not limited to, professional services contracts, general services contracts, public works contracts, and grants. This Contract includes such agreements currently in place or entered into during the term of the Emergency Declaration. This Contract does not include an agreement with a state or federal governmental entity or agreements that do not involve the City paying or receiving funds.

(iii) In accordance with the Contractor Vaccination Policy, Contractor agrees that:

(1) Contractor has read the Contractor Vaccination Policy pertaining to the obligations of City;

(2) Where applicable, Contractor shall ensure it complies with the requirements of the Contractor Vaccination Policy pertaining to Covered Employees, as they are defined under the Emergency Declaration and the Contractor Vaccination Policy, and insure such Covered Employees are either fully vaccinated for COVID-19 or obtain from Contractor an exemption based on medical or religious grounds; and

(3) If Contractor grants Covered Employees an exemption based on medical or religious grounds, Contractor will promptly notify the SFMTA by completing and submitting the Covered Employees Granted Exemptions Form (Exemptions Form), which can be found at https://sf.gov/confirm-vaccine-status-your-employees-and-subcontractors (navigate to "Exemptions" to download the form).

4.3 Subcontracting

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

4.3.2 City's execution of this Agreement constitutes its approval of the subcontractors listed below.

- i3Screen
- No Drugs, Inc.

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses

4.4.1 Independent Contractor. For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any

agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

4.5 Assignment. The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner (collectively referred to as an "Assignment"), 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. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with City; and (c) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.6 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at

the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

4.7 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. Contractor agrees that the sum of One Hundred Dollars ($100) for each 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 Agreement was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of such cancelled test(s).

Article 5 Insurance and Indemnity

5.1 Insurance.

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

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

(b) 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.

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

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

(e) Reserved. (Technology Errors and Omissions Coverage)

(f) Reserved. (Cyber and Privacy Coverage)

(g) Reserved. (Pollution Liability Insurance)

5.1.2 Additional Insured Endorsements.

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Reserved. (Pollution Auto Liability Additional Insured Endorsement).

5.1.3 Reserved. (Workers Compensation Insurance Waiver of Subrogation Endorsement)

5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved. (Pollution Liability Insurance Primary Insurance Endorsement)

5.1.5 Other Insurance Requirements.

(a) Thirty days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment, for which no less than 10 Days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

(b) 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 Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

(d) 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.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements from 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.

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

5.2 Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent

rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

Article 6 Liability of the Parties

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

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

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

Article 7 Payment of Taxes

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

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

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

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this

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

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

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

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 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.

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

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

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

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

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

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

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

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

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

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

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

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

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by the SFMTA, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead,

attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

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

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

8.2 Termination for Default; Remedies

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

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

3.5	Submitting False Claims
4.5	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.10	Alcohol and Drug-Free Workplace
11.10	Compliance with Laws
Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within 10 days after written notice thereof from the SFMTA to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, the SFMTA may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a

custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

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

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

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

8.3 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.

8.4 Rights and Duties upon Termination or Expiration

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

3.3.2	Payment Limited to Satisfactory Services and Delivery of Goods
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights in Deliverables

9.1 Ownership of Results. Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Works for Hire. If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the

United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

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

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

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

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at https://sfgov.org/olse/consideration-salary-history. Contractor is

required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

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

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

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

10.7 Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at http://sfgov.org/olse/mco. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 Health Care Accountability Ordinance. If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. 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. Information about and the text of Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at http://sfgov.org/olse/hcao. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any

Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

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

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (a) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (c) a candidate for that City elective office, or (b) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved. (Slavery Era Disclosure)

10.13 Reserved. (Working with Minors)

10.14 Consideration of Criminal History in Hiring and Employment Decisions

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

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

10.15 Reserved. (Public Access to Nonprofit Records and Meetings)

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

10.17 Reserved. (Distribution of Beverages and Water)

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

10.19 Reserved. (Preservative-Treated Wood Products)

Article 11 General Provisions

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

To City: Danny Yeung
Principal Administrative Analyst
Taxis, Access & Mobility Services Division
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 7th floor
San Francisco, CA 94103

To Contractor: Steve Lobsinger
Chief Financial Officer
Energetix Corporation
175 Wood Road
Centereach, NY 11720
steve@energetixholdings.com

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

11.2 Compliance with Americans with Disabilities Act. Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 Incorporation of Recitals. The Recitals are incorporated into and made part of this Agreement.

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

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

11.6 Dispute Resolution Procedure

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative

decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

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

11.7 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.

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

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

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

11.11 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.

11.12 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement

reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, Contractor's proposal dated February 7, 2022, and Contractor's revised fee proposal dated January 31, 2023. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, and any implementing task orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

11.14 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests, and other legal requests (Legal Requests) related to all City Data given by City to Contractor in the performance of this Agreement, or which in any way might reasonably require access to City Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

Article 12 SFMTA Specific Terms

12.1 Large Vehicle Driver Safety Training Requirements

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

12.1.2 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.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information

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

13.1.2 Confidential Information . In the performance of Services, Contractor may have access to, or collect on City's behalf, City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

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

13.3 Business Associate Agreement. This Agreement may require the exchange of information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 (HIPAA). A Business Associate Agreement (BAA) executed by the Parties is attached as Appendix C.

13.4 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City.

13.5 Management of City Data and Confidential Information

13.5.1 Use of City Data and Confidential Information. Contractor agrees to hold City Data received from, or collected on behalf, of the City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City

Data outside the United States is subject to prior written authorization by the City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors, or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.5.2 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than 30 Days, return all Data given to or collected by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall within 10 Days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors' environment(s), work stations that were used to process the Data or for production of the Data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five Days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88, or the most current industry standard.

Article 14 MacBride And Signature

14.1 MacBride Principles - Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY	**CONTRACTOR**
San Francisco **Municipal Transportation Agency** _____ Jeffrey P. Tumlin Director of Transportation Authorized By: Municipal Transportation Agency Board of Directors Resolution No: _____ Adopted: _____ Attest: _____ Secretary to the Board Approved as to Form: David Chiu City Attorney By: _____ Robin M. Reitzes Deputy City Attorney	**Energetix Corporation** Susan Lobsinger _____ Susan Lobsinger President & CEO <u>Acknowledgement of Large Vehicle Driver Safety Training Requirements</u>: By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements. City Supplier Number: **0000020663**

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Appendices

A: Scope of Services
B: Calculation of Charges
C: Business Associate Agreement

Appendix A
Scope of Services

1. Description of Services

Contractor shall provide drug and alcohol testing and substance abuse professional (SAP) evaluation services for San Francisco taxi drivers. This drug and alcohol program is not federally mandated but will be substantially similar to the requirements contained in 49 Code of Federal Regulations (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 and SAP services.

A. Types of Testing

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

   a. New permit issuance (paid for by the SFMTA).

   b. Permit renewal (paid for by the SFMTA).

   c. Reasonable suspicion (paid for by taxi companies).

   d. Post-accident (paid for by taxi companies).

   e. Optional return-to-duty (current drivers, taxi companies, or the SFMTA will pay for return-to-duty tests, subject to further negotiations).

   f. Optional follow-up (current drivers, taxi companies or the SFMTA will pay for follow-up tests).

2. **Alcohol Tests**. Contractor shall also provide alcohol tests in conformity with 49 CFR Part 40. Alcohol tests will be required for reasonable suspicion and post-accident testing. Alcohol tests may be required for return-to-duty and follow-up testing, as determined by the SAP, and at the driver's expense.

3. **Forms and Procedures**. Each testing type shall be conducted using 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 Locations Mobile Unit or Transport to Collection Facility

Contractor shall locate urine and breath collection site(s) within the geographical boundaries of the City and County of San Francisco (including the San Francisco International Airport):

See Appendix A-1

At a minimum, one proposed collection site must be available for testing on a 24-hour basis, seven days a week. Other sites within the San Francisco Bay Area shall also be made available for testing during normal business hours, since many taxi drivers reside outside of San Francisco.

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 testing, or other urgent testing situations. Contractor shall make all arrangements with the collection site to ensure its availability for testing.

Contractor shall engage all required collection personnel. Urine Drug Collectors (UDC) 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 BAT 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 chain-of-custody (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 accounts for each designated taxi company, including:

1. The designated taxi company name, contact information, and authorized contacts.
2. The names, addresses, and contact information of the testing laboratory and the 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.

Contractor shall act as a liaison between the SFMTA and the 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 (including Ecstasy/MDMA)
4. Opiates (including heroin)
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. Contractor 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

SAP referral and monitoring services will be required for drivers who test positive. The SFMTA may also refer other non-taxi drivers for SAP services on an as-needed basis.

Contractor's services shall include engaging certified personnel and locating an appropriate local facility to perform SAP evaluations in compliance with 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.

SAP evaluation services may be paid for by either the driver, taxi companies, or the SFMTA based on the rates included in this Agreement. Contractor will be responsible for invoicing the appropriate party requesting the SAP evaluation services. The SFMTA will not pay for SAP evaluation services not requested by the SFMTA.

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 of up to 1 hour.
2. Supervisor post-accident and reasonable suspicion training programs (2 hours) for taxi companies licensed in San Francisco. Taxi companies will designate which and how many of their employees will receive this training and will be responsible for payment for such training. Contractor shall provide all taxi company management and trainees with at least one "live" training of at least two hours. Contractor shall also provide to the taxi companies a training video or online training resource of the same training material for reference and refresher 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 shall be performed within five days by a physician, selected by the Contractor. The evaluations shall be performed 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 regarding their respective drivers.

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. 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.

3. 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.

4. SFMTA Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the **SFMTA** will be Danny Yeung.

Appendix A-1
Collection Sites

	Name	Address	City	Phone	Hours
1	ARCPOINT LABS - BAKERSFIELD, CA (MEANY AVE)	7737 MEANY AVE	BAKERSFIELD	6616796799	M-F 8:00 am-5:00 pm
2	AMERICAN INDUSTRIAL CARE, INC.	1210 ALHAMBRA AVE	MARTINEZ	9256748080	M-F 8:30 AM - 4 PM
3	NO DRUGS INC - FREMONT, CA (SELDON CT)	3225 SELDON COURT	FREMONT	8004903784	M-F 8:00 am-5:00 pm
4	DRUG TESTING CENTER	5612 N. BLACKSTONE AVE	FRESNO	5594401991	M,W,F 9:00 am-6:00 pm T,Thu 9:00 am-5:00 pm
5	VALLEY DRUG TESTS - FRESNO, CA (S BAGLEY AVE)	3667 SOUTH BAGLEY AVENUE	FRESNO	5594326700	M-F 9:00 AM - 4:30 PM
6	VALLEY WORKFORCE COMPLIANCE & TRAINING - FRESNO, CA (P ST)	744 P STREET	FRESNO	5593582513	M-F 9:00 am - 5:00 pm
7	NO DRUGS, INC - LAKEPORT, CA (LAKESHORE BLVD)	2559 LAKESHORE BLVD	LAKEPORT	8004903784	M-W, F 8:00 am-5:00 pm (Closed Thursday)
8	ARCPOINT LABS OF MARTINEZ - MARTINEZ, CA (ALHAMBRA AVE)	3237 ALHAMBRA AVE	MARTINEZ	9259576870	M-F 8:30AM-5:00PM
9	NO DRUGS INC - MARTINEZ, CA (ARNOLD DR)	827 ARNOLD DR	MARTINEZ	9253708378	M-F 8:00 am-5:00 pm
10	ACCURATE DRUG & DNA TESTING	8105 EDGEWATER DR	OAKLAND	5107770904	M-F 9:30AM-12:00PM. Stops doing collections after 12:00pm
11	GLOBAL DRUG ALCOHOL & DNA SERVICES	1730 FRANKLIN STREET	OAKLAND	5102684901	M-F 9:30 am-5:00 pm
12	ARCPOINT LABS - PLEASANTON, CA (BOULDER CT)	405 BOULDER COURT	PLEASANTON	9252361700	M-F 9:00 am - 4:00 pm
13	NORTH STATE DRUG TESTING LAB	2301 PARK MARINA DR STE 17	REDDING	5302438921	M-F 8:00 am-5:00 pm
14	ARCPOINT LABS - RICHMOND, CA (RICHMOND PKWY)	3065 RICHMOND PARKWAY	RICHMOND	5106864278	M-F 7:00 am- 6:00 pm, Saturday 9:00 am – 1:00 pm
15	ALCOHOL & DRUG TESTING SERVICES/ADTS - ROHNERT PARK, CA (LABATH AVE)	6025 LABATH AVE	ROHNERT PARK	7075881234	M-F 8:00 am-5:00 pm
16	ARCPOINT LABS OF SACRAMENTO (ACCUDIAGNOSTICS)	1578 HOWE AVE	SACRAMENTO	9165650400	M-F 8:30 am - 3:30 pm
17	NO DRUGS INC - SACRAMENTO, CA (E SOUTHGATE DR)	7275 EAST SOUTHGATE DRIVE	SACRAMENTO	9164283784	M-F 8:00 am-5:00 pm
18	CALIFORNIA PACIFIC MED CENTER	CASTRO & DUBOCE SUITE 160A SOUTH TOWER	SAN FRANCISCO	4156006600	M-F: 8:30 am - l:30 pm; Walk-in, appointments recommended
19	CONCENTRA - SAN FRANCISCO, CA (CALIFORNIA STREET)	26 CALIFORNIA STREET	SAN FRANCISCO	4157817077	M-F: 7:00 am – 6:00 pm; Walk-in
20	CONCENTRA MEDICAL CENTER- SAN FRANCISCO, CA (CONNECTICUT ST)	2 CONNECTICUT STREET	SAN FRANCISCO	4156215055	M-F: 7:00 am — 6:00 pm; Sat: 9:00 am – 3:00 pm Walk-in
21	NO DRUG INC - SAN FRANCISCO, CA (SILLIMAN ST)	9 SILLIMAN STREET	SAN FRANCISCO	4154683784	M-F: 8:00 am — 4:00 pm; Sat: by appointment; Walk-in
22	SAN FRANCISCO INT'L AIRPORT MEDICAL GROUP INTERNATIONAL TERMINAL MAIN HALL	BOARDING AREA A SIDE	SAN FRANCISCO	6508215601	M-F: 7:00 am — 7:00 pm; Weekends and Holidays Closed
23	DNA & DRUG SCREENING SERVICES INC	242 MERIDIAN AVE	SAN JOSE	4089939998	M-F 7:30 am-5:00 pm

	Name	Address	City	Phone	Hours
24	NO DRUGS INC - SAN JOSE, CA (NEWBERRY DR)	3162 NEWBERRY DRIVE	SAN JOSE	4084483784	M-F 8:00 am—1:00 pm 2:00—5:00 PM
25	SOLANO DRUG AND ALCOHOL TESTING	418 DAVIS STREET	VACAVILLE	7074479651	M-F 8:30 am-12:00 pm & 1:00 pm-4:30 pm
26	CONCENTRA MEDICAL CENTER-SFO	3 SOUTH LINDEN AVE	SOUTH SAN FRANCISCO	6502381500	M-F 8 AM - 8 PM, on Saturday 10 AM - 2 PM

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:

Alcohol and Drug Testing Services

TASK	PRICE PER SERVICE	
Collection Fees*		
New permit issuance (New Driver)	$ 26	Per Drug Test
Permit Renewal	$ 26	Per Drug Test
Reasonable Suspicion – Alcohol Test	$ 39	Per Alcohol Test
Reasonable Suspicion – Drug Test	$ 26	Per Drug Test
Post-accident – Alcohol Test - Normal Hours 7:00 am to 6:00 pm and could be adjusted for any 8-hour period such as 8:00 am to 5:00 pm. Must be designated and consistent from collection site to collection site.	$ 39	Per Alcohol Test
Post-accident – Drug Test - Normal Hours 7:00 am to 6:00 pm and could be adjusted for any 8-hour period such as 8:00 am to 5:00 pm. Must be designated and consistent from collection site to collection site	$26	Per Drug Test
Post-accident – Alcohol Test – After-Hours – Before collection site opens and after it closes	$150	Per Alcohol Test
Post-accident – Drug Test – After-Hours – Before collection site opens and after it closes	$ 123	Per Drug Test
Return-to-Duty and Follow-up – Drug Test	$ 46	Per Drug Test
Return-to-Duty and Follow-up – Alcohol Test - (if required or requested)	$ 39	Per Alcohol Test
Initial Alcohol Test/Confirmation Test (if required)	$ 39	Per Alcohol Test
Technician wait time and shy bladder/shy lung no-test fees	No Charge	Per Hour
Laboratory Fees*		
Urine Screen Review	$ 21.50	Per Review
Split Sample	$ 150	Per Review
Medical Review Officer Services*		
Urine Screen Review	$ 13.50	Per Review
Shy Lung Review (by Physician)	$ 100	Per Review
Shy Bladder Review (by Physician)	$ 100	Per Review

TASK	PRICE PER SERVICE	
Other*		
Blind Specimen Cost	No Charge	Per Test

SAP Services

TASK	LUMP SUM PER DRIVER	
Stand-Alone (Responsibility of Taxi Company, Current Driver or the SFMTA)		
Substance Abuse Professional Services (following a positive test), which include the following: • Initial evaluation, monitoring and return-to-duty evaluation • Monitoring following return-to-duty	$600	Per Client Caseload

Training and MRO Testimony

Training (lump sum per training session) (Responsibility of Taxi Company)		
Supervisor Post-accident/Reasonable Suspicion Training – Live Session	$ 600	Per Live Session
Supervisor Post-accident/Reasonable Suspicion Training – DVD or Online	$ 30	Per DVD or Online Per Taxi Company
Testimony (hourly rate) (Responsibility for Payment is Person/Entity Who Paid for Underlying Test)		
Medical (MRO/Lab)	$ 200	Per Hour
Medical (MRO/Lab)	$ 100	Per Hour

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

Appendix C
Business Associate Agreement

This Business Associate Agreement (BAA) supplements and is made a part of the agreement by and between the City and County of San Francisco, the Covered Entity (CE), and Energetix Corporation (Contractor and the Business Associate (BA)), dated _____ (Agreement). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control.

RECITALS

A. CE, by and through its Municipal Transportation Agency (SFMTA), wishes to disclose certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (PHI) (defined below).

B. For purposes of the Agreement and this BAA, CE requires Contractor, even if Contractor is also a covered entity under HIPAA, to comply with the terms and conditions of this BAA as a BA of CE.

C. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the HITECH Act), and regulations promulgated there under by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws, including, but not limited to, California Civil Code §§ 56, et seq., California Health and Safety Code § 1280.15, California Civil Code §§ 1798, et seq., California Welfare & Institutions Code §§5328, et seq., and the regulations promulgated there under (the California Regulations).

D. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into an agreement containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (C.F.R.) and contained in this BAA.

E. BA enters into agreements with CE that require the CE to disclose certain identifiable health information to BA. The parties desire to enter into this BAA to permit BA to have access to such information and comply with the BA requirements of HIPAA, the HITECH Act, and the corresponding Regulations.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

1. Definitions

a. Breach means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.

b. Breach Notification Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Part 164, Subpart D.

c. Business Associate is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information received from a covered entity, but other than in the capacity of a member of the workforce of such covered entity or arrangement, and shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

d. Covered Entity means a health plan, a health care clearinghouse, or a health care provider who transmits any information in electronic form in connection with a transaction covered under HIPAA Regulations, and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

e. Data Aggregation means the combining of Protected Information by the BA with the Protected Information received by the BA in its capacity as a BA of another CE, to permit data analyses that relate to the health care operations of the respective covered entities, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

f. Day means a calendar day, unless otherwise indicated**.**

g. Designated Record Set means a group of records maintained by or for a CE, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

h. Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103. For the purposes of this BAA, Electronic PHI includes all computerized data, as defined in California Civil Code Sections 1798.29 and 1798.82.

i. Electronic Health Record means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

j. Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

k. Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

l. Protected Health Information or PHI means any information, including electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

m. Protected Information shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.

n. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.

o. Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

p. Unsecured PHI means PHI that is not secured by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute, and shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. Obligations of Business Associate

a. User Training. The BA shall provide, and shall ensure that BA subcontractors provide, training on PHI privacy and security, including HIPAA and HITECH and its regulations, to each employee or agent that will access, use or disclose Protected Information, upon hire and/or prior to accessing, using or disclosing Protected Information for the first time, and at least annually thereafter during the term of the Agreement. BA shall maintain, and shall ensure that BA subcontractors maintain, records indicating the name of each employee or agent and date on which the PHI privacy and security trainings were completed. BA shall retain, and ensure that BA subcontractors retain, such records for a period of seven years after the

Agreement terminates and shall make all such records available to CE within 15 Days of a written request by CE.

b. Permitted Uses. BA may use, access, and/or disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.502, 164.504(e)(2). and 164.504(e)(4)(i)].

c. Permitted Disclosures. BA shall disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

d. Prohibited Uses and Disclosures. BA shall not use or disclose Protected Information other than as permitted or required by the Agreement and BAA, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Information solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and

the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Agreement.

e. Appropriate Safeguards. BA shall take the appropriate security measures to protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the CE, and shall prevent any use or disclosure of PHI other than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.306, 164.308, 164.310, 164.312, 164.314 164.316, and 164.504(e)(2)(ii)(B). BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316, and 42 U.S.C. Section 17931. BA is responsible for any civil penalties assessed due to an audit or investigation of BA, in accordance with 42 U.S.C. Section 17934(c).

f. Business Associate's Subcontractors and Agents. BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph 2.f. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2) through (e)(5); 45 C.F.R. Section 164.308(b)]. BA shall mitigate the effects of any such violation.

g. Accounting of Disclosures. Within 10 Days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five Days.

h. Access to Protected Information. BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within five Days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.

i. Amendment of Protected Information. Within 10 Days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R Section 164.526. If an individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five Days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

j. Governmental Access to Records. BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.

k. Minimum Necessary. BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary" to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

l. Data Ownership. BA acknowledges that BA has no ownership rights with respect to the Protected Information.

m. Notification of Breach. BA shall notify CE within five Days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its

agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

n. Breach Pattern or Practice by Business Associate's Subcontractors and Agents. Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this BAA within five Days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

3. Termination

a. Material Breach. A breach by BA of any provision of this BAA, as determined by CE, shall constitute a material breach of the Agreement and this BAA and shall provide grounds for immediate termination of the Agreement and this BAA, any provision in the AGREEMENT to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii).]

b. Judicial or Administrative Proceedings. CE may terminate the Agreement and this BAA, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

c. Effect of Termination. Upon termination of the Agreement and this BAA for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this BAA to such information, and limit further use and disclosure of such PHI to those purposes that make the

return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(2)(ii)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

d. Civil and Criminal Penalties. BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure or Protected Information in accordance with the HIPAA Regulations and the HITECH Act including, but not limited to, 42 U.S.C. 17934 (c).

e. Disclaimer. CE makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations or corresponding California law provisions will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

4. Amendment to Comply with Law

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the updated standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable state or federal laws. CE may terminate the Agreement upon 30 Days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this BAA when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

5. Reimbursement for Fines or Penalties

In the event that CE pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine or penalties or damages within 30 Days from City's written notice to BA of such fines, penalties or damages.

SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA)
TAXI DRIVER DRUG AND ALCOHOL TESTING POLICY

1.0 PURPOSE

The purpose of this Policy is to assure Driver fitness for duty, and to protect the public from the risks posed by the use of Alcohol and Prohibited Drugs (as defined below) by: 1) taking appropriate action to assure that the City's Taxi Drivers are not impaired in their ability to perform in a safe, productive, and healthy manner; 2) encouraging Taxi Drivers to voluntarily seek professional assistance whenever personal problems, including alcohol or drug use, may adversely affect their ability to perform.

California Government Code section 53075.5 requires local entities regulating taxicabs to adopt a mandatory controlled substance and alcohol testing certification program with procedures that substantially comply with applicable regulations in Part 40 and Part 382 of Title 49 of the Code of Federal Regulations (CFR). This Taxi Driver Drug and Alcohol Testing Policy ("Policy") incorporates these federal requirements for Drivers, as well as other provisions, as noted. Compliance with this Policy and participation in the testing program is a requirement of each Taxi Driver and therefore is a condition of the Driver permit.

2.0 DEFINITIONS

2.1 Accident. An accident involving a taxicab in which:

A. A person dies; or

B. Within eight hours of the accident the Driver receives a citation under State or local law for a moving traffic violation arising from the accident, and the accident involved:
   i. Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
   ii. Disabling Damage to one or more vehicles as a result of the accident that required the motor vehicle to be transported from the scene by a tow truck or other motor vehicle.

2.2 Adulterated Specimen. A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

2.3 Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol. (The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.)

2.4 **Breath Alcohol Technician.** A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

2.5 Cancelled Test. A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which 49 CFR Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

2.6 Dilute Specimen. A specimen with creatinine and specific gravity values that is lower than expected for human urine.

2.7 Direct Observation. Collection of a urine specimen performed while under the observation of a collector of the same gender as the individual providing the specimen, under the circumstances and according to the provisions set forth in 49 CFR Section 40.67.

2.8 Disabling Damage. Damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs.

A. *Inclusions.* Damage to motor vehicles that could have been driven, but would have been further damaged if so driven.

B. *Exclusions.*
   (i) Damage which can be remedied temporarily at the scene of the accident without special tools or parts.

   (ii) Tire disablement without other damage even if no spare tire is available.

   (iii) Headlight or taillight damage.

   (iv) Damage to turn signals, horn, or windshield wipers that make them inoperative.

2.9 DOT. The United States Department of Transportation.

2.10 DOT Procedures. "Procedure for Transportation Work Place Drug Testing Programs" published by the Office of Secretary of Transportation in 49 CFR Part 40.

2.11 DOT Regulations. Alcohol and Controlled Substances Testing Regulations published by the Secretary of Transportation in 49 CFR Part 382.

2.12 Invalid Drug Test. The result of a drug test or a urine specimen that contains an unidentified adulterant or an unidentified substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

2.13 Medical Review Officer (MRO). A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by a drug testing program and evaluating medical explanations for certain drug test results.

2.14 Non-negative Drug Test. A test result found to be Adulterated, Substituted, Invalid, or positive for drug/drug metabolites.

2.15 Performing (a Safety-Sensitive Function). A Covered Driver is considered to be Performing a Safety-Sensitive Function at any time in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

2.16 Positive Drug Test: A test result found to be Adulterated, Substituted, Invalid, or positive for Prohibited Drug/Prohibited Drug metabolites.

2.17 Positive Alcohol Test: A test revealing an Alcohol concentration of 0.04 or greater.

2.18 Primary Specimen. In drug testing, the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing.

2.19 Prohibited Drugs. The following substances: marijuana, amphetamines, methylenedioxymethamphetamine (MDMA), methylenedioxyamphetamine (MDA), opiates, phencyclidine (PCP), and cocaine.

2.20 Refuse (Refusal) to Submit. A refusal to take a drug test as set out in 49 CFR Section 40.191 or an Alcohol test as set out in 49 CFR Section 40.261.

2.21 Safety-Sensitive Function. All time from the time a Driver begins to work or is required to be in readiness to work until the time he or she is relieved from work and all responsibility for performing work. Safety-Sensitive functions shall include:

A. All time at company facility, or other property, or on any public property waiting to be dispatched, unless the Driver has been relieved from duty by company;

B. All time inspecting equipment or otherwise inspecting, servicing, or conditioning any Taxi at any time;

C. All time spent at the driving controls of a Taxi in operation;

D. All time, other than driving time, in or upon any Taxi;

E. All time loading or unloading a taxicab, supervising, or assisting in the loading or unloading of passengers, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for or compensation from passengers; and

F. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

2.22 Service Agents. Any person or entity, other than the SFMTA or a Taxi Company, who provides services specified in 49 CFR Part 40 in connection with the drug and Alcohol testing requirements specified in this Policy. This includes, but is not limited to, collectors, Breath Alcohol Technicians, laboratories, TPAs, MROs, and SAPs.

2.23 Split Specimen. In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the Driver requests that it be tested following a verified positive test of the Primary Specimen or a verified Adulterated or Substituted test result.

2.24 Substance Abuse Professional (SAP). A licensed physician, psychologist, social worker, certified employee assistance professional, or nationally certified addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders who evaluates employees who have violated a drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

2.25 Substituted Specimen. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

2.26 Taxi Company. A Color Scheme Permit Holder as defined in Transportation Code Article 1100.

2.27 Taxi Driver; Driver. A Taxi Driver who holds an "A-Card" or "Driver Permit" issued by the SFMTA to operate a taxi or ramp taxi in the City.

2.28 Third Party Administrator (TPA). A contractor hired by the SFMTA to administer all aspects of the Taxi Driver drug and alcohol testing program.

3.0 APPLICABILITY

This Policy applies to all Taxi Drivers regulated by the SFMTA. Under this Policy all Taxi Drivers will be subject to pre-permit, permit renewal, reasonable suspicion, post-accident, return-to-duty and follow-up testing for Prohibited Drugs, and to reasonable suspicion, post-accident and return-to-duty and follow-up Alcohol testing. This Policy will be applied in an unbiased and impartial manner.

4.0 OPPORTUNITIES FOR REHABILITATION

4.1 Rehabilitation After a Positive Alcohol or Drug Test. When a Taxi Driver tests positive for Prohibited Drugs or over 0.04 for Alcohol, the SFMTA will suspend the Driver's A-Card, and the Third Party Administrator will refer the Driver to a SAP. If a Driver wishes to return to work as a Taxi Driver, he/she must properly follow the

rehabilitation program prescribed by the SAP. The SAP will provide a written release to the Third Party Administrator certifying the Driver's eligibility to be considered for return to work only after the Driver has signed a return-to-work agreement. The return-to-work agreement shall outline the terms and conditions of continuing care and follow-up drug testing, which shall be the terms and conditions under which the SFMTA lifts the suspension of the Driver's A-Card.

The requirements for referral, evaluation and rehabilitation do not apply to applicants who refuse to submit to a permit issuance drug test or who test positive for Prohibited Drugs on a permit issuance test.

4.2 **Cost of Rehabilitation.** The SFMTA will not pay for the SAP's services, or for rehabilitation services, and will not require Taxi Companies to pay for such services. Instead, Drivers will be responsible for the cost of such services.

5.0 PROHIBITED SUBSTANCES

"Prohibited Substances" addressed by this Policy include the following:

5.1 **Prohibited Drugs**. No Taxi Driver will work under the influence of Prohibited Drugs. Any Taxi Driver discovered to be in violation of these prohibitions is required to cease operation of the taxicab immediately.

5.2 **Alcohol**. The possession and consumption of beverages containing Alcohol, or substances, including any medication, containing Alcohol such that Alcohol is present in the body while Performing Safety-Sensitive Functions as a Taxi Driver, is prohibited

5.3 **Legally Prescribed and Over-the-Counter Drugs.** Prescriptions and over the counter drugs can adversely affect a Driver's job performance. However, the use of Legally Prescribed Drugs and over-the-counter drugs is permitted under the circumstances below. Legally Prescribed Drugs include those drugs approved and authorized by a physician for use during the course of medical treatment. For prescription drugs, the physician must issue a written prescription that clearly indicates the Driver's name, drug type, and proper dosage. If a Driver is taking prescription and/or over the counter drugs, he/she must obtain a signed note from a physician that the use of this drug(s) at the prescribed or authorized dosage is consistent with the safe performance of the Driver's duties. This note must be presented to the Taxi Company before driving a taxi. The authorized use of Legally Prescribed Drugs does not include the use of prescribed Prohibited Drugs.

In the event it is determined by the MRO that a Driver is taking or is under the influence of a prescribed medication that will reasonably impair the Driver's ability to safely and adequately perform their job, the Driver will not be allowed to drive until the condition requiring the taking of the medication is resolved or the Driver is no longer taking the medication.

6.0 PROHIBITED CONDUCT

6.1 **Alcohol Use/Hours of Compliance**. The following applies to the consumption of Alcohol by Taxi Drivers:

A. No Taxi Driver should report for duty or remain on duty when his or her ability to perform Safety-Sensitive Functions is adversely affected by Alcohol while on duty or when his or her blood alcohol concentration is 0.04 or greater.
B. No Taxi Driver shall use alcohol while on duty or while driving.
C. No Taxi Company supervisor, manager, or other employee who has actual knowledge that any Driver Performing Safety-Sensitive Functions has an Alcohol level of .04 or greater, is using Alcohol while Performing Safety-Sensitive Functions, has tested positive for Alcohol, has used Alcohol within four hours prior to Performing a Safety-Sensitive Function, or has Refused To Submit to testing, shall not permit the Driver to perform or continue to Perform a Safety-Sensitive Function..
D. No Driver shall drive within four hours after having consumed Alcohol.
E. After an Accident, a Driver shall refrain from Alcohol use for eight hours or until a post-Accident alcohol test has been administered, whichever comes first. This prohibition relating to Alcohol includes over-the-counter medications and medical prescriptions that contain Alcohol. Drivers are advised to notify their physicians at the time medication is prescribed as to be in compliance with the work place requirement to avoid Alcohol consumption in any form.

6.2 **Prohibition Against Driving.** No Taxi Driver shall Perform a Safety-Sensitive Function under the following circumstances:

A. After testing positive or Refusing to Submit to Testing, a Taxi Driver shall not perform their functions unless he or she is referred for evaluation and testing, is approved and authorized to return to duty by a SAP, and the SFMTA has lifted the suspension of the Driver's A-Card.

B. No Driver who has a Prohibited Drug or Alcohol testing violation shall Perform a Safety-Sensitive Function. No Taxi Company shall permit a Driver who has such a violation to perform any driving duties.

C. If a Taxi Driver's drug test is reported as "negative dilute," the Taxi Driver will be immediately sent for another drug test. If the second test result is negative dilute, the result will be accepted and no further testing will be performed, unless directed by the MRO. Certain Dilute specimens may require retest under Direct Observation under 49 CFR Part 40. A required Direct Observed test will be performed by a person of the same gender as Driver.

D. A Taxi Company must remove a Taxi Driver from his or her duties until the start of his or her next regularly scheduled duty period, but not less than 24 hours following administration of the test, if the Taxi Driver has a confirmed Alcohol concentration of greater than 0.02 and less than 0.04.

6.3 **Refusal to Submit.** A Taxi Driver, who Refuses to Submit to Prohibited Drug or Alcohol testing, as required, shall be prohibited from Performing or continuing to Perform Safety-Sensitive Functions. A Refusal to Submit to drug or Alcohol testing constitutes a verified positive drug or Alcohol test result. Any conduct or behavior as defined in the following list constitutes a Refusal to Submit and will be deemed a verified positive drug or Alcohol test:

A. Failure to appear for any drug test (except a permit issuance or permit renewal) as directed by the SFMTA within a reasonable time, and failure to appear(for Alcohol testing within two hours of notification that he or she must be tested;

B. Except for a permit issuance or permit renewal test, failure to remain at the testing site until the testing process is complete, or leaving the testing site before the testing process commences;

C. Failure to permit the observation or monitoring of a specimen collection in the case of a Direct Observation drug test;

D. Failure to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;

E. Failure or declining to take a second drug test that the TPA or collection site personnel has directed the Taxi Driver to take;

F. Failure to sign the certification at Step 2 of the alcohol testing form ("ATF");

G. Failure to cooperate with any part of the testing process (e.g., refusal to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process);

H. The MRO reports a verified Adulterated or Substituted test result;

I. Anytime the Taxi Driver is directed to provide another urine specimen because the temperature of the original specimen was out of the accepted temperature range of 90 degrees to 100 degrees F;

J. Anytime the Taxi Driver is directed to provide another specimen because the original specimen appeared to have been tampered with;

K. Anytime a collector observes materials brought to the collection site or the Taxi Driver's conduct clearly indicates an attempt to tamper with the specimen;

L. Anytime the Taxi Driver is directed to provide another specimen because the laboratory reported to the MRO that the original specimen was Invalid and the MRO determined that there was not an adequate medical explanation for the result;

M. Anytime the Taxi Driver is directed to provide another specimen because the MRO determined that the original specimen was positive, Adulterated or Substituted, but had to be cancelled because the test of the Split Specimen could not be performed;

N. Anytime the Driver possesses or wears a prosthetic or other device that could be used to interfere with the collection process;

O. The Driver admits to the MRO or collector that the he or she Adulterated or Substituted a specimen;

P. Failure to follow the Observer's instructions during a Direct Observation collection, including instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if any type of prosthetic or other device could be used to interfere with the collection process.

7.0 TESTING FOR PROHIBITED SUBSTANCES

7.1 Procedures for Testing

7.1.1 General. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability, and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). Testing for Prohibited Drugs and Alcohol on Taxi Drivers shall be conducted in accordance with the procedures set forth in 49 CFR Part 40, as amended. Non-federal Custody and Control Forms (CCF) (urine) and Alcohol Testing Forms (ATF) (breath) will be used. The procedures that will be used to test for the presence of illegal drugs or Alcohol misuse are designed to protect the Taxi Driver and the drug and alcohol testing process, safeguard the validity of the test results, and ensure the test results are attributed to the correct Taxi Driver.

7.1.2 Testing for Prohibited Drugs. The Third Party Administrator shall collect urine samples from Drivers to test for Prohibited Drugs. The Collector will split each urine sample collected into a Primary and a Split Specimen**.** The urine samples will be sent under seal, with required chain-of custody-forms, to a laboratory approved by DHHS. At the laboratory, all specimens are placed in secure storage. An initial drug screen will be conducted on each Primary Specimen.

For those specimens that are not negative, a confirmatory gas Chromatography/Mass Spectrometry (GS/MS) test will be performed. The test will be considered positive if the amounts present are above the minimum thresholds established in 49 CFR Part 40. The specimen could be considered Adulterated or Substituted based on criteria established by DOT and DHHS. If the result of the test of the Primary Specimen is positive Adulterated, Substituted or Invalid, the Primary and Split Specimen will be retained in frozen storage for at least one year.

7.1. 3 Specimen Validity Testing. Specimen validity testing is the evaluation of the specimen by the laboratory to determine if it is consistent with normal urine. Validity

testing determines if the specimen contains adulterants or foreign substances, if the urine was diluted, or if the specimen was substituted, based on criteria established by DOT and DHHS. Validity testing is conducted on all specimens. Specimens that yield positive results on confirmation must be retained by the laboratory in properly secured, long-term frozen storage for at least 365 days as required by Part 40.

7.1.4 Alcohol Testing. Tests for alcohol concentration on Drivers will be conducted with a National Highway Traffic Safety Administration (NHTSA)-approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT) or as otherwise authorized by Part 40. In order to maintain quality assurance, EBTs must be externally calibrated in accordance with the plan developed by the manufacturer of the device. If the initial test (screening test) on an employee indicates an alcohol concentration of equal to 0.02 or greater, a second test will be performed to confirm the results of the initial test and must be conducted 15 minutes after the initial test. The confirmation test must be conducted using an EBT that prints out the test results, and the date and time the procedure was performed. The EBT also prints a sequential test number along with the name and serial number of the EBT. Alcohol testing will be administered for all Taxi Drivers under the following circumstances:

A. Reasonable suspicion
B. Post-Accident
C. Optional return-to-duty (Drivers will be responsible for costs)
D. Optional follow-up (Drivers will be responsible for costs)

7.1.5 Medical Review Officer (MRO). All drug testing results shall be interpreted and evaluated by an MRO, who shall be a licensed physician. The MRO shall comply with the drug testing procedures set forth in 49 CFR Part 40, as amended.

When the laboratory reports a confirmed positive, Adulterated, Substituted, or Invalid test, it is the responsibility of the MRO to: (a) within 24 hours after verifying the test, contact the Driver and inform him or her of the Positive, Adulterated, Substituted, or Invalid test result; (b) afford the Driver an opportunity to discuss the test results with the MRO; (c) review the Driver's medical history, including any medical records and biomedical information provided; and (d) determine whether there is a legitimate medical explanation for the result, including legally prescribed medication. If the Driver indicates that he or she has a medical explanation for the positive, Adulterated, Substituted, or Invalid test, he or she has up to five days to provide this information to the MRO.

The MRO has the authority to verify a positive or Refusal to Submit to testing without interviewing the Driver if: (a) the Driver refuses to discuss the test result with the MRO, (b) if the SFMTA or Taxi Company has successfully directed the Driver to contact the MRO, and the Driver has not made contact with the MRO within 72 hours, or (c) if neither the MRO nor SFMTA or Taxi Company has made contact with the Driver within 10 days of the date that the MRO received the test result from the laboratory.

The MRO shall not convey test results to the SFMTA or Taxi Company until the MRO has made a definite decision that the test result was positive, Adulterated, Substituted, Invalid

or negative. The MRO may request the laboratory to conduct additional analyses of the original sample in order to verify the accuracy of the test result.

The MRO will report the test to the SFMTA or Taxi Company as either negative, positive, a Refusal to Submit due to Adulteration or Substitution, or Cancelled (Invalid). When the MRO reports the results of the verified positive test to the SFMTA, the MRO will disclose the drug(s) for which there was a positive test. The MRO will also provide additional, clarifying information to the SFMTA for tests that are confirmed as a Refusal to Submit due to Adulteration or Substitution, or are Cancelled. The MRO may only reveal the quantitative amount of a positive drug test result to the SFMTA, Driver, or the decision maker in a lawsuit, grievance or other proceeding initiated by the Driver and arising from a verified positive drug test result.

When the MRO has verified a test positive or a Refusal to Submit as a result of Adulteration or Substitution, the MRO shall inform the Driver that he or she has 72 hours to request a test of the Split Specimen.

7.1.6 Direct Observation. The employer is required to conduct a directly observed collection when:

A. The laboratory reports an invalid specimen and the MRO reports that there was not an adequate medical explanation for the result.

B. Because the split specimen test could not be performed (e.g., split, lost, inadequate volume).

C. The MRO reports a negative-dilute result with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL.

D. The test is a return-to-duty or follow-up test.

Note: A Driver may not "volunteer" to have his or her specimen collected under direct observation.

7.2 Types of Testing. The SFMTA requires the following types of testing for Prohibited Substances for Taxi Drivers: permit issuance, permit renewal, reasonable suspicion, post-accident, optional return-to-duty, and optional follow-up testing.

7.2.1 Permit Issuance Testing. All Taxi Driver permit applicants shall undergo urine drug testing prior to issuance of a permit by the SFMTA. At the time they apply for a Taxi Driver permit, SFMTA will notify all applicants that they will be required to submit to a drug test if they are considered otherwise qualified for driving a taxicab and that they will be required to comply with the terms and conditions of this Policy. No applicant for a permit will be issued a permit, unless he or she passes a drug test.

7.2.2 Permit Renewal Testing. Taxi Drivers will be subject to annual drug testing upon permit renewal, which is scheduled during the Driver's birth month; however, any prior negative test result shall be accepted for one year as meeting a requirement for periodic permit renewal testing if the Driver has not tested positive subsequent to a negative test. Failure to submit to permit renewal testing shall result in a non-renewal of the permit.

7.2.3 Reasonable Suspicion Testing. All Drivers shall be subject to reasonable suspicion testing, to include appropriate urine and/or breath testing, when there are reasons to believe that drug or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances which are consistent with short-term effects of substance abuse. Reasonable suspicion tests for the presence of alcohol shall only be made just prior, during or immediately after performance of a Safety-Sensitive Function.

Reasonable suspicion determinations will be made by a Taxi Company employee who is trained to detect and document the signs and symptoms of drug and alcohol use and who reasonably concludes that the Taxi Driver may be adversely affected or impaired in his or her work performance due to prohibited substance abuse or misuse.

A written report describing the Taxi Driver's condition will be completed, dated and signed by a trained supervisor who either substantiated or was consulted about the report of reasonable suspicion. Copies of the report will be given to the Taxi Driver, and the trained employee will order the Driver to submit to drug testing.

In any reasonable suspicion circumstance**,** the Taxi Company will transport the Driver to the appropriate collection site facility and await the completion of the collection process. After the testing has been completed, the Taxi Company will transport the Driver back to the company premises. During the time period the Taxi Driver waits for the results, the Driver must not be allowed to drive a Taxi until his or her test is confirmed as negative. If the Taxi Driver's drug test comes back positive, then a spouse, family member, or someone else will be contacted to transport the Taxi Driver back to his or her residence. If no one is available, the Taxi Company will arrange to transport the Driver home by Taxi or other means. If the reasonable suspicion test is negative, the Taxi Company will reimburse the Driver the cost of any Taxi fare paid by the Driver for transport back to his or her residence.

7.2.4 Post-Accident Testing.

A. **Testing Requirement**. Post-accident testing for Prohibited Substances shall be required of every Driver involved in an Accident as defined in Section 2, above.

B. **Procedure**. Following an Accident, all Taxi Drivers shall remain readily available for testing. A Driver who fails to remain readily available, including notifying a supervisor of his or her location if he or she leaves the scene of the Accident prior to submitting to testing, may be deemed to have Refused to Submit to testing. The drug test shall occur as soon as practicable but not later

than 32 hours after the Accident. An Alcohol test must be administered as soon as practicable following the Accident; if the Alcohol test is not administered within eight hours of the Accident, no test shall be given. Nothing in this section shall delay medical attention for the injured following an Accident or prohibit a Driver from leaving the scene of an Accident for the period necessary to obtain assistance in responding to the Accident or to obtain necessary emergency medical care when appropriate approval is given. The results of a breath or blood test for the use of Alcohol or a urine test for the use of Prohibited Drugs, conducted by federal, state or local officials having independent authority to test (e.g., local law enforcement if accident occurs in a remote area), shall be acceptable, provided that such tests conform to applicable federal, state or local requirements, and that the results of the tests are obtained by the Third Party Administrator and/or the Taxi Company.

C. **Table**. The following table summarizes when a post-Accident test is required:

Type of Accident involved	Citation issued to the Driver	Test must be performed
i. Human fatality	YES NO	YES YES
ii. Bodily injury with immediate medical treatment away from the scene	YES NO	YES NO
iii. Disabling damage to any motor vehicle requiring tow-away	YES NO	YES NO

7.2.5 Return-to-Duty Testing/Follow-up Testing. Any Taxi Driver who has failed a drug test or tested in excess of 0.04 on an Alcohol test, or who has Refused to Submit to testing, must pass the return-to-duty tests ordered by the SAP at his or her own cost before the SFMTA will lift the suspension of the Driver's A-Card. The Driver also must have successfully completed the SAP recommendations and sign a return-to-work agreement, if required by the SAP, before the SFMTA lifts the suspension. Return-to-duty and follow-up drug tests will be conducted using Direct Observation collection procedures.

7.2.6 Taxi Driver-Requested Drug Retesting. Any Taxi Driver who questions the results of a required drug test under Section 7.0 of this Policy may, within 72 hours of having been notified of a verified positive test, request that an additional test be conducted. This test must be conducted at a different DHHS-certified laboratory. Each urine sample shall be a minimum of 45 ml. The sample will be split at the time of collection into 30 ml. for the Primary Specimen test and 15 ml. for a re-test if the Primary Specimen tests positive. The additional test must be conducted on the Split Sample that was provided at the same time as the original sample. The method of collecting, storing, and testing the Split Sample shall be consistent with the procedures set forth in 49 CFR Part 40, as amended. The Taxi Driver's request for a re-test must be made to the MRO within 72 hours of notice of the initial test result. Requests after 72 hours will only be

accepted if the delay was due to documentable facts that were beyond the control of the Taxi Driver. If the analysis of the Split Specimen fails to confirm the presence of the drug(s) detected in the Primary Specimen, or if the Split Specimen is unavailable, inadequate for testing, or untestable, the MRO shall cancel the test and report cancellation and the reasons for it to the SFMTA, the applicable Taxi Company, and the TPA. The Split Specimen test shall be paid for by the Taxi Driver.

8.0 CONSEQUENCES – Taxi Drivers and Taxi Companies

8.1 **Positive Test Result.** An Alcohol concentration of 0.04 or greater will be considered a positive Alcohol test and in violation of this Policy. The SFMTA shall summarily suspend the A-Card of a Driver who has (a) a positive drug test, as confirmed by the MRO or (b) a confirmed positive Alcohol test. The SFMTA shall then, at the Driver's request, refer the Driver for evaluation by a SAP who will inform the Driver of educational and rehabilitation programs available.

8.2 **Compliance with Testing Requirements**. A Refusal to Submit to testing shall be considered a positive result, and the SFMTA shall suspend the A-Card of a Driver who refuses to submit.

8.3 **Return to Work**. The SFMTA shall lift the suspension of the a Driver after the SAP has determined that the Driver has successfully complied with the prescribed rehabilitation program, the Driver has tested negative for Prohibited Drugs or Alcohol, and the Driver has signed a return-to-work agreement.

9.0 RETURN-TO-WORK CONDITIONS

Drivers may not return to work unless they have obtained a release-to-work statement from an approved SAP, have tested negative for drugs and/or Alcohol, have signed a return-to-work agreement, and the SFMTA has lifted the suspension of the Driver's A-Card.

Following the Driver's satisfactory completion of the SAP recommendation and a negative return-to-duty test, the SAP will provide the SFMTA and the TPA with a written statement of completion, along with a continuing care plan that may include a follow-up testing schedule.

10.0 TRAINING AND EDUCATION

All Taxi Drivers shall receive educational materials provided by the SFMTA that explain the requirements of the Policy, which will include distribution of informational material on substance abuse, and distribution of the Taxi Company's policy regarding the use of prohibited drugs. Drivers must sign a statement acknowledging receipt of these materials.

Those Taxi Company employees participating in reasonable suspicion testing will be required to have at least two hours of training to explain the criteria for reasonable cause testing paid for by the companies, including at least an hour on the physical, behavioral and

performance indicators of probable drug use and another hour on the physical, behavioral, speech and performance indicators of probable alcohol misuse. The Taxi Companies shall be responsible for the cost of such training.

11.0 RECORDS; CONFIDENTIALITY

11.1 Access to Records. Information regarding a Driver's test results will be released, as necessary, to the Taxi Company, but will only be released to a third party upon the specific written consent of the Driver, except that such information must be released to a federal, state or local agency with regulatory authority over the SFMTA, the Taxi Company, or the Taxi Driver. Other exceptions to the confidentiality of the testing results are as follows:

A. Release to the collection facility, testing laboratory, MRO, SAP, or designee.

B. Release pursuant to a lawful court order or other law requiring disclosure.

C. Release to a decision maker in connection with a Taxi Company or SFMTA disciplinary action, grievance, arbitration or other legal proceeding initiated by or on behalf of the individual and arising from a certified positive drug or Alcohol test or from the SFMTA's determination that the Driver engaged in conduct prohibited under this Policy.

D. Release to a subsequent Taxi Company who seeks to hire the Driver upon receipt of a written request from a Driver.

11.2 Records Maintained. The Third Party Administrator and Taxi Company must maintain records relating to Prohibited Drug and Alcohol testing under this Policy in a secure location with controlled access. Taxi Companies may not make a Driver's drug and Alcohol testing records part of the Driver's personnel file.

The SFMTA shall maintain records as follows: (a) results of negative Prohibited Drug tests and Alcohol tests less than .02 -- one year; (b) records of collection and training -- two years; (c) records of verified positive drug test results and Alcohol tests .02 or greater, documentation of refusals, calibration documentation, referrals to the SAP and evaluations, reports to the SFMTA -- five years; and the records shall include the following information;

A. The functions performed by the Driver who failed the drug test;

B. The Prohibited Drugs that were used by Drivers who failed the drug test;

C. The disposition of Drivers who failed the drug test (e.g., termination, leave without pay);

D. The age of each Driver who failed the test.

The laboratory maintains all records relating to urine specimen analysis in confidence for at least two years. The laboratory may not disclose such records to anyone other than the SFMTA, the Taxi Company or the Driver, and the decision maker in a lawsuit, grievance or other proceeding initiated by the employee and arising from a verified positive drug or Alcohol test result.

11.3 <u>Retention of Records of Questions or Complaints.</u> The Third Party Administrator will retain records of questions or complaints related to the drug and alcohol testing process.

12.0 COMPLIANCE WITH BACKGROUND CHECK REQUIREMENTS

All applicants for Driver Permits are required to sign a written consent to allow SFMTA to obtain the following information regarding the applicant's drug and alcohol testing history for the previous two years:

- Alcohol tests with a result of .04 or higher;
- Verified positive drug tests;
- Refusals to Submit for testing, including verified Adulterations and Substitutions
- Other violations of drug and alcohol testing regulations; and
- Documentation of the applicant's successful completion of return-to-duty requirements and follow-up tests.

Information will be obtained from all companies (including Service Agents) for whom the applicant worked as a Taxi Driver or other driver subject to DOT testing for a period of two years prior to the date of the application. Such companies will be asked to include any Alcohol and Prohibited Drug test information obtained from previous employers or jurisdictions. For example, if a previous taxi company has information from other taxi companies or Service Agents (within the two-year period), that company is obligated to provide that information to SFMTA.

Additionally, the applicant must disclose if he or she has, within the prior two years, ever failed a pre-employment drug or alcohol test that resulted in the applicant not getting hired.

13.0 SYSTEM CONTACT

Any questions regarding this Policy or any other aspect of the Taxi Driver Drug and Alcohol Testing Program should be directed to the office of the following SFMTA representative:

Name: Peter N. Kashtanoff
Address: One South Van Ness Avenue, Seventh Floor
San Francisco, CA 94103-5417
email: peter.kashtanoff@sfmta.com
Telephone: (415) 581-5134