

**THIS PRINT COVERS CALENDAR ITEM NO. : 11**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Executive Director/CEO to execute an agreement with Titan Outdoor LLC for advertising on San Francisco Municipal Transportation Agency vehicles and other property.

**SUMMARY:**

- In 2004, the City entered into a Transit Advertising Agreement for transit vehicles with a term of five years. That agreement expires on June 30, 2009.
- On August 19, 2008, the SFMTA Board adopted Resolution No. 08-149, authorizing a Request for Proposals (“RFP”) for Advertising on SFMTA Property, including vehicles and parking garages. The SFMTA received two proposals, only one of which conformed to the minimum qualifications set forth in the RFP. The SFMTA conducted a thorough evaluation process of Titan Outdoor, the proposer that submitted the responsive proposal. The SFMTA then negotiated an agreement with Titan Outdoor. On February 12, 2009, Titan Outdoor withdrew its offer to the SFMTA.
- The SFMTA issued a revised RFP on February 26, 2009. The SFMTA conducted a thorough evaluation process of Titan Outdoor and CBS Outdoor, the two responsive proposers, and a selection panel rated Titan Outdoor as the higher bidder.
- The SFMTA has negotiated a five-year contract with Titan Outdoor, including a total minimum guarantee of \$22,102,525 over the term of the contract.
- Titan Outdoor may wrap up to 20 percent of the SFMTA’s transit vehicles at any one time, excluding cable cars and historic streetcars, but may not cover any of the windows, vehicle numbers or SFMTA insignia.
- If approved by the SFMTA Board and the Parking Authority Commission, the Agreement will be submitted to the Board of Supervisors for final approval.

**ENCLOSURES:**

1. Resolution
2. Selection Panel Report
3. Agreement for Advertising on SFMTA Vehicles and Other Property

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE

\_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION Gail Stein, SFMTA Real Estate  
BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: \_\_\_\_\_

## **PAGE 2**

### **PURPOSE**

This calendar item authorizes the Executive Director/CEO to execute a five-year agreement with Titan Outdoor LLC for advertising on San Francisco Municipal Transportation Agency vehicles, in parking garages and on other property, and enables the SFMTA to obtain significant additional revenues from advertising to meet its operating needs.

### **GOAL**

This item will meet the following goal and objectives of the SFMTA Strategic Plan:

- Goal 4, Financial Capacity: To ensure financial stability and effective resource utilization.
  - Objective - 4.1 Increase revenue by 20% or more by 2012 by improving collections and identifying new sources.
  - Objective - 4.2 Ensure efficient and effective use of resources.

### **DESCRIPTION**

The City and Viacom Outdoor Group Inc. (now known as CBS Outdoor) entered into the current agreement for advertising on transit vehicles effective as of July 1, 2004. That agreement expires on June 30, 2009.

On August 19, 2008, the SFMTA Board adopted Resolution No. 08-149, authorizing a Request for Proposals (“RFP”) for Advertising on SFMTA Property. The SFMTA issued the RFP on August 22, 2008. The SFMTA received two proposals, one from Titan Outdoor and one from CBS Outdoor. Only the Titan Outdoor proposal conformed to the minimum qualifications set forth in the RFP. The SFMTA conducted a thorough evaluation of Titan Outdoor, the proposer that submitted the responsive proposal. The SFMTA then negotiated an agreement with Titan Outdoor. On February 12, 2009, Titan Outdoor withdrew its offer to the SFMTA. Titan Outdoor has agreed to provide the SFMTA with \$125,000 to compensate the SFMTA for withdrawing its offer after the initial RFP selection process.

The SFMTA issued a revised RFP on February 26, 2009. The SFMTA conducted a thorough evaluation of Titan Outdoor and CBS Outdoor, the two responsive proposers, and the selection panel rated Titan Outdoor as the higher bidder. A copy of the selection panel report is included as Exhibit 2. Negotiations with Titan Outdoor have been completed, and the major provisions of the Agreement for Advertising on SFMTA Vehicles and Other Property (the “Agreement”), which is attached, are as follows:

#### **Term**

- The Agreement is for a five-year term.

**Revenue; Payments**

- Titan Outdoor will pay the SFMTA the greater of (i) 65% of its gross revenues from advertising under the contract or (ii) a Minimum Annual Guarantee (“MAG”) of revenue, as set forth in the chart below:

<b>Fiscal Year</b>	<b>MAG</b>	<b>Percentage of Revenues</b>
2009-10	<b>\$4,000,000</b>	<b>65%</b>
2010-11	<b>4,200,000</b>	<b>65%</b>
2011-12	<b>4,410,000</b>	<b>65%</b>
2012-13	<b>4,630,500</b>	<b>65%</b>
2013-14	<b>4,862,025</b>	<b>65%</b>
Total	<b>\$22,102,525</b>	

**Rights Granted**

- Titan Outdoor will have the right to advertise on a wide range of properties under the jurisdiction of the SFMTA and will provide related infrastructure, such as ad panels for the vehicles.
- The Agreement ensures that Titan Outdoor’s rights are incidental to the SFMTA’s transportation services, which may undergo changes affecting the advertising rights granted in the Agreement.

**SFMTA Property; Other Property; Limitations on Advertising Displays**

- The following SFMTA property is available for advertising under the Agreement: transit vehicles, parking garages, transit stations, other SFMTA facilities, and fare and parking media.
- The property covered under the Agreement will include parking garages under the jurisdiction of the Recreation and Park Department. The SFMTA will enter into a Memorandum of Understanding with the Recreation and Park Department related to those garages.
- Only interior ads are allowed on historic streetcars; all ads on cable cars and historic vehicles must be in conformity with the character, style, and design of such vehicles.
- Titan Outdoor may wrap up to 20 percent of the SFMTA’s transit vehicles at any one time, excluding cable cars and historic streetcars, but may not cover any of the windows, vehicle numbers or SFMTA insignia.
- Titan Outdoor may place digital advertising on up to 20 percent of the SFMTA’s transit vehicles at any one time, excluding cable cars and historic streetcars. The SFMTA will be able to override digital advertising with emergency signage.
- The SFMTA will approve the following items prior to their use by Titan Outdoor: plan for advertising and advertising locations in parking garages; advertisements on fare media; plan for naming rights; and experimental advertisements.

**Quality of Advertising**

- Titan Outdoor will be required to comply with the provisions of the SFMTA Advertising Policy.

**Maintenance Responsibilities**

- Titan Outdoor will maintain the advertisements that it installs and any infrastructure that supports such advertisements in a clean, safe and first-class condition. Titan Outdoor will use “green” maintenance products that present the least potential threat to human health and the City’s natural systems.
- Titan Outdoor will inspect and, if necessary, clean each advertisement at least once per week. Titan Outdoor will inspect more often if conditions warrant.
- Within 24 hours of notification, Titan Outdoor must repair any damage to any advertisements or infrastructure, including damage of a hazardous nature.

**Performance Requirements and Security Deposits**

- Titan Outdoor will provide a letter of credit for \$4,000,000 (100% of the MAG for fiscal year 2009-2010) for the duration of the Agreement. The SFMTA may draw on the letter of credit in the event of a failure to make the annual required payments due under the Agreement, a failure to replenish the Security Fund (see below) or termination of the Agreement due to a default by Titan Outdoor.
- Titan Outdoor has provided the SFMTA with a bid security check for \$1,000,000 to secure its proposal. If Titan Outdoor executes the contract, then the SFMTA will credit the \$1,000,000 against amounts due from Titan Outdoor. If Titan Outdoor fails to execute the contract, then the SFMTA will keep the \$1,000,000 as compensation for damages sustained by the SFMTA.
- Liquidated damages ranging from \$500/day to \$5,000/day may be imposed for maintenance breaches, failure to submit an annual financial statement, failure to cure audit deficiencies or failure to comply with the SFMTA’s Advertising Policy. Titan Outdoor will provide a Security Fund of \$250,000 that SFMTA may draw on to pay for liquidated damages and other obligations not covered by the letter of credit.

**SBE Participation**

- Titan Outdoor has voluntarily committed to utilize certified SBE firms in support of the SFMTA’s SBE Program goals and to encourage advertisers and advertising agencies to utilize SBEs. Titan Outdoor has agreed to use its best efforts to mentor an SBE or SBE-eligible San Francisco firm or firms to become a supplier and fabricator of non-illuminated static advertising frames and to perform printing services.

**Termination**

- The SFMTA may terminate the contract for default or convenience. The SFMTA may also partially terminate advertising rights with respect to any category of advertising space, other than transit vehicles, that Titan Outdoor does not sell over a period of 60 days unless Titan Outdoor demonstrates that it intends to sell advertising on that space but has been unable to do so.

## **PAGE 5**

### **Reference Checks**

The SFMTA conducted reference checks with four comparable transit agencies with similar transit advertising contracts with Titan Outdoor: the New York MTA, Southeastern Pennsylvania Transportation Authority, Massachusetts Bay Transportation Authority and BART. All of these advertising contracts included MAG payments. All four of the agencies reported that Titan Outdoor had fulfilled and, in most cases, exceeded its annual MAG payment obligations, which ranged from \$7 million to \$58 million. All four transit agencies highly recommended Titan Outdoor as a contractor for the SFMTA. No operational issues were discovered through the reference verification process. The SFMTA updated its reference checks for Titan Outdoor prior to the April meeting of the Selection Panel. Titan Outdoor has requested a reduction in MAG payments from other transit agencies due to the poor economy. Most of those agencies are still considering Titan Outdoor's request. Each agency contacted by SFMTA staff reported that Titan Outdoor had timely met its payment obligations to that agency under its respective agreement.

### **ALTERNATIVES CONSIDERED**

The alternative to entering into the Agreement with Titan Outdoor would be for the SFMTA to cease this type of advertising and forgo this revenue source. Given the budget challenges facing the SFMTA, staff eliminated this option.

See the Selection Panel Report for the selection panel's evaluation of the strengths and weaknesses of the two proposers. The panel was unanimous in its decision regarding Titan Outdoor's proposal.

### **FUNDING IMPACT**

The Agreement is a revenue contract which will bring significant additional funds to the SFMTA and will not require the expenditure of funds.

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

The Agreement will require the approval of the Board of Supervisors.

The City Attorney's Office and the Contract Compliance Office have reviewed this Calendar Item and the Agreement.

### **RECOMMENDATION**

Staff recommends that the SFMTA Board of Directors and Parking Authority Commission authorize the Executive Director/CEO to execute an agreement with Titan Outdoor for advertising on SFMTA vehicles and other property.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS AND  
PARKING AUTHORITY COMMISSION

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

WHEREAS, In 2004, the City entered into a Transit Advertising Agreement for advertising on transit vehicles with a term of five years, which is due to expire on June 30, 2009; and

WHEREAS, On August 19, 2008, the Board of Directors adopted Resolution No. 08-149, which authorized the San Francisco Municipal Transportation Agency ("SFMTA") to advertise a Request for Proposals ("RFP") for an agreement for advertising on SFMTA property, including vehicles and parking garages; and

WHEREAS, The SFMTA issued the RFP on August 22, 2008 and received two proposals, only one of which was responsive to the minimum qualifications set forth in the RFP; and

WHEREAS, The SFMTA conducted an evaluation of the proposal submitted by Titan Outdoor LLC ("Titan Outdoor"), the proposer that submitted the responsive proposal, and negotiated an agreement with Titan Outdoor; on February 12, 2009, Titan Outdoor withdrew its offer to the SFMTA ; and

WHEREAS, Titan Outdoor has agreed to provide the SFMTA with \$125,000 to compensate the SFMTA for withdrawing its offer after the initial RFP selection process; and

WHEREAS, The SFMTA issued a revised RFP on February 26, 2009, conducted a thorough evaluation of the proposals of Titan Outdoor and CBS Outdoor, the two responsive proposers, and a reference check of the two proposers; and

WHEREAS, The selection panel rated Titan Outdoor as the higher bidder; and

WHEREAS, SFMTA staff and Titan Outdoor have completed negotiations for a new Agreement for Advertising on SFMTA Vehicles and Other Property ("Agreement"); and

WHEREAS, The new Agreement is for a five-year term and will bring the SFMTA a minimum of \$22,102,525 in revenue; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors and Parking Authority Commission authorizes the Executive Director/CEO to execute Contract SFMTA 2008/09-08, Advertising on SFMTA Vehicles and Other Property, with Titan Outdoor, in a form substantially as presented to this Board, including a five-year term and a minimum annual guarantee to the SFMTA; and, be it further

RESOLVED, That the SFMTA Board of Directors agrees to accept \$125,000 from Titan Outdoor to compensate the SFMTA for the withdrawal of Titan Outdoor's offer after the initial RFP selection process; and be it further

RESOLVED, That the SFMTA Board of Directors recommends this matter to the Board of Supervisors for its approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors and Parking Authority Commission at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency and  
Parking Authority Commission

PARKING AUTHORITY COMMISSION  
CITY AND COUNTY OF SAN FRANCISCO

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

WHEREAS, On August 19, 2008, the Parking Authority Commission adopted Resolution No. 08-154, which authorized the San Francisco Municipal Transportation Agency ("SFMTA") to advertise a Request for Proposals ("RFP") for an agreement for advertising on SFMTA and Parking Authority Commission property, which includes parking garages under the jurisdiction of this Commission; and

WHEREAS, The SFMTA issued the RFP on August 22, 2008 and received two proposals, only one of which was responsive to the minimum qualifications set forth in the RFP; and

WHEREAS, The SFMTA conducted an evaluation of the proposal submitted by Titan Outdoor LLC ("Titan Outdoor"), the proposer that submitted the responsive proposal, and negotiated an agreement with Titan Outdoor; on February 12, 2009, Titan Outdoor withdrew its offer to the SFMTA; and

WHEREAS, The SFMTA issued a revised RFP on February 26, 2009, conducted a thorough evaluation of the proposals of Titan Outdoor and CBS Outdoor, the two responsive proposers, and a reference check of the two proposers; and

WHEREAS, The selection panel rated Titan Outdoor as the higher bidder; and

WHEREAS, SFMTA staff and Titan Outdoor have completed negotiations for a new Agreement for Advertising on SFMTA Vehicles and Other Property ("Agreement"); and

WHEREAS, The Agreement is for a five-year term and will bring the SFMTA a minimum of \$22,102,525 in revenue; now, therefore, be it

RESOLVED, That the Parking Authority Commission authorizes the SFMTA Executive Director/CEO, as the authorized representative of the Parking Authority, or his designee, to execute Contract SFMTA 2008/09-08, Advertising on SFMTA Vehicles and Other Property, with Titan Outdoor, in a form substantially as presented to this Commission, including a five-year term and a minimum annual guarantee to the SFMTA; and, be it

FURTHER RESOLVED, That the Parking Authority Commission recommends this matter to the Board of Supervisors for its approval.

I certify that the foregoing resolution was adopted by the Parking Authority Commission at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary, Parking Authority Commission

**ENCLOSURE 2**

Selection Panel Report



**SELECTION PANEL REPORT**

**AGREEMENT FOR ADVERTISING ON SFMTA PROPERTY**

**REQUEST FOR PROPOSALS**

**APRIL 2009**

**Prepared by:**

---

**Gail Stein  
Committee Facilitator**

**Approved by:**

---

**Sonali Bose  
Director of Finance and Information Technology/CFO**

**Approved by:**

---

**Nathaniel P. Ford, Sr.  
Executive Director/CEO  
Municipal Transportation Agency**

## **TABLE OF CONTENTS**

<b><u>SECTION</u></b>	<b><u>PAGE NO.</u></b>
I. INTRODUCTION .....	1
II. PROJECT DESCRIPTION .....	2
III. SELECTION PROCESS CHRONOLOGY .....	2
IV. SUBMISSION OF PROPOSALS .....	2
V. SCORING OF RESPONSIVE FIRMS.....	2
VI. RECOMMENDATION.....	3

### **LIST OF ATTACHMENTS**

Appendix A	LIST OF TRANSIT ADVERTISING FIRMS AND CONTACTS
Appendix B	SCORING CRITERIA USED FOR INTERVIEW
Appendix C	STRENGTHS AND WEAKNESSES
Appendix D	SUMMARY OF SCORES
Appendix E	APPROVAL OF SCORES

## **I. INTRODUCTION**

### **Background**

The Selection Panel has completed the evaluation of firms responding to the Request for Proposals for Advertising on San Francisco Municipal Transportation Agency (“SFMTA”) Property.

The City and Viacom Outdoor Group Inc. (now known as CBS Outdoor) entered into the current agreement for advertising on transit vehicles effective as of July 1, 2004. That agreement expires on June 30, 2009.

On August 19, 2008, the SFMTA Board adopted Resolution No. 08-149, authorizing a Request for Proposals (“RFP”) for Advertising on SFMTA Property. The SFMTA issued the RFP on August 22, 2008. Copies of the RFP were distributed to a list of transit advertising firms and contacts (see Appendix A) and posted on the City’s Website. The SFMTA received two proposals, one from Titan Outdoor LLC (“Titan”) and one from CBS Outdoor (“CBS”). Only the Titan proposal conformed to the minimum qualifications set forth in the RFP. The SFMTA conducted a thorough evaluation of Titan Outdoor, the proposer that submitted the responsive proposal. The SFMTA then negotiated an agreement with Titan. On February 12, 2009, Titan withdrew its offer to the SFMTA.

### **Revised RFP**

The SFMTA issued a revised RFP on February 26, 2009. Copies of the RFP were also distributed to a list of transit advertising firms and contacts (see Appendix A) and posted on the City’s website. The SFMTA issued two addenda and notices to cure deficiencies to the three firms that responded to the revised RFP. The Selection Panel conducted a thorough evaluation of Titan Outdoor and CBS Outdoor, the two proposers who ultimately submitted conforming proposals to the revised RFP. The Selection Panel scored the proposals based on the experience and qualifications of each firm, the quality of the proposal, the offer of compensation, and the financial stability and security of each proposer. The Panel accorded the most weight to the latter two criteria. See sample score sheets, attached as Appendix B.

### **Recommendation**

Based on evaluations of all of the proposals received and discussions of the relative strengths and weaknesses of the firms who submitted proposals, the Selection Panel recommends the following firm, who received the overall highest ranking:

### **Titan Outdoor LLC**

This report explains the process that was followed by the Selection Panel to arrive at this recommendation.

## **II. PROJECT DESCRIPTION**

The purpose of the project is to select a new contractor to advertise on transit vehicles and other property under the jurisdiction of the SFMTA. The contractor shall have the exclusive right to sell space for advertising to advertisers on transit vehicles and a wide range of other SFMTA property, including parking garages and fare media. In exchange, the contractor will be responsible for making certain payments to the SFMTA, starting at \$4,000,000 for fiscal year 2009-2010, and will provide related infrastructure, such as ad panels for the vehicles.

## **III. SELECTION PROCESS CHRONOLOGY**

The key events for the selection process were as follows:

Advertise Request for Proposals	August 22, 2008
Pre-Proposal Conference	September 15, 2008
Proposals Due	November 3, 2008
Interview Responsive Firm	November 18, 2008
Titan withdraws its proposal	February 12, 2009
Advertise revised Request for Proposals	February 26, 2009
Proposals Due	March 16, 2009
Notices to Cure Deficiencies sent to Proposers	March 30, 2009
Modified Proposals Due	April 8, 2009
Selection Panel Scores	April 10, 2009

## **IV. SUBMISSION OF PROPOSALS**

On March 16, 2009, the SFMTA received three proposals in response to the revised RFP. After reviewing the proposals, the SFMTA determined that they were all deficient in some respect; for example, none of the proposals included all information that was requested in the RFP. The SFMTA returned the proposals and sent deficiency notices to the three proposers on March 30, 2009. The SFMTA set a date of April 8, 2009 for the proposers to submit any missing information, along with a firm, final offer. Two of the three proposers submitted the missing information and final offer. After reviewing the missing information submitted by the proposers, it was determined that both were responsive.

## **V. SCORING OF RESPONSIVE FIRMS**

A Selection Panel composed of SFMTA staff convened to review and evaluate the proposals. All evaluators attested that they had no conflict of interest with any of the proposers or their teams. They all signed confidentiality statements prior to participating in the selection process. Additionally, staff met with the panel members to review the project, the process and their role, and to answer any questions.

Present at the Selection Panel meeting were the following persons:

**Administrative Staff (Non-Voting)**

Gail Stein	Committee Facilitator
André Boursse	Manager, Contract Compliance Office
Robin Reitzes	Deputy City Attorney

**Selection Panel Members**

Terrie Williams	Deputy Director of Finance
Steven Lee	Manager, Special Projects
Travis Fox	Manager, Performance Monitoring and Customer Services

Following individual review of the proposals, the Selection Panel evaluated the strengths and weaknesses of each firm using the criteria shown on the score sheet in Appendix B. The SFMTA designed the selection criteria to identify the proposer whose proposal would offer the greatest value to the SFMTA and who would, in addition, actually provide the highest return to the SFMTA. The SFMTA also reserved the right, in its sole and absolute discretion, to select a Proposer other than the one who promised the highest return. As set forth in Appendix B, the Selection Panel considered the experience and qualifications of each firm, the quality of the proposal, the offer of compensation, and the financial stability and security of each proposer. The Panel accorded the most weight to the latter two criteria. Following the final discussion of strengths and weaknesses, and based on each firm's proposal, each Selection Panel member filled out and signed his or her score sheet for each firm and gave the forms to the Committee Facilitator for final tabulation.

The Selection Panel reached consensus on the strengths and weaknesses of the two firms in the areas designated for its review. That information was recorded and is shown in Appendix C.

The final scoring of the two firms is shown in Appendix D. The Contract Compliance Office letter of approval is included in Appendix E.

**VI. RECOMMENDATION**

Based on evaluations of the proposals received and discussions of the relative strengths and weaknesses of the firms who submitted proposals, the Selection Panel recommends the following firm for work on this contract:

**Titan Outdoor LLC**

**NOTE:** After award of the contract, all proposals will be available for review at One South Van Ness Avenue, 8<sup>th</sup> Floor, Real Estate Section. They will be maintained for two years, after which they will be discarded except for the selected consultants' proposal, which will be maintained as a permanent record.

## **LIST OF ATTACHMENTS**

Appendix A	LIST OF TRANSIT SHELTER ADVERTISING FIRMS AND CONTACTS
Appendix B	SCORING CRITERIA USED FOR INTERVIEW
Appendix C	STRENGTHS AND WEAKNESSES
Appendix D	SUMMARY OF SCORES
Appendix E	APPROVAL OF SCORES

**APPENDIX A**

**LIST OF TRANSIT SHELTER ADVERTISING FIRMS AND CONTACTS**

**CBS Outdoor**

Stephen Shinn  
Vice President  
CBS Outdoor  
865 Battery Street, 3<sup>rd</sup> Floor  
San Francisco, CA 94111  
Phone: (415) 402-6863  
Email: [Steve.Shinn@CBSOutdoor.com](mailto:Steve.Shinn@CBSOutdoor.com)

**Cemusa**

Toulla Constantinou  
Chief Executive Officer, North America  
Cemusa  
420 Lexington Avenue, Suite 2533  
New York, NY 10170  
Phone: (646) 312-8528  
Email: [tconstantinou@cemusainc.com](mailto:tconstantinou@cemusainc.com)

**Clear Channel Outdoor**

Bill Hooper  
President/General Manager  
Northern California Region  
Clear Channel Outdoor  
555 12<sup>th</sup> Street, Suite 950  
Oakland, CA 94607  
Phone: (510) 835-5900  
Email: [billhooper@clearchannel.com](mailto:billhooper@clearchannel.com)

**JCDecaux**

Francois Nion  
Executive Vice President  
JCDecaux  
1000 Quesada Avenue  
San Francisco, CA 94124  
Phone: (415) 671-1250  
Email: [Francois.Nion@jcdecauxna.com](mailto:Francois.Nion@jcdecauxna.com)

**KEM Outdoor**

Marquis LaFortune  
KEM Outdoor, Inc.  
PO Box 461406  
San Antonio, TX 78246-1406  
Phone: (210) 675-6444  
Email: [marquis.lafortune@swbell.net](mailto:marquis.lafortune@swbell.net)

**Titan Outdoor**

Don Allman  
Titan Outdoor  
850 Third Avenue  
New York, NY 10022  
Phone: (212) 644-6200  
Email: [Don.Allman@titanoutdoor.com](mailto:Don.Allman@titanoutdoor.com)



**Abuzz Technologies**

Business Development  
316 Abercrombie Street  
Darlington NSW 2008  
Sydney, Australia  
Website: [www.abuzz.com.au](http://www.abuzz.com.au)

**Kiosk Information Systems**

Steven M. Jeziorski  
Kiosk Information Systems  
346 South Arthur Avenue  
Louisville, CO 80027  
Phone: (303) 661-1695  
Email: [info@kis-kiosk.com](mailto:info@kis-kiosk.com)  
Website: [www.kiosk.com](http://www.kiosk.com)

**Quad Media**

539 Randolph Avenue  
Pulaski, Virginia 24301  
Phone: (540) 980-8309  
Email: [blafleur@quadmedia.com](mailto:blafleur@quadmedia.com)  
Website: [www.quadmedia.com](http://www.quadmedia.com)

**ICE Tech**

Ash House  
Fairfield Avenue  
Staines  
Middlesex, TW18 4AN, England  
Email: [sales@icetech.ie](mailto:sales@icetech.ie)  
Website: [www.icetech.ie](http://www.icetech.ie)

**King Products**

5696 Ambler Drive  
Mississauga, Ontario  
Canada L4W 2K9  
Phone: (800) 661-5464  
E-mail: [sales@kingproducts.com](mailto:sales@kingproducts.com)  
Website: [www.kingproducts.com](http://www.kingproducts.com)

**SeePoint, Inc.**

2619 Manhattan Beach Blvd.  
Redondo Beach, CA 90278  
Phone: (888) 587-1777  
E-Mail: [info@seepoint.com](mailto:info@seepoint.com)

**IKS Technologies, Inc.**

1074 Walker Street  
Cypress, CA 90630  
Phone: (714) 763-4400  
Email: [info@ikskiosks.com](mailto:info@ikskiosks.com)

**SCALA, Inc.**

350 Eagleview Blvd., Suite 150

Exton, PA 19341

Phone: (610) 561-9724

Email: [Christopher.broad@scala.com](mailto:Christopher.broad@scala.com)

Website: [www.scala.com](http://www.scala.com)

**Cisco Systems, Inc.**

Mark Richard

Cisco Systems, Inc.

201 Third Street, Suite 620

San Francisco, CA 94103

Phone: (415) 371-2383

Email: [markrich@cisco.com](mailto:markrich@cisco.com)

**Rodman Consulting, LLC**

Caroline Alain Rodman

Rodman Consulting, LLC

280 Fell Street, Suite 402

San Francisco, CA 94102

Cell: (415) 218-1618

Email: [caroline@rodmanconsulting.com](mailto:caroline@rodmanconsulting.com)

**IBM**

Douglas Naschke

IBM

2710 Gateway Oaks Drive, # 200S

Sacramento, California 95833-4307

Phone: (916) 920-6046

Email: [naschke@us.ibm.com](mailto:naschke@us.ibm.com)

**Google**

Tom Sly

Google

345 Spear Street, 4<sup>th</sup> Floor

San Francisco, CA 94105

Cell: (415) 504-3553

Email: [tomsly@google.com](mailto:tomsly@google.com)

**Lamar Advertising**

York Haines

Director of Transit & Development

3030 SW Moody Street, Suite 270

Portland, Oregon 97201

Phone: (503) 223-9796

Email: [yhaines@lamar.com](mailto:yhaines@lamar.com)

**Solem & Associates**

Jonathan Kaufman

One Daniel Burnham Court, Suite 100-C

San Francisco, CA 94109

Phone: (415) 296-2019

Email: [jonk@solem.com](mailto:jonk@solem.com)

**Big Think Studios**

1426 18<sup>th</sup> Street  
San Francisco, CA 94107  
Phone: (415) 934-1111  
Email: [colleen@bigthinkstudios.com](mailto:colleen@bigthinkstudios.com)

**Jungle Communications Inc.**

1750 Montgomery Street, Suite 1108  
San Francisco, CA 94111  
Phone: (415) 584-8844  
Email: [info@webjungle.com](mailto:info@webjungle.com)

**KC Communications**

610 Leavenworth Street, #303  
San Francisco, CA 94109  
Phone: (415) 447-8530  
Email: [kim@kccommunications.net](mailto:kim@kccommunications.net)

**O'Rorke Inc.**

55 Hawthorne Street, Suite 430  
San Francisco, CA 94105  
Phone: (415) 543-9119  
Email: [andrew@ororkepr.com](mailto:andrew@ororkepr.com)

**Oneworld Communications**

2001 Harrison Street  
San Francisco, CA 94110  
Phone: (415) 355-1935  
Email: [jonathan.villet@owcom.com](mailto:jonathan.villet@owcom.com)

**Polaris Research & Development, Inc.**

390 4<sup>th</sup> Street  
San Francisco, CA 94107  
Phone: (415) 777-3229  
Email: [ernie@polarisinc.com](mailto:ernie@polarisinc.com)

**Small Business Exchange**

P.O. Box 190668  
San Francisco, CA 94119-0668  
Phone: (415) 778-6250  
Email: [sbe@sbeinc.com](mailto:sbe@sbeinc.com)

**The Johnson Agency**

1550 California Street, Suite 6-262  
San Francisco, CA 94109  
Phone: (415) 294-7798

**The M-Line**

27 South Park, Suite 201  
San Francisco, CA 94107  
Phone: (415) 777-4433  
Email: [mya@the-m-line.com](mailto:mya@the-m-line.com)

**Traction Corporation**

1349 Larkin Street  
San Francisco, CA 94109  
Phone: (415) 962-5800  
Email: [adam@tractionco.com](mailto:adam@tractionco.com)

**Railcar Quality Service**

10824 Olson Drive  
Rancho Cordova, CA 95670  
Phone: (800) 768-9653  
Email: [RQSQAR@aol.com](mailto:RQSQAR@aol.com)

**Bardel, Inc.**

1695 Eastshore Highway  
Berkeley, CA 94701  
Phone: (510) 527-8850  
Email: [flira@bardelinc.com](mailto:flira@bardelinc.com)

**Kizmo Incorporated**

414 Mason Street, Suite 246  
San Francisco, CA 94102  
Phone: (415) 398-1220  
Email: [Michael@kizmodesign.com](mailto:Michael@kizmodesign.com)

**Sign A Rama**

James & Susan Chin  
1470 El Camino Real  
San Bruno, CA 94066  
Phone: (650) 589-2988  
Email: [signaramajsc@pacbell.net](mailto:signaramajsc@pacbell.net)

**Danoo**

One Sutter Street, Suite 500  
San Francisco, CA 94104  
Phone: (415) 433-5700  
Email: [sales@danoo.com](mailto:sales@danoo.com)  
Website: [www.danoo.com](http://www.danoo.com)

**Illumobile**

2680 Bancroft Way  
Berkeley, CA 94702  
Phone: (888) 692-8661  
Email: [advertise@illumobile.com](mailto:advertise@illumobile.com)  
Website: [www.illumobile.com](http://www.illumobile.com)

**The Rail Network**

561 Seventh Avenue, Suite 702  
New York, NY 10018  
Phone: (646) 728-0266  
Website: [www.railnetwork.tv](http://www.railnetwork.tv)

## **Transit Television Network**

8544 Commodity Circle  
Orlando, FL 32819  
Phone: (407) 226-0204  
Email: [info@transitv.com](mailto:info@transitv.com)  
Website: [www.transitv.com](http://www.transitv.com)

## **Vertical Alliance, LLC**

Peter Kaszycki  
Vertical Alliance, LLC  
12600 Deerfield Parkway, suite 100  
Alpharetta, GA 30004  
Email: [peter@verticalalliance.net](mailto:peter@verticalalliance.net)

## **GAMUT Systems**

Seth Nylund  
GAMUT Systems  
13507 Star Flower Court  
Chantilly, VA 20151  
Email: [Seth.Nylund@gamutsystems.com](mailto:Seth.Nylund@gamutsystems.com)

## **Q-MATIC Corporation**

Garry Hines  
Q-MATIC Corporation  
Director of Sales, Western USA  
Phone: (949) 888 5284,  
Cell: (949) 922 1653  
Email: [garry.hines@q-matic.com](mailto:garry.hines@q-matic.com)  
Website: [www.q-matic.us](http://www.q-matic.us)

## **Blue Horizon Group**

Paul Mataras  
President and CEO  
Blue Horizon Group, Inc.  
1485 Bush Street, Suite 504  
San Francisco, CA 94104  
Phone: (415) 410-4913  
Email: [pmataras@bhgidev.com](mailto:pmataras@bhgidev.com)

## **Reiland & Reiland**

Hal Reiland  
Reiland & Reiland  
P.O. Box 5490  
Pleasanton, CA 94588  
Phone: (925) 223-7053  
Email: [hal@reilandlaw.com](mailto:hal@reilandlaw.com)

## **Gannett Co., Inc.**

7950 Jones Branch Drive  
McLean, VA 22107  
Phone: (703) 854-6000  
Email: [gcishare@gannett.com](mailto:gcishare@gannett.com)  
Website: [www.gannett.com](http://www.gannett.com)

## **Goldfinger Media**

Zev Zukerman  
Goldfinger Media  
655 43<sup>rd</sup> Ave.  
San Francisco, CA 94121  
Phone: (415) 377-9288  
Email: [zzukerman@gmail.com](mailto:zzukerman@gmail.com)  
Website: [www.goldfingermedia.com](http://www.goldfingermedia.com)

## **VendSight**

Michael J. Barnhill  
VendSight  
8021 Wing Avenue  
El Cajon, CA 92020  
Phone: (619) 562-1486  
Website: [www.vendsight.com](http://www.vendsight.com)

## **Trillium Transit Internet Solutions**

Aaron Antrim  
Trillium Transit Internet Solutions  
1445 Chester Avenue  
Arcata, CA 95521  
E-mail: [aaron@trilliumtransit.com](mailto:aaron@trilliumtransit.com)

## **VPI.Net**

Fred Arnow  
VPI.Net  
220 Technology Drive West, Suite 100  
Irvine, CA 92618  
E-mail: [farnow@corp.vpi.net](mailto:farnow@corp.vpi.net)

## **Seattle Digital Signage**

Mike Draghici  
President  
Seattle Digital Signage  
800 5<sup>th</sup> Avenue, Suite 4100  
Seattle, WA 98104  
Phone: (206) 447-1472  
Email: [SeattleDigitalSignage.com](http://SeattleDigitalSignage.com)

**APPENDIX B**  
**SCORING CRITERIA USED FOR INTERVIEW**

\_\_\_\_\_  
Selection Committee Member

\_\_\_\_\_  
Proposer

**Selection Committee  
Evaluation Instructions**

**Individual evaluators:** Evaluate each of the categories below.

**Committee:** After each evaluator has completed its evaluation, the entire selection committee may review the panel's scores for consistency in order to develop a consensus ranking of each proposal. The final committee ranking shall be supported by a narrative explaining the rationale for the committee's determination.

**Evaluation**

**I. EXPERIENCE AND QUALIFICATIONS (SCALE OF 1-10)**

Evaluate the expertise of the firm, assigned personnel and any subcontractors and the quality of the firm's organization structure; evaluate how well the firm's qualifications can enhance the value of the contract to the SFMTA

\_\_\_\_\_

**II. QUALITY OF THE PROPOSAL (SCALE OF 1-20)**

Evaluate the proposal, including the creativity of advertising and sales ideas, in terms of enhancing revenue and the overall value of the contract to the SFMTA

\_\_\_\_\_

**III. OFFER OF COMPENSATION (SCALE OF 1-50)**

Proposed MAG  
Proposed percentage of gross revenue

\_\_\_\_\_

**IV. FINANCIAL STABILITY AND SECURITY OF THE PROPOSER (SCALE OF 1-50)**

Evaluate the financial information provided by the proposers and obtained by the SFMTA; assess the current financial condition of the proposers; review the results of reference checks by staff. Evaluate the likelihood of the proposer's ability to deliver the proposed compensation over the term of the contract.

\_\_\_\_\_

**OVERALL RATING**

\_\_\_\_\_

**Selection Committee Member Signature/Date** \_\_\_\_\_



**APPENDIX C**  
**STRENGTHS AND WEAKNESSES**

**Strengths and Weaknesses—CBS Outdoor**

<b><u>Strengths</u></b>	<b><u>Weaknesses</u></b>
Firm has fairly wide-ranging experience, has worked for other big transit agencies	Did not offer anything other than categories of property in the current contract (transit vehicles)
Qualified to do this work	Did not offer anything creative or anything that they would want to try differently from current contract—not a lot of innovation or creative ideas
Firm has been the contractor for many years and understands the SFMTA and our structure	Did not say why fare media or information kiosk advertising would be unsuccessful
Provided 10-K to give financial information	Did not know definitively if sign advertising is allowed under City law after brought up in proposal
Financially viable—a large company with excellent ability to make payments under the SFMTA contract	Not clear about their overall commitment to the transit advertising portion of the CBS business; not clear who we would deal with in the future
More to CBS than just transit advertising—has experience in other markets that may benefit ability to sell advertising	MAG seems safe—may not take into account other advertising opportunities
Continuing to use a local (LBE) firm that is familiar with San Francisco	Offer of Compensation doesn't reflect confidence that they can sustain revenue growth
	Offer of Compensation seems to extend current contract with potentially less money to the SFMTA
	Half of portfolio of contracts set to expire—their transit advertising portfolio may be in jeopardy

**Strengths and Weaknesses—Titan Outdoor**

<b><u>Strengths</u></b>	<b><u>Weaknesses</u></b>
Quality of proposal is very informative, including intro letter from President; market and firm's focus explained well; sales focus and philosophy well-presented and explained	Possibility that firm's SF staff may not have sufficient resources to support both BART and SFMTA
Firm stated that it is in the market for transit agencies, 90% from transit agencies	Firm itself not established in the field for quite as long as some competitors
Effort put into the proposal, gives some confidence that they will explore all opportunities—showed the possibilities; appear to want the SFMTA business	History from first round of proposals raises some concerns about financial stability and timely communication
Possible positives with them having BART contract, too—for example, tie-ins; BART advertising seems aggressive—for example, Montgomery station saturation with Emirates	
Proposal showed ideas from overseas—might help here	
MAG inspires confidence—growth year-to-year	
Have new contracts—indicates viability	
Gave a minimum guarantee by month—shows understanding of seasonality of the market	
Digital advertising mentioned—maintained, and with capability of override for emergency signage	
Newness of firm itself may lead to fresher perspective	
Better financial package	
Graphical presentation inspires confidence in produce delivery	

**APPENDIX D**  
**SUMMARY OF SCORES**

**Request for Proposals for Advertising on SFMTA Property**

**130 Points Maximum**

**Selection Panel: April 10, 2009**

<b>FIRM NAME</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>FINAL TOTAL RAW SCORE</b>	<b>AVERAGE SCORE</b>	<b>RANKING</b>
Titan Outdoor	102	113	111	326	108.67	1
CBS Outdoor	95	69	89	253	84.33	2

**APPENDIX E**  
**APPROVAL OF SCORES**

## MEMORANDUM

**DATE:** April 15, 2009

**TO:** Gail Stein, Manager  
Property Contracts and Development

**FROM:** Virginia Harmon, Senior Manager  
Equal Opportunity Office

**SUBJECT: (09-1068) RFP: Advertising of SFMTA Property**

---

We have reviewed the score sheets for the above referenced RFP, submitted to our office on April 13, 2009

The highest ranked proposer – Titan Outdoor LLC, is eligible to proceed to the next phase in the selection process.

In addition, Titan Outdoor LLC is in compliance with the Nondiscrimination in Contracts and Benefit Requirements contained in the San Francisco Administrative Code Chapters 12B and 12C.

If you have any questions regarding this matter, please contact Contract Compliance Officer, Pansy Waller, at (415) 701-4437.

VH:APB:PW

cc: André P. Boursse, Manager, CCO

**ENCLOSURE 3**

Agreement for Advertising on SFMTA Vehicles and Other Property



**AGREEMENT BETWEEN**  
**THE CITY AND COUNTY OF SAN FRANCISCO**  
**AND**  
**TITAN OUTDOOR LLC**  
**FOR ADVERTISING ON SAN FRANCISCO MUNICIPAL**  
**TRANSPORTATION AGENCY PROPERTY**

**Contract No. SFMTA 2008/09-08**

## TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS.....	1
1.1. Advertisement.....	1
1.2. Advertising Campaign.....	1
1.3. Advertising Contract.....	1
1.4. Advertising Space.....	1
1.5. Agreement.....	1
1.6. Annual Financial Report.....	1
1.7. Annual Revenue Share.....	1
1.8. Barter; Trade.....	1
1.9. Calendar Year.....	1
1.10. City.....	2
1.11. Consumer Price Index, Bay Area CPI.....	2
1.12. Contractor.....	2
1.13. Contract Year.....	2
1.14. Days.....	2
1.15. Digital Infrastructure Costs.....	2
1.16. Director.....	2
1.17. Effective Date.....	2
1.18. Fare and Parking Media.....	2
1.19. Fiscal Year.....	2
1.20. Graffiti.....	2
1.21. Gross Revenue.....	2
1.22. Historic Streetcars.....	2
1.23. Infrastructure.....	2
1.24. MAG; Minimum Annual Guarantee.....	2
1.25. Monthly Payment.....	2
1.26. Municipal Railway; Muni.....	2
1.27. Net Revenue.....	2
1.28. Outage.....	3
1.29. Party; Parties.....	3

1.30.	Proposal .....	3
1.31.	Records .....	3
1.32.	Request for Proposals, RFP .....	3
1.33.	San Francisco Municipal Transportation Agency; SFMTA .....	3
1.34.	SFMTA Property .....	3
1.35.	Small Business Enterprise; SBE .....	3
1.36.	Total Required Payments .....	3
1.37.	Transit Stations .....	3
1.38.	Vehicles .....	3
1.39.	Wrap .....	3
2.	TERM OF THE AGREEMENT .....	3
3.	GRANT OF ADVERTISING RIGHTS AND PRIVILEGES; LIMITATIONS .....	3
3.1.	Rights Granted .....	3
3.2.	License Granted .....	3
3.3.	Rights Retained .....	3
3.4.	Authorized Advertising .....	4
3.4.1	Vehicle Advertising .....	4
	(a) Vehicle Count and Description .....	4
	(b) Wraps .....	4
	(c) Guaranteed Space on Vehicles .....	4
3.4.2	Transit Information Displays .....	5
	(a) PDSS Description .....	5
	(b) PDSS Advertising Space and Time .....	5
	(c) PDSS Ownership .....	5
3.4.3	Transit Stations .....	5
3.4.4	Fare Media .....	5
3.4.5	Corporate Sponsorships; Naming Rights .....	5
3.4.6	Trades and Barters .....	5
3.5.	Unsold Space .....	6
3.5.1	City's Use of Unsold Space .....	6
3.5.2	Contractor's Use of Unsold Space .....	6
3.5.3	Public Service Announcements .....	6
3.6.	Bonuses; Discounts; Allowances .....	6
3.7.	Advertising Space Subject to Change .....	6
3.8.	Transportation Priority .....	6

3.9.	Partial Termination .....	6
3.10.	Use of Structures.....	7
3.11.	No Damage to City Property.....	7
3.12.	Nuisances .....	7
4.	PARKING GARAGES .....	7
4.1.	Approvals Required .....	7
4.2.	Advertising Plan .....	7
5.	INVENTORY MANAGEMENT SYSTEM (IMS).....	7
5.1.	General.....	7
5.2.	IMS Review and Approval .....	7
5.3.	Inventory Records.....	7
5.4.	Technical Requirements .....	7
5.4.1	Application Requirements .....	7
5.4.2	IMS Maintenance and Upgrades.....	8
5.4.3	Security .....	8
5.4.4	Outages .....	8
5.5.	Disaster Planning .....	8
6.	OWNERSHIP, INSTALLATION AND MAINTENANCE .....	8
6.1.	Installation and Ownership Rights.....	8
6.2.	Maintenance.....	8
6.3.	Inspection and Clean-up .....	8
6.4.	Repair.....	8
6.5.	Removal of Advertisements.....	9
6.6.	Maintenance Plan.....	9
6.7.	Maintenance Products.....	9
6.8.	Remedies for Failure to Maintain or Repair .....	9
6.9.	Meetings.....	9
6.10.	Permits .....	9
7.	CONTENT OF ADVERTISEMENTS .....	9
7.1.	Advertising Policy .....	9
7.2.	Disclaimers .....	9
7.3.	Complaints .....	9
7.4.	Design Considerations and Use of Materials.....	9
7.4.1	General Considerations.....	9
7.4.2	Experimental Displays; New Media .....	10

7.4.3	Digital Displays .....	10
(a)	Limitations .....	10
(b)	Rollout Plan .....	10
(c)	Revenue .....	10
7.4.4	Cable Car Displays .....	10
7.4.5	Historic Streetcars.....	10
8.	PAYMENTS.....	10
8.1.	Payments by Contractor to SFMTA .....	10
8.1.1	Minimum Annual Guarantee (MAG) .....	10
8.1.2	Monthly Payment.....	11
8.2.	Late Payments.....	11
8.3.	Verification of Revenue.....	11
9.	REPORTS, INSPECTION AND REVIEWS .....	11
9.1.	Annual Financial Statement.....	11
9.2.	Summary Report .....	11
9.3.	Annual Inspection of Records.....	11
9.4.	Sales Activity Report .....	12
9.5.	Account Activity Summary by Display Location and Type.....	12
9.5.1	Advertising by Category .....	12
9.5.2	Bay Area-Wide Transit Contracts.....	12
9.6.	Copies of Contracts.....	12
9.7.	Maintenance and Service Logs .....	12
9.8.	Media Trade Reports .....	12
9.9.	Schedule of Rates and Charges.....	12
9.10.	Garage Revenue .....	12
10.	SECURITY DEPOSITS .....	13
10.1.	Requirement to Provide Financial Guarantees.....	13
10.2.	Letter of Credit.....	13
10.2.1	Requirements .....	13
10.2.2	Financial Institution .....	13
10.2.3	Demand on Letter of Credit .....	13
10.2.4	Expiration or Termination of Letter of Credit .....	13
10.2.5	Return of Letter of Credit .....	14
10.2.6	Excessive Demand.....	14
10.3.	Security Fund.....	14

11.	INSURANCE.....	14
12.	INDEMNIFICATION.....	16
13.	INCIDENTAL AND CONSEQUENTIAL DAMAGES.....	16
14.	LIABILITY OF CITY .....	16
15.	LIQUIDATED DAMAGES .....	16
	15.1. Performance Standards .....	16
	15.1.1 Maintenance Breaches .....	16
	15.1.2 Annual Financial Statement.....	17
	15.1.3 Failure to Cure Audit Deficiencies .....	17
	15.2. Failure to Comply with Advertising Policy .....	17
	15.3. Failure to Pay Liquidated Damages.....	17
16.	DEFAULT; REMEDIES .....	17
	16.1. Events of Default .....	17
	16.2. City's Rights on Default.....	17
	16.3. No Waiver of Remedies.....	18
17.	TERMINATION FOR CONVENIENCE.....	18
18.	RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION .....	18
19.	SMALL BUSINESS PARTICIPATION; EMPLOYMENT REQUIREMENTS .....	18
	19.1. SBE PARTICIPATION .....	18
	19.1.1 Commitment .....	18
	19.1.2 Nature of SBE Participation .....	19
	19.1.3 Function .....	19
	19.1.4 Mentoring Program.....	19
	19.1.5 Quarterly Meetings .....	19
	(a) SBE Prime Contractor .....	19
	(b) SBE Subcontractor.....	19
	(c) SBE Joint Venture Partner .....	19
	(d) Other SBEs .....	19
	(e) Materials or Supplies .....	19
	19.1.6 Substitution of Subcontractor and Suppliers.....	20
	19.1.7 Addition of Subcontractors and Suppliers .....	20
	19.1.8 Reporting Requirements .....	20
	19.1.9 Enforcement.....	20
20.	FIRST SOURCE HIRING PROGRAM .....	20
	20.1. Incorporation of Administrative Code Provisions by Reference .....	20

20.2.	First Source Hiring Agreement.....	20
20.3.	Hiring Decisions .....	22
20.4.	Exceptions.....	22
20.5.	Liquidated Damages .....	22
20.6.	Subcontracts.....	23
21.	REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES .....	23
22.	REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES .....	24
23.	MISCELLANEOUS PROVISIONS.....	25
23.1.	Submitting False Claims; Monetary Penalties .....	25
23.2.	Taxes.....	25
23.3.	Qualified Personnel.....	26
23.4.	Responsibility for Equipment .....	26
23.5.	Independent Contractor.....	26
23.6.	Payment of Taxes and Other Expenses.....	26
23.7.	Conflict of Interest .....	27
23.8.	Proprietary or Confidential Information of City .....	27
23.9.	Notices to the Parties .....	27
23.10.	Works for Hire .....	27
23.11.	Audit and Inspection of Records.....	28
	23.11.1 Records .....	28
	23.11.2 City's Right to Inspect and Copy .....	28
	23.11.3 Audit .....	28
	23.11.4 Findings of Nonperformance .....	28
23.12.	Subcontracting .....	28
23.13.	Assignment .....	28
23.14.	Non-Waiver of Rights.....	28
23.15.	Nondiscrimination; Penalties .....	28
	23.15.1 Contractor Shall Not Discriminate.....	28
	23.15.2 Incorporation of Administrative Code Provisions by Reference .....	29
23.16.	Drug-Free Workplace Policy .....	29
23.17.	Compliance with Americans With Disabilities Act.....	29
23.18.	Sunshine Ordinance .....	29
23.19.	Limitations on Contributions .....	29
23.20.	Prohibition on Political Activity with City Funds .....	30
23.21.	Preservative-Treated Wood Containing Arsenic .....	30

23.22.	Modification of Agreement.....	30
23.23.	Administrative Remedy for Agreement Interpretation .....	30
23.24.	Agreement Made in California; Venue.....	30
23.25.	Construction.....	30
23.26.	Entire Agreement.....	30
23.27.	Compliance with Laws .....	30
23.28.	Services Provided by Attorneys.....	30
23.29.	Severability .....	30
23.30.	Protection of Private Information .....	30
23.31.	Graffiti Removal .....	31
23.32.	Food Service Waste Reduction Requirements.....	31
23.33.	No Third Party Beneficiaries .....	31
23.34.	Disputes .....	31
23.35.	MacBride Principles--Northern Ireland .....	31
24.	INCLUDED APPENDICES .....	32



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

**Agreement between the City and County of San Francisco and [contractor]**

SFMTA 2008/09-08

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2009, in the City and County of San Francisco, State of California, by and between: Titan Outdoor LLC (“Contractor”) and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (“SFMTA”).

**Recitals**

- A. The SFMTA wishes to grant certain advertising rights on SFMTA properties.
- B. A Request for Proposals (“RFP”) was issued on February 26, 2009, and City selected Contractor as the highest-qualified proposer pursuant to the RFP.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract.

Now, THEREFORE, the parties agree as follows:

**1. DEFINITIONS.**

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

**1.2. Advertising Campaign.** A series of Advertisements that share a single idea and theme and are placed on numerous Vehicles or other Advertising Space for a limited period of time.

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

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

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

**1.6. Annual Financial Report.** The report required to be submitted under Section 9.1.

**1.7. Annual Revenue Share.** The amount payable to SFMTA as determined by applying the revenue share percentage listed in Table 8.1.1 to the Net Revenues for the previous Fiscal Year.

**1.8. Barter; Trade.** A sale of Advertising Space by Contractor in which the consideration received is all or partially in products or services.

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

- 1.10. City.** The City and County of San Francisco, a municipal corporation.
- 1.11. Consumer Price Index, Bay Area CPI.** Consumer Price Index distributed by the Bureau of Labor Statistics for the Consolidated Metropolitan Statistical Area covering San Francisco - Oakland - San Jose, effective April 1 of each year.
- 1.12. Contractor.** Titan Outdoor LLC, and its successors in interest.
- 1.13. Contract Year.** The period of time beginning July 1 and ending June 30 of a particular year.
- 1.14. Days.** Unless otherwise specified, all references to the term "Days" refer to calendar days.
- 1.15. Digital Infrastructure Costs.** All costs associated with the installation and fabrication of the digital displays and associated equipment, including but not limited to, all hardware and software costs, telecommunications costs (including wiring), digital system development costs, installation costs, initial electricity costs, flagging costs, if any, and the cost of financing.
- 1.16. Director.** The Director of Transportation of the San Francisco Municipal Transportation Agency or his or her designee.
- 1.17. Effective Date.** July 1, 2009.
- 1.18. Fare and Parking Media.** Fare and parking media issued by the SFMTA, including Fast Passes®, transfers, passports, cable car tickets, parking tickets (excluding garage parking tickets) and residential parking permits, but not including TransLink® cards.
- 1.19. Fiscal Year.** July 1 through June 30.
- 1.20. Graffiti.** Any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" does not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).
- 1.21. Gross Revenue.** All amounts billed for the sale of Advertising Space to advertisers, including the cash value of any Barter or Trades, as reflected in Contractor's Advertising Contracts, without any deductions and without regard to actual amounts received from advertisers.
- 1.22. Historic Streetcars.** Muni's historic trolley fleet as shown on the following website:  
<http://www.sfmta.com/cms/mfleet/histcars.php>
- 1.23. Infrastructure.** All infrastructure required to be constructed, installed or maintained pursuant to this Agreement, including but not limited to advertising display frames, displays, racks, space frames, advertising boards, projection equipment or any device that is for the purpose of displaying Advertisements.
- 1.24. MAG; Minimum Annual Guarantee.** The minimum annual guarantee payment required by Section 8.1.1 of the Agreement.
- 1.25. Monthly Payment.** A payment made by Contractor to the SFMTA each month consisting of 65% of the Net Revenue for the preceding month, or the MAG, whichever is higher.
- 1.26. Municipal Railway; Muni.** The public transit system in San Francisco under the jurisdiction of the SFMTA.
- 1.27. Net Revenue.** Gross Revenue less actual costs for advertising agency commission, provided that no such commission shall exceed 16 2/3% of Gross Revenue.

**1.28. Outage.** Any period of time during which the IMS, required by Section 5, is not fully operational in accordance with the requirements of this Agreement or is not accessible to the SFMTA.

**1.29. Party; Parties.** The Parties to this Agreement are SFMTA and Contractor.

**1.30. Proposal.** The proposal submitted by Contractor in response to the City's Request for Proposals, dated March 16, 2009 and April 8, 2009.

**1.31. Records.** All documents created, received or maintained by Contractor in connection with performance under this Agreement, including, but not limited to, books, accounts, invoices, maintenance and service logs, database information, contracts, construction documents, payroll information, maintenance and service logs and other documents, whether or not kept in electronic format.

**1.32. Request for Proposals, RFP.** The Request for Proposals issued by the City on February 26, 2009, incorporated by reference as though fully set forth.

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

**1.34. SFMTA Property.** Real or personal property under the jurisdiction or control of the SFMTA that the SFMTA may approve for advertising under this Agreement, including, but not limited to, Vehicles, parking garages, facilities, Transit Stations, and Fare and Parking Media.

**1.35. Small Business Enterprise; SBE.** A for-profit, small business concern with a three-year average gross revenue not exceeding \$12 million dollars and certified under any of the following programs: the State of California's Small Business Program with the Department of General Services, the City and County of San Francisco's LBE Program, or the California Unified Certification Program.

**1.36. Total Required Payments.** The amounts that Contractor is required to pay to SFMTA pursuant to Section 8.1.1 through 8.1.2 of this Agreement.

**1.37. Transit Stations.** Muni subway stations and tunnels owned and operated by the SFMTA during the term of this Agreement.

**1.38. Vehicles.** Municipal Railway diesel buses, electric trolley buses, alternative fuel buses, Historic Streetcars, light rail vehicles, and cable cars used for public transit.

**1.39. Wrap.** An Advertisement covering an entire Vehicle except windows.

## **2. TERM OF THE AGREEMENT**

The term of this Agreement shall be from July 1, 2009 to June 30, 2014.

## **3. GRANT OF ADVERTISING RIGHTS AND PRIVILEGES; LIMITATIONS**

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

**3.2. License Granted.** In conjunction with the rights granted by this Section 3, and subject to all provisions of this Agreement and applicable law, the SFMTA grants to Contractor a license to install, maintain, repair or replace Infrastructure as necessary for the placement of advertising on Advertising Space subject to this Agreement, including Advertising Space in or on Vehicles, Transit Stations, buildings and facilities, and to access such properties for the purpose of installation, maintenance, repair or replacement of Advertisements or Infrastructure, subject to any access restrictions communicated to Contractor in writing by SFMTA.

**3.3. Rights Retained.** Contractor acknowledges that City intends to, and hereby does, retain and reserve all advertising rights that are not specifically granted by this Agreement, and that City may exercise such

retained and reserved rights through a source other than Contractor. The rights retained and reserved by City include, but are not limited, to:

**3.3.1.** The right to place Advertisements on any SFMTA property that is not expressly made part of this Agreement;

**3.3.2.** The right to license or otherwise provide for the use of any trade name, trademark, or other identifying device or symbol used, owned, licensed or registered by City;

**3.3.3.** The right to display poster advertisements in Muni Metro stations, except for the rights granted herein to Contractor for the sale of transit information display advertising; provided, that nothing herein shall affect any rights Contractor has as a result of any prior contractual relationship with the Bay Area Rapid Transit District;

**3.3.4.** The right to install electronic information displays with advertising in the Muni Metro stations other than as authorized in Section 3.4.2 and at Muni cable car stops;

**3.3.5.** The right to grant concessionaires the authority to advertise in Muni Metro stations, and on or in items sold by them on such premises;

**3.3.6.** Exclusive of all Advertising Space approved under this Agreement, the right, at SFMTA's expense, to place on Vehicles and within transit stations and other structures related to its transit system, informative material, including, but not limited to, timetables, "take-one" brochures, service notices, additional signs and other displays designed to encourage the use of its transit system. SFMTA reserves exclusive use of all 11" x 17" frames mounted on the rear-facing side of the bulkhead panel behind the operator's position, and, in articulated Vehicles, two additional 11" x 17" frames located near the trailer portion of the Vehicle. SFMTA shall not sell such space to advertisers either directly or through any intermediary;

**3.3.7.** Advertising rights granted under the Transit Shelter Advertising Agreement, dated December 10, 2007, between the City and Clear Channel Outdoor, Inc.

**3.3.8.** Advertising rights granted under a contract between the City and Ghiradelli Chocolate, with a term from August 1, 2008 through December 31, 2009.

**3.4. Authorized Advertising.** In accordance with the exclusive advertising rights granted in this Section 3, City authorizes advertising as set forth below and in Section 4.

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

**(a) Vehicle Count and Description.** For Vehicle advertising, subject to change in the sole and exclusive discretion of Director, City initially authorizes Contractor to use the spaces on the Vehicles listed in Appendix A. The City reserves the right to negotiate with the Contractor for the use of other vehicles for advertising at a future date. SFMTA will provide to Contractor a "Fleet Inventory Report" at the inception of this Agreement and on or about the first day of the month following the increase or decrease of Vehicle fleet by 200 Vehicles or more. If new Vehicles are added, the revenue generated from Advertising Spaces on such Vehicles shall be credited towards fulfilling the MAG and included in the Annual Revenue Share.

**(b) Wraps.** Contractor may apply Wraps to all Vehicles except Historic Streetcars and cable cars; provided, however, that Contractor may apply Wraps to a maximum of 20 percent of all authorized Vehicles at any one time. Wraps may not cover Vehicle numbers, SFMTA insignia or windows. All Wraps are subject to policies adopted by the SFMTA Board of Directors regarding Wrap advertising. Wrap Advertisements shall not damage the Vehicles, their paint schemes or decal applications. Contractor shall reimburse City for any damage to Vehicles by reason of the application of any Wraps.

**(c) Guaranteed Space on Vehicles.** In each contract month, SFMTA shall have the right to the exclusive use of no more than 15 percent of Advertising Spaces on the exterior of Vehicles. SFMTA retains the right to use all interior Advertising Space on each Vehicle unless Contractor notifies the

SFMTA, at least 30 Days in advance, that it has sold the Advertising Space. Contractor shall install, maintain and remove interior Advertisements for the SFMTA free of charge.

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

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

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

(c) **PDSS Ownership.** Contractor acknowledges City's ownership of the PDSS and all its components, and waives any right, title or interest therein. Contractor may not remove any PDSS equipment or components without approval of the Director.

**3.4.3. Transit Stations.** Contractor may advertise in Transit Stations subject to the prior approval of the Director. At least 90 Days prior to any advertising in Transit Stations, Contractor shall present an advertising plan to the SFMTA, setting forth the Contractor's proposal for advertising within Transit Stations (e.g., locations and size/shape/style of advertisements, schedules for advertising campaigns, installations).

**3.4.4. Fare and Parking Media.** Contractor may advertise on the backs of Fare and Parking Media, subject to the prior approval of the Director.

**3.4.5. Corporate Sponsorships; Naming Rights.** SFMTA authorizes Contractor to design a corporate sponsorship/naming rights program that will maximize revenue for the SFMTA. This program will be subject to approval of the Director. All revenue generated in connection with the program shall be included in Gross Revenues and in the calculation of the Annual Revenue Share.

**3.4.6. Trades and Barter.** Contractor may Barter or Trade Advertising Space and/or time on unsold Advertising Space under the following conditions:

(a) Contractor must secure the prior written approval of the Director for each Barter or Trade.  
(b) Contractor is prohibited from receiving compensation for such transactions except as otherwise expressly authorized by this Agreement.

(c) Contractor shall report the value attributable to the Advertising Space subject to a Trade or Barter in the same manner as it reports actual Gross and Net Revenues. All such reported amounts shall be included in the calculation of the Annual Revenue Share. Contractor will ensure that the advertising value of all Barters and Trade be on a dollar-for-dollar basis, i.e., that the value of Barters or Trades Contractor receives will equal the cash value of Advertising Space Bartered or Traded.

(d) Contractor is prohibited from receiving any consideration or commission for any such Trade or Barter other than payments which are reported under Section 8 of this Agreement.

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

### **3.5. Unsold Space**

**3.5.1. City's Use of Unsold Space** By the first day of each month, Contractor shall provide a projection of all unsold Advertising Space anticipated over the next 60 Days to SFMTA in an electronic format. Notwithstanding the provisions of Section 3 of this Agreement, the City has the first option to use, for a minimum of 14 Days, any Advertising Space, at no charge to the City and for any public purpose that has not been sold by Contractor. The City will be responsible for providing all printed posters ready for posting by Contractor. The SFMTA shall notify Contractor of the City's intention to use the unsold Advertising Space at least 30 Days prior to the date on which the City's use would begin. If Contractor is unable to deliver unsold Advertising Space for any reason after being notified of the City's intention to use unsold Advertising Space, and if the printed materials are time sensitive and cannot be reused, Contractor shall reimburse the City for all reasonable printing and design costs expended in anticipation of the City's use of that Advertising Space.

**3.5.2. Contractor's Use of Unsold Space.** To the extent that the City does not exercise its option to use unsold Advertising Space in accordance with Section 3.5.1, Contractor may use, at its sole cost and expense, available unsold Advertising Space: (a) for its own advertisements and promotion designed to increase the sale of Advertising Space; or (b) to display public service announcements provided by non-profit public, educational, and charitable organizations; or (c) for Trade and Barter as permitted under Section 3.4.6 of this Agreement.

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

**3.6. Bonuses; Discounts; Allowances.** No Advertising Space or time bonus, discount or allowance (from the amounts published in Contractor's then current Schedule of Rates and Charges as referenced in Section 9.9) shall be permitted without the prior written approval of the Director unless all the following conditions are met:

**3.6.1.** The transaction must result in a direct financial benefit to SFMTA, and may not relate in any way to the sale of advertising on or with other transit systems or properties;

**3.6.2.** Each such space or time bonus, discount or allowance, together with the term and/or schedule of display, shall be clearly itemized with appropriate footnotes in Contractor's Advertising Contracts or on an equivalent form reasonably approved by the Director.

**3.6.3.** Contractor is prohibited from receiving any consideration or commission for any bonus, discount or allowance other than payments which are reported under Section 9 of this Agreement.

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

**3.8. Transportation Priority.** Contractor acknowledges and agrees that advertising, and the grant of advertising rights provided for in this Agreement, are incidental to the SFMTA's transportation business, which may undergo changes affecting the advertising rights granted. SFMTA will have no liability to Contractor for any change in its routes, in the number of Vehicles operated by it, in ridership, or for any other change affecting the level or scope of advertising authorized by SFMTA.

**3.9. Partial Termination.** The SFMTA may partially terminate the rights to any category of Advertising Space (other than on Vehicles) granted to Contractor pursuant to this Agreement upon which no Advertisement has been displayed for a period of 60 Days once advertising has commenced on such Advertising Space. Such partial termination shall require 60 Days' written notice by SFMTA, during which time Contractor

may avoid partial termination by demonstrating to SFMTA with appropriate documents either (a) that it has sold Advertisements on the subject Advertising Space prior to the date of SFMTA's notice of partial termination, or (b) that it intends to continue advertising on such Advertising Space but has been unable to sell advertising on the Advertising Space after reasonable attempts to do so.

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

**3.11. No Damage to City Property.** Contractor and its subcontractors may not damage City property. The use of exterior advertising display frames or similar hardware and adhesive decals such as "Control-TAC" or its equivalent shall not damage the paint schemes or decal applications of Vehicles, or any surface of any Advertising Space. If in the course of its activities under the Agreement Contractor or any of its employees or subcontractors damages any property belonging to City, Contractor shall compensate the City for the full extent of its losses resulting from the damage. At City's option, City may require Contractor to repair any such damage.

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

#### **4. PARKING GARAGES.**

**4.1. Approvals Required.** The Director must approve all Advertising Space locations in parking garages. For those parking garages under their jurisdiction, the SFMTA Board of Directors, the Parking Authority Commission (or its designee), or the Recreation and Park Commission (or its designee), respectively, must also approve the location of Advertising Space. Contractor shall assist the SFMTA in obtaining the consent of garage operators that may be required to place advertising in certain garages.

**4.2. Advertising Plan.** At least 90 Days prior to any planned advertising in parking garages, Contractor shall submit a proposed plan for review and approval by the Director. The plan shall contain the Contractor's proposals for Advertising Space locations within each garage, the results of outreach and meetings with garage operators, proposed schedules for advertising placement in each garage, and contact information. The plan must demonstrate that the Contractor is knowledgeable about and has satisfactorily addressed the operating needs and concerns of garage operators. Space shall be reserved for advertisements or signs by businesses located in the garage or for community information. After the plan is finally approved as required under Section 4.1, Contractor need not obtain any further approvals unless the Contractor or SFMTA wish to make a material change to the plan.

#### **5. INVENTORY MANAGEMENT SYSTEM (IMS).**

**5.1. General.** Contractor shall create and maintain throughout the term of the Agreement an Inventory Management System (IMS), as set forth in further detail below, for documenting the location(s) of Advertisements and Advertising Campaigns on Advertising Space.

**5.2. IMS Review and Approval.** Within 60 Days after the Effective Date, Contractor shall submit for SFMTA approval complete documentation of its proposed IMS, including the database structure and fields, the reports available from the system, disaster planning information required by Section 5.5, and the end-user interface and access as it will be available to SFMTA staff. Within 60 Days after SFMTA approval, Contractor shall implement the system with full functionality in accordance with the approved IMS design.

**5.3. Inventory Records.** Contractor shall enter into the database, on a daily basis, the Advertising Space, by Vehicle number or other location, the subject matter of the Advertisement or Advertising Campaign; and a sample of each Advertisement that is part of a particular Advertising Campaign. In addition, the database shall contain detail on which Advertisement is posted on each Advertising Space.

#### **5.4. Technical Requirements.**

**5.4.1. Application Requirements.** The data on the IMS must be available to designated SFMTA staff through the internet 24 hours a day. All reports from the IMS shall be available for downloading by SFMTA staff in an open architecture format, such as .xls, .csv, .txt, or .xml format.

**5.4.2. IMS Maintenance and Upgrades.** Contractor shall backup the IMS system every weekday but shall not conduct any backup or maintenance activities between the hours of 8 a.m. and 8 p.m. Pacific Time, weekdays. Contractor and SFMTA shall meet on an annual basis to review and discuss enhancements to the IMS. Contractor shall obtain written approval from the Director before making any modifications to the IMS that affect the use of the IMS by the SFMTA.

**5.4.3. Security.** Contractor shall ensure that all information in the IMS is secure and that no other entity will have access to information required to be provided under this Agreement without written authorization from the Director. Contractor shall provide to SFMTA username(s) and password(s) for secure access to the IMS. Contractor shall replace and/or block any username(s) and password(s) if requested by SFMTA within four hours. Contractor shall provide any new requested username(s) and passwords within two Days. There shall be no limit to the number of username(s) and password(s).

**5.4.4. Outages.** Contractor shall document any Outages and shall provide a monthly report documenting all Outages no later than the fifth day of each calendar month. In no case shall the IMS be less than fully operational for a total of more than 240 minutes in any calendar month.

**5.5. Disaster Planning.** Contractor shall use disaster planning best practices to ensure that IMS data can be recovered within a reasonable period of time after a disaster affecting IMS utilization. Contractor shall submit a copy of its disaster planning protocol to the SFMTA in connection with the approval of the database under Section 5.2.

## **6. OWNERSHIP, INSTALLATION AND MAINTENANCE**

### **6.1. Installation and Ownership Rights.** Contractor, at its own expense, shall:

**6.1.1.** Furnish all new Infrastructure of the size currently in use, or of a size and type as may be agreed upon by SFMTA and Contractor, as is required either to replace presently existing Infrastructure, to add to the existing Infrastructure or to construct new Infrastructure in new locations. Contractor shall reimburse City for any such Infrastructure installed at City's expense by a factory supplier of new or rebuilt vehicles or other supplier. Contractor acknowledges and agrees that City owns and has full title to any and all Infrastructure including, but not limited to, that which is now or hereafter affixed to any Vehicle or any other SFMTA property subject to this Agreement. Notwithstanding anything to the contrary hereto, all digital signs shall remain the property of the Contractor until the expiration of this Agreement, at which time ownership of the signs shall vest in the SFMTA.

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

**6.1.3.** Erect all Infrastructure and insert all Advertisements in accordance with any schedule approved by SFMTA, or if no schedule is approved, whenever possible at hours of minimum passenger, visitor and employee activity within SFMTA facilities. Contractor may only install Advertisements in or on Vehicles when they are not in use.

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

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

**6.4. Repair.** Within 24 hours of notification by the City, SFMTA staff or discovery by Contractor, Contractor shall repair any damage, including, but not limited to, damage from vandalism or Graffiti, found on any Advertisement or advertising Infrastructure. Contractor shall repair, replace or remove, as appropriate, any damage to an Advertisement or Infrastructure that is of a hazardous nature, including but not limited to broken glass or protruding edges, within 24 hours of notification to or discovery by Contractor.



**6.5. Removal of Advertisements.** Contractor agrees to remove Advertisements as expeditiously as practical after the expiration of each Advertising Contract, and in no event later than 30 Days after expiration of any such Advertising Contract, so that no continuation or over-posting of such Advertising Contract results in any loss of revenues to be generated under this Agreement. Dated advertisements shall be removed within five days after expiration of the Advertising Contract.

**6.6. Maintenance Plan.** Contractor shall perform maintenance in accordance with the standards of this Agreement and the terms of the maintenance and installation plan attached as Appendix B.

**6.7. Maintenance Products.** To the maximum extent feasible, Contractor shall use maintenance products that present the least potential threat to human health and the City's natural systems. The City's approved "green" product list may be obtained at the following website:  
[http://www.sfenvironment.org/our\\_programs/topics.html?ssi=9&ti=22](http://www.sfenvironment.org/our_programs/topics.html?ssi=9&ti=22).

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

**6.9. Meetings.** Contractor's upper level management personnel shall meet with the SFMTA in San Francisco quarterly for the purpose of reviewing Contractor's performance under this Agreement, including the success of its advertising sales program. Contractor's operations personnel shall meet in person or by telephone with SFMTA staff monthly (or more often, at the request of the SFMTA) to discuss operational issues.

**6.10. Permits.** Contractor shall be responsible for obtaining any permits that may be required in connection with installation of any Advertising under this Agreement.

## **7. CONTENT OF ADVERTISEMENTS**

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

**7.2. Disclaimers.** Contractor shall install a decal on each Advertisement or associated Infrastructure that reads: "The views expressed in any advertisement do not necessarily reflect the views of the Municipal Transportation Agency." Contractor shall provide the decals and SFMTA will determine the locations on the Advertising Space where Contractor shall place the decals.

**7.3. Complaints.** Contractor shall provide and install a decal on each Advertisement or associated Infrastructure indicating that a member of the public may dial 3-1-1 to report any complaint about the physical condition of the Advertisement. The design of the decal and the location of the decal on the Advertisement will be subject to the prior approval of the SFMTA. Current decals shall be replaced as needed to ensure accuracy and readability.

## **7.4. Design Considerations and Use of Materials**

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

determine the number, type, and method of attachment and location of all advertising Infrastructure. Contractor shall also use, to the maximum extent feasible, the most sustainable technology and materials.

**7.4.2. Experimental Displays; New Media.** Contractor may experiment with new advertising materials, media formats, displays and designs. SFMTA and Contractor shall coordinate on the type and extent of such experimental projects, and their schedule and term; provided, however, Contractor shall not proceed with such experimental projects until authorized by SFMTA. During the term of these projects, the sales and inventory value of such experimental displays shall not be used to recalculate the MAG, unless and until the SFMTA authorizes any such display on a non-experimental basis. Revenue from these displays may, however, be used as a credit towards meeting the MAG and shall be included in the calculation of Annual Revenue Share.

**7.4.3. Digital Displays.** Digital advertising displays are permitted on Vehicles and in Transit Stations subject to the following:

(a) **Limitations.** Contractor shall limit digital advertising to no more than 20 percent of Vehicles at any one time; and Contractor may not include digital advertising on Historic Streetcars and cable cars. Digital advertising must be capable of being overridden when the SFMTA determines that such Infrastructure must be used for emergency signage.

(b) **Rollout Plan.** Not later than 60 days prior to any planned placement of digital advertising displays on Vehicles or in Transit Stations, Contractor shall submit a rollout plan to the SFMTA for approval. The rollout plan shall set forth the types, locations, and duration of such displays, the Infrastructure costs, and projected advertising revenue. Contractor shall include a pro forma spreadsheet showing how long it will take to recoup its capital costs from advertising revenues based on the revenue share allocation in subsection (c) below. The SFMTA will have 30 days from submission of the rollout plan to review the rollout plan and either approve it, disapprove it, or submit any comments to Contractor.

(c) **Revenue.** Notwithstanding any provision of Section 7.4.2 or Section 8.1., Net Revenues from digital displays shall be allocated as follows: 75 percent of Net Revenues to Contractor and 25 percent of Net Revenues to the SFMTA until Contractor has recouped its Digital Infrastructure Costs for the digital displays, in accordance with the schedule in its rollout plan. Thereafter, the revenue allocation shall be allocated on a 50%/50% basis between Contractor and the SFMTA.

**7.4.4. Cable Car Displays.** All advertising on cable cars shall be in conformity with the character, style, and design of such Vehicles.

**7.4.5. Historic Streetcars.** No Advertisements may be placed on the outside of Historic Streetcars. All interior advertising on Historic Streetcars shall be in conformity with the character, style, and design of such Vehicles.

## **8. PAYMENTS**

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

**8.1.1. Minimum Annual Guarantee (MAG).** The MAG and the Annual Revenue Share for each Fiscal Year of the Agreement are set forth in Table 8.1.1 below.

**Table 8.1.1: MAG Amount and Revenue Share Percentage**

Fiscal Year	Jul	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total	Rev. Share %
2009 -2100	\$300,000	\$340,660	\$370,434	\$380,169	\$380,169	\$314,242	\$217,532	\$234,477	\$352,274	\$333,013	\$366,315	\$410,717	\$4,000,000	65%
2010 -2011	\$349,664	\$348,630	\$431,252	\$384,946	\$384,946	\$329,954	\$228,409	\$246,200	\$369,887	\$357,693	\$357,693	\$374,724	\$4,200,000	65%
2011 -2012	\$367,147	\$403,862	\$452,815	\$404,193	\$404,193	\$346,451	\$239,830	\$258,510	\$388,382	\$375,578	\$375,578	\$393,461	\$4,410,000	65%
2012 -2013	\$385,505	\$424,055	\$475,456	\$424,403	\$424,403	\$363,774	\$251,821	\$271,436	\$407,801	\$394,357	\$394,357	\$413,134	\$4,630,500	65%
2013 - 2014	\$404,780	\$445,258	\$499,229	\$445,623	\$445,623	\$381,963	\$264,412	\$285,008	\$428,191	\$414,074	\$414,074	\$433,790	\$4,862,025	65%

**8.1.2. Monthly Payment .** On or before the 10th day of each month during each Fiscal Year, Contractor shall pay the SFMTA the Monthly Payment.

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

**8.3. Verification of Revenue.** In each Contract Year covered by this Agreement, a verification of sales and revenues reported to the SFMTA by Contractor shall be made by a certified public accounting firm selected by the SFMTA. The SFMTA may assign the verification function to the Audits Division of the San Francisco Controller's Office. The cost of such verification shall be shared equally by SFMTA and Contractor. Alternatively, Contractor, at its sole expense, may have its certified public accounting firm perform the verification function. If it is determined as a result of any such verification that there has been a deficiency in percentage payments as required by this Agreement, then such deficiency shall become immediately due and payable with interest at 10%, or the maximum lawful rate, whichever is higher, from the date when said payment should have been made. If Contractor's accounting reports for any contract month shall be found to have understated Net or Gross Revenues by more than 2% and the SFMTA is entitled to any additional percentage payment as a result of said understatement and said understatement is material and intentional, then Contractor shall pay, in addition to the interest charges above, all of the costs and expenses of such audit.

**9. REPORTS, INSPECTION AND REVIEWS**

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

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

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

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

**9.3.2.** Comparable financial statistics relating to Contractor's advertising contracts for transit vehicles with other public or transit agencies in the Bay Area or other large metropolitan areas.

**9.4. Sales Activity Report.** A "Sales Activity Report" on the form attached hereto as Appendix D, or an equivalent form approved by Director shall be prepared by Contractor and submitted to the Director on or before the 30<sup>th</sup> day of the following month.

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

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

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

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

**9.7. Maintenance and Service Logs.** Contractor shall maintain accurate maintenance and service logs describing the dates and locations of all routine inspections conducted of Advertisements, Infrastructure and Advertising Spaces as required by this Agreement, as well as the date, the location and the nature of any maintenance or service activity conducted by Contractor. If Contractor conducts the maintenance or service in response to a complaint by the public, the log shall include the date and the nature of the complaint to which the Contractor has responded. If requested by the SFMTA, Contractor shall provide copies of such maintenance and service logs in an electronic format.

**9.8. Media Trade Reports.** Contractor shall supply SFMTA with quarterly reports of media trade transactions authorized by Section 3.4.6 showing:

**9.8.1.** the cumulative total of consideration received for Barters or Trades received by the SFMTA since contract inception through the end of the previous quarter;

**9.8.2.** a list of new Trade offers for the quarter, showing amounts accepted by the SFMTA.

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

**9.10. Garage Revenue.** No later than 30 Days after the end of each quarter, Contractor shall provide a report ("Garage Report") that identifies the portion of the MAG attributable to all parking garages ("Garage

MAG”). In the Garage Report, Contractor shall also itemize the portion of the Garage MAG and the overall garage revenue attributable to each parking garage.

## **10. SECURITY DEPOSITS**

**10.1. Requirement to Provide Financial Guarantees.** Upon the Effective Date of this Agreement, Contractor shall provide, and shall maintain for the time periods specified herein, financial instruments and funds described in this Section 10 as security to ensure Contractor's performance of all terms and conditions of this Agreement and to compensate for any damage to City property and/or other actual costs to City for Contractor's violation of the terms of this Agreement, as further described below.

### **10.2. Letter of Credit**

**10.2.1. Requirements.** No later than June 15, 2009, Contractor shall provide to City and shall maintain, throughout the term of this Agreement and for 90 Days after the expiration or termination of this Agreement or the conclusion of all of Contractor's obligations under the Agreement, whichever occurs later, a confirmed, clean, irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, in the amount of \$4,000,000. The letter of credit must have an original term of one year, with automatic renewals of the full amount throughout the term of the Agreement. If Contractor fails to deliver the letter of credit as required, City may deem Contractor to be in default in the performance of its obligations hereunder. In such event, City, in addition to all other available remedies, may terminate the Agreement. The letter of credit must provide that payment of its entire face amount, or any portion thereof, will be made to City upon presentation of a written demand to the bank signed by the Director of Transportation of the San Francisco Municipal Transportation Agency on behalf of the City and County of San Francisco.

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

**10.2.3. Demand on Letter of Credit.** The letter of credit will constitute a security deposit guaranteeing faithful performance by Contractor of the following terms, covenants, and conditions of this Agreement, including all monetary obligations set forth in such terms: (a) failure to pay any of the Total Required Payments under Section 8.1; (b) failure to replenish the Security Fund under Section 10.3; and (c) termination of this Agreement due to the default of the Contractor, in which case the City shall be entitled to the full amount of the Letter of Credit. Under any of the above circumstances, SFMTA may make a demand under the letter of credit for all or any portion of the Letter of Credit to compensate City for any loss or damage that they may have incurred by reason of Contractor's default, negligence, breach or dishonesty; provided, however, that City will present its written demand to said bank for payment under said letter of credit only after City first has made its demand for payment directly to Contractor, and five full Days have elapsed without Contractor having made payment to City. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the letter of credit those amounts necessary to pay any fees or other financial obligations under the Agreement and perform the services described in this Agreement until such time as the City procures another contractor and the agreement between the City and that contractor becomes effective. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of the letter of credit is so used or applied by City, Contractor, within 10 business days after written demand by City, shall reinstate the letter of credit to its original amount; Contractor's failure to do so will be a material breach of this Agreement.

**10.2.4. Expiration or Termination of Letter of Credit.** The letter of credit must provide for 60 Days' notice to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business Days prior to its expiration. In the event the City receives notice from the issuer of the letter of credit that the letter of credit

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

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

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

**10.3. Security Fund.** Contractor shall deposit into a City-controlled account the amount of \$250,000 to guarantee the performance of its obligations under the Agreement not secured by the Letter of Credit under Section 10.2. These obligations shall include, but not be limited to, failure to perform maintenance and repair work under Section 6.4, and failure to pay liquidated damages as provided in Section 15.2. Prior to withdrawal of any amounts from the Security Fund, SFMTA shall notify Contractor of its intent to withdraw and the circumstances requiring such withdrawal. Contractor shall have one business day to cure any default. After any withdrawal by City of amounts from the Security Fund, Contractor shall restore the Security Fund to its full amount within five business days. City shall return any amounts remaining in the Security Fund within 60 Days of the expiration or termination of this Agreement, or correction of any audit deficiencies after completion of a final audit under Section 23.11, whichever is later.

## **11. INSURANCE**

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

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

**11.1.2.** Commercial General Liability Insurance (supported by the Commercial Umbrella Policy) with a minimum combined single limit of liability of \$25,000,000 each occurrence for bodily injury and property damage; with a minimum limit of liability of \$25,000,000 each person for personal and advertising injury liability; and a minimum limit of liability of \$25,000,000 each occurrence for products/completed operations liability. Such policy shall have a general aggregate limit of not less than \$25,000,000; and

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

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

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

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

**11.3.** All policies shall provide 30 days' advance written notice to City of reduction or non-renewal of coverages or cancellation of coverages for any reason. Such notices shall be sent to the following address:

Director of Transportation  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94103

with a copy to:

Real Estate Division  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 8th Floor  
San Francisco, CA 94103

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

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

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

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

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

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

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

**11.11.** Consultant hereby agrees to waive subrogation which any insurer of Contractor may acquire from Consultant by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

## **12. INDEMNIFICATION**

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

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

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

## **13. INCIDENTAL AND CONSEQUENTIAL DAMAGES**

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

## **14. LIABILITY OF CITY**

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

## **15. LIQUIDATED DAMAGES**

**15.1. Performance Standards.** By entering into this Agreement, Contractor agrees that in the event Contractor fails to perform in accordance with the performance standards listed below, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the amounts listed in this Section 15.1 are not penalties, but are reasonable estimates of the loss that City will incur based on the delay or non-performance, established in light of the circumstances existing at the time this contract was awarded.

**15.1.1. Maintenance Breaches.** City may assess liquidated damages in the following amount for failure to complete maintenance or repair work required to be performed



within 24 hours of notification from the SFMTA; provided that Contractor shall have one additional business day to perform such maintenance or repair work after notice from SFMTA: \$1,000 per occurrence per Day until the violation is remedied. The date of notification will be the earliest date of notification, as determined from records of notices received by Contractor under Section 6.4 of this Agreement.

**15.1.2. Annual Financial Statement.** Contractor's failure to submit any report with substantially all information as required under Section 9.1, will subject Contractor to liquidated damages in the amount of \$500.00 for each Day the report is late continuing until the report has been submitted with all required information.

**15.1.3. Failure to Cure Audit Deficiencies.** In the event that Contractor fails to cure an audit deficiency within the time periods reasonably imposed by the City under Section 23.11, City may impose liquidated damages not to exceed \$500 per Day per deficiency until the deficiency is cured to the satisfaction of the City.

**15.1.4. Failure to Comply with Advertising Policy.** In the event that Contractor fails to comply with the SFMTA's advertising policy, the City may impose liquidated damages in the amount of \$5,000.00 per Day if the Contractor fails to cure the violation within two Days after receipt of a written notice from the SFMTA. For purposes of this Section, a "violation" is a failure to comply in the context of a single Advertising Campaign.

**15.2. Failure to Pay Liquidated Damages.** Contractor agrees that if it fails to remit liquidated damages amounts assessed by City under this Section 15 or under any other section of this Agreement, City may deduct such damages from Contractor's Security Fund provided under Section 10.3 above. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's default failure to perform this Agreement in compliance with specified performance standards.

## **16. DEFAULT; REMEDIES**

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

**16.1.1.** Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 10, 11, 15, 23.1, 23.2, 23.8, 23.13, 23.16, 23.27, or 23.30.

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

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

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

**16.2. City's Rights on Default.** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement with 30 Days' written notice, or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with

interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

**16.3. No Waiver of Remedies.** 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.

## **17. TERMINATION FOR CONVENIENCE**

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

## **18. RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION**

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

**18.2.** This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 1.5, 1.9, 1.17, 1.18, 1.20, 1.24 through 1.27, 1.29, 5.5, 6.1.1, 8.1, 8.2, 11 through 13, 15, 23.1, 23.2, 23.4 through 23.9, 23.11.1, 23.11.2, 23.23 through 23.26, 23.30.

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

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

## **19. SMALL BUSINESS PARTICIPATION; EMPLOYMENT REQUIREMENTS**

**19.1. SBE PARTICIPATION.** In accordance with the mutual commitment of the parties to encourage the use of Small Business Enterprises (SBEs) in performing work or supplying materials and services under this Agreement, Contractor shall comply with the following SBE provisions:

**19.1.1. Commitment.** To the extent that Contractor procures supplies or services in connection with this Agreement, or subcontracts or joint ventures work under this Agreement, Contractor agrees to utilize certified SBE firms in support of the SFMTA's SBE Program goals. Contractor further shall encourage advertisers and advertising agencies to utilize SBEs.

Information pertaining to SBEs is available from the Contract Compliance Office ("CCO") of the SFMTA, at One South Van Ness Ave., 3<sup>rd</sup> floor, San Francisco, CA 94103, Phone: 415- 701-4443.

**19.1.2. Nature of SBE Participation.** SBE participation includes contracts with SBEs for any goods or services specifically required for the completion of the SBE Work. An SBE may participate as a prime contractor, subcontractor, joint venture partner with a prime contractor, or a supplier of materials or equipment to fulfill the SBE goal for the SBE Work.

**19.1.3. Function.** A SBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of work and must carry out its responsibility by actually performing, managing and supervising the work. However, a SBE may contract out a portion of the work if it is considered to be a normal industry practice. If a SBE subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the SBE shall be presumed not to be performing a commercially useful function.

**19.1.4. Mentoring Program.** Contractor agrees to use its best efforts to work with a SBE or SBE-eligible San Francisco firm(s) to become a supplier and fabricator of non-illuminated static advertising frames for this and other of Contractor's advertising contracts or to perform printing services for Contractor and its advertising clients. Contractor's work in this regard shall include, but not be limited to, providing specifications and samples of the product to the local firm(s) and assisting the firm(s) in becoming certified as a SBE, if the firm has not already been certified.

**19.1.5. Quarterly Meetings.** The Contractor shall meet with the CCO on a quarterly basis to review and update the projection of subcontracting and make any revisions necessary to achieve SBE participation.

(a) **SBE Prime Contractor.** SFMTA counts the entire dollar amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work and the reasonable fees and commissions charged for the services. Do not count any work subcontracted to another firm as SBE participation by the SBE Prime Contractor.

(b) **SBE Subcontractor.** SFMTA counts the entire amount of the work performed or services provided by the SBE's own forces, including the cost of materials and supplies obtained for the work (except for materials and supplies purchased or leased from the Prime Consultant or supplier) and reasonable fees and commissions charged for the services. SFMTA does not count any work subcontracted by an SBE subcontractor to another firm as SBE participation by said SBE subcontractor. If the work has been subcontracted to another SBE, it will be counted as SBE participation by that other SBE.

(c) **SBE Joint Venture Partner.** SFMTA counts the portion of the work that is performed solely by the SBE's forces or if the work is not clearly delineated between the SBE and the joint venture partner, count the portion of the work equal to the SBE's percentage of ownership interest in the joint venture.

(d) **Other SBEs.** SFMTA counts the entire amount of fees or commissions charged for assistance in procuring or delivering materials and supplies when purchased from a SBE that is not a manufacturer or Regular Dealer. SFMTA does not count the cost of the materials and supplies.

(e) **Materials or Supplies.** SFMTA counts expenditures with SBEs for materials or supplies as follows:

(i) If the materials or supplies are obtained from a SBE Manufacturer, SFMTA counts 100% of the cost of the materials or supplies.

(ii) For purposes of this paragraph (e)1(i), a SBE Manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(iii) If the materials or supplies are purchased from a SBE Regular Dealer, SFMTA counts 60% of the cost of the materials or supplies.

(iv) For purposes of this Section, a Regular Dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

**19.1.6. Substitution of Subcontractor and Suppliers.** The Contractor may not terminate a SBE subcontractor or supplier for convenience and then perform the work with its own forces unless the Contractor first reviews the reasons for such decision with the CCO and receives the approval of the CCO. The CCO's approval may not be unreasonably withheld. In other situations, the Contractor must make good faith efforts to substitute another SBE for an original SBE subcontractor or supplier when the original SBE subcontractor or supplier is terminated or fails to complete the work on the contract. The Contractor will notify SFMTA in writing of any request to substitute a SBE subcontractor or supplier and provide the CCO with any documentation requested to support the substitution. The CCO must approve the request in writing in order for the substitution to be valid. The substitution may also have to be approved by the SFMTA Board of Directors.

**19.1.7. Addition of Subcontractors and Suppliers.** The Contractor shall notify the CCO prior to any addition of a SBE or non-SBE subcontractor or supplier to the Agreement and submit MTA Form No. 4 (Subcontractor Participation Declaration) from each new subcontractor or supplier. Any new SBE subcontractor or supplier approved by the CCO also must submit an MTA Form No. 5. MTA Form No. 4 and MTA Form No. 5 are attached as Appendix E and Appendix F, respectively.

**19.1.8. Reporting Requirements.** The Contractor will submit to the CCO copies of all signed subcontractor and supplier agreements or purchase orders within 10 Days of their execution. The Contractor shall maintain records of all SBE participation in the performance of the contract, including subcontracts entered into with certified SBEs and all materials purchased from certified SBEs. The Contractor shall submit SBE participation reports to City on a quarterly basis, or as otherwise directed by City. The reports shall identify the name and address of each SBE performing work on the project, and show the total dollar amount requested for payment and the total dollar amount actually paid to each SBE. Within 30 Days of completion of the subcontract or purchase order, or as otherwise directed by the CCO, the Contractor will submit a final summary SBE report to the CCO.

**19.1.9. Enforcement.** In order to establish its SBE program at the earliest possible date, Contractor shall designate an employee or consultant to act as a coordinator of Contractor's SBE obligations. Contractor's failure to make a good faith effort, as determined by the CCO, to encourage SBE participation or to comply with Section 19.1.4, will constitute a material breach of contract and in the event said breach is not cured within 60 Days from receipt of written notice of said breach, City will be entitled to have and elect among any of the remedies set forth in Section 16.2.

## **20. FIRST SOURCE HIRING PROGRAM**

**20.1. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

**20.2. First Source Hiring Agreement.** As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract.

Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

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

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

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

**20.2.4.** Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

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

**20.2.6.** Set the term of the requirements.

**20.2.7.** Set appropriate enforcement and sanctioning standards consistent with this Chapter.

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

**20.2.9.** Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

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

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

**20.5. Liquidated Damages.** Contractor agrees:

**20.5.1.** To be liable to the City for liquidated damages as provided in this section;

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

**20.5.3.** That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

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

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

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

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

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

**20.5.7.** That in the event the City is the prevailing party in a civil action to recover liquidated damages for breach of a contract provision required by this Chapter, the contractor will be liable for the City's costs and reasonable attorneys fees.

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

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

## **21. REQUIRING MINIMUM COMPENSATION FOR COVERED EMPLOYEES**

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

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

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

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

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

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

**21.7.** Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach

cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

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

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

## **22. REQUIRING HEALTH BENEFITS FOR COVERED EMPLOYEES**

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

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

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

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

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

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

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



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

**22.8.** Contractor shall keep itself informed of the current requirements of the HCAO.

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

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

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

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

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

### **23. MISCELLANEOUS PROVISIONS**

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

### **23.2. Taxes**

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

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

(a) 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;

(b) 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.

(c) 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.

(d) 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.

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

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

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

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

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

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

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

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

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

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

To City: San Francisco Municipal Transportation Agency  
Real Estate Division  
One South Van Ness Ave. 8<sup>th</sup> floor  
San Francisco, California 94103  
Fax: (415) 701-4341

with a copy to:

San Francisco Municipal Transportation Agency  
Attn: Contracts and Procurements  
One South Van Ness Ave. 7<sup>th</sup> floor  
San Francisco, California 94103

To Contractor: Titan Outdoor LLC  
850 Third Avenue, 2<sup>nd</sup> Floor  
New York, NY 10022  
Attn: Donald R. Allman or Scott E. Goldsmith, Esq.

with a copy to:

Titan Outdoor LLC  
333 Post Street, 3<sup>rd</sup> Floor  
San Francisco, CA 94108  
Attn: Brad Staten

Any notice of default must be hand-delivered or sent by registered mail.

**23.10. Works for Hire.** If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs,

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

### **23.11. Audit and Inspection of Records**

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

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

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

**23.11.4. Findings of Nonperformance.** In the event that any audit conducted pursuant to Section 23.11.3 results in a determination that Contractor has failed to perform any material term of this Agreement, City will issue a written Finding of Nonperformance to Contractor. Such Finding of Nonperformance will include a calculation of liquidated damages for Contractor's failure to perform, using the measure of liquidated damages specified in Section 15.1.3. Contractor's failure to cure may result in an Event of Default pursuant to Section 16. Any failure of City to list any violation of the terms of this Agreement in the Finding of Nonperformance shall not constitute a waiver of the City's right to impose any other right or remedy that it has under this Agreement or applicable law with respect to that violation.

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

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

**23.14. 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.

### **23.15. Nondiscrimination; Penalties**

**23.15.1. Contractor Shall Not Discriminate.** In the performance of this Agreement, Contractor agrees not to discriminate against any employee, City and County

employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

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

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

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

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

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

Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

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

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

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

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

**23.24. 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.

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

**23.26. Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 23.22.

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

**23.28. 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.

**23.29. 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.

**23.30. Protection of Private Information.** Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated

herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 21 of the Administrative Code, or debar the Contractor.

**23.31. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of Graffiti. Contractor shall remove all Graffiti from any Advertising Space or real property owned or leased by Contractor in the City and County of San Francisco within 48 hours of the earlier of Contractor's (a) discovery or notification of the Graffiti or (b) receipt of notification of the Graffiti from the Department of Public Works. This Section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. Any failure of Contractor to comply with this Section of this Agreement shall constitute an Event of Default of this Agreement.

**23.32. Food Service Waste Reduction Requirements.** Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

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

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

**23.35. MacBride Principles--Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, Contractor acknowledges that it has read and understood this Section.

**24. INCLUDED APPENDICES.**

The following documents appended to this Agreement are incorporated by reference:

- A. Vehicles
- B. Installation and Maintenance Plan
- C. MTA Advertising Policy
- D. Sales Activity Report
- E. SFMTA SBE Form No. 4
- F. SFMTA SBE Form No. 5

The remainder of this page has intentionally been left blank.



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

<b>CITY</b>	<b>CONTRACTOR</b>
By _____ NATHANIEL P. FORD, SR. Executive Director/CEO San Francisco Municipal Transportation Agency	TITAN OUTDOOR LLC
MTA Board of Directors Resolution No. _____ Dated: _____	By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.
ATTEST:  _____ Secretary, Municipal Transportation Agency Board of Directors	By _____ Donald R. Allman Chief Executive Officer
Board of Supervisors Resolution No. _____ Dated: _____	
Attest:  _____ Clerk of the Board	
Approved as to Form:  Dennis J. Herrera City Attorney	
By: _____ Robin M. Reitzes Deputy City Attorney	

# APPENDIX A

## Vehicles

Approximate total fleet count: 1,066 vehicles\*:

Distributed among 5 distinct vehicle types:

1. 511 Diesel Buses\*
2. 331 Trolley Buses
3. 151 Breda Light Rail Vehicles
4. 40 Cable Cars
5. 33 Historic Streetcars

**\*(numbers include 51 reserve diesel coaches)**

# **APPENDIX B**

## **INSTALLATION AND MAINTENANCE PLAN**

### **POSTING TIMELINE**

Contractor shall ensure timely posting and removal of all Advertisements as specified in Section 6.5. Should SFMTA require removal of an Advertisement or Advertising Campaign (e.g., for failure to comply with its Advertising Policy), Contractor shall remove such Advertisements within 72 hours of written notification (for an Advertising Campaign) and 24 hours of written notification for a single Advertisement.

### **CLEANING SCHEDULE AND PRODUCTS**

Contractor agrees to keep all advertising displays in pristine condition by ensuring that each advertising device is visited/inspected by an operations employee of Contractor as required under Section 6.3.

In furtherance of the requirements of Section 6.7, Contractor shall use its best efforts to use “green” products and technologies, including using green posting and cleaning materials as available.

### **MINIMIZING INTERFERENCE TO SFMTA OPERATIONS DURING MAINTENANCE AND INSTALLATION ACTIVITIES.**

Contractor shall work with the SFMTA to ensure that its placement, maintenance and removal of advertisements shall not disrupt service or inconvenience passengers. Contractor’s operations group shall install advertisements mostly at night, but may perform work during the day with prior authorization from the Director.

### **RESPONSE TO HAZARDOUS CONDITIONS AND COMPLAINTS**

As required under Section 6.4, Contractor shall repair any deficiency, including damage to an advertising display or Infrastructure within 24 hours of notification by the City. Contractor shall respond to and commence correction to any emergency condition within four hours.

Contractor shall respond to any question, request, concern or complaint within 24 hours after receipt.

### **STAFFING**

Contractor intends to utilize its own employees for installation and maintenance of all Advertisements and Infrastructure. Contractor currently has 11 union employees and three operations managers in its San Francisco operation, which will increase by four additional employees to service the SFMTA inventory. Contractor will also have at least one specialist in San Francisco who will be dedicated to scheduling, charting and managing advertising inventory, arranging for the timely installation and removal of advertisements, and ensuring that paid occupancy space is maximized while vacant space is eliminated.

## **SAFETY**

Contractor shall comply with all applicable and relevant federal, state and local safety and health rules and regulations, including, but not limited to, rules established in the United States by OSHA, the Federal and State EPA and the Federal and State Department of Transportation. Posting, cleaning and any related activity shall only be performed by Contractor personnel that have successfully completed safety training and all employees shall comply with all SFMTA safety requirements.

## **APPENDIX C**

### **MTA Advertising Policy Effective October 16, 2007**

Advertising on Municipal Transportation Agency ("MTA") property, or as authorized under any contract with the MTA, constitutes a nonpublic forum. No such advertisement shall:

- be false, misleading or deceptive;
- concern a declared political candidate or ballot measure scheduled for consideration by the voters in an upcoming election, or an initiative petition submitted to the San Francisco Department of Elections;
- appear to promote the use of firearms;
- be clearly defamatory;
- be obscene or pornographic;
- advocate imminent lawlessness or violent action;
- promote alcoholic beverages or tobacco products;
- infringe on any copyright, trade or service mark, title or slogan;

In addition, all advertisements on MTA property or as authorized under any MTA contract shall include the following language: "The views expressed in this advertisement do not necessarily reflect the views of the San Francisco Municipal Transportation Agency."

Any pilot programs or experimental advertisements must be submitted and approved by the MTA Executive Director/Chief Executive Officer at least sixty (60) days prior to implementation.

This policy shall be effective upon adoption but shall not be enforced to impair the obligations of any contract in effect at the time of its approval. It shall be incorporated into any new contract for advertising on MTA property including any new contract for advertising on transit shelters effective on or after December 7, 2007.

The MTA Board of Directors reserves the right to amend this policy at any time with written notice to any affected advertising contractor.

MTA contracts granting advertising rights shall include this Policy as an attachment and must require the following:

- The contractor must comply with the advertising standards set forth in this Policy, as they may be amended from time to time.
- The contractor must display only those advertisements that are in compliance with this Policy.
- The contractor must promptly remove any advertisements that are in violation of this policy upon written demand by the MTA Executive Director/Chief Executive Officer, in conformity with state and federal law.

## APPENDIX D

### (1) Sales Activity Report:

Contract #	Advertiser's Name	Client Category	Advertisement Category	Quantity Sold per Week/Month	Advertisement Rate	Gross Revenues	Commission	Net Revenues
		(1)	(2)					

(1) Commercial National, Commercial Local, Municipal Public Service, etc.

(2) Fashion, Media, Automotive, etc.

### (2) Account Activity Summary by Display Location:

The same information as above by Display Type, External and Internal

### (3) Account Activity Summary by Display Type:

#### Categories of Advertising Clients

Categories of Advertisers	% of Net Monthly Revenues (less Agency Commission)
Commercial – National	%
Commercial – Regional/Local	%
Municipal	%
Public Service	%

### (4) Bay Area Distribution of Contracts:

Contract #	Gross Revenues	% Muni	% *	% *

\* Insert names of other Bay Area transit properties

# APPENDIX E

## SFMTA SBE FORM No. 4

### SBE SUBCONSULTANT PARTICIPATION DECLARATION

(To be submitted by the prime consultant or subconsultant, as appropriate,  
to the SFMTA Contract Compliance Office)

\_\_\_\_\_  
(Name and Title)

declares as follows: That contingent upon award of \_\_\_\_\_  
(Name of Project)

\_\_\_\_\_ will award subcontracts or pursue  
(Name of Prime Consultant)

orders to the following Small Business Enterprise firms: (If the firm is a joint venture, you must attach a copy of the joint venture agreement.)

Name and Address of SBEs	HRC SBE Certi- fication No.	Lic.#	Gender		Ethnicity	Type of Work (Describe)	% and/or \$ Amount of Contract
			M	F			

Total dollar value of SBE work: \$ \_\_\_\_\_ = \_\_\_\_\_ % of SBE Participation

Total dollar value of Proposal Price \$ \_\_\_\_\_ 100%

I declare under penalty of perjury under the laws of the State of California, that the above information is true and correct.

\_\_\_\_\_  
Owner or Authorized Representative (Signature)

Dated: \_\_\_\_\_

**END OF SFMTA SBE FORM No. 4**



# APPENDIX F

## SFMTA SBE FORM No. 5

### SMALL BUSINESS ENTERPRISE ACKNOWLEDGMENT DECLARATION

(Every listed SBE subconsultant or supplier (including lower tier subconsultant) must submit the completed declarations to the Prime Consultant. The Prime Consultant shall submit completed declarations to the SFMTA Contract Compliance Office.)

\_\_\_\_\_  
(Owner or Authorized Representative and Title)

declares that \_\_\_\_\_ will award  
(Name of Prime Consultant)

\_\_\_\_\_ [(%) percent and/or (\$) amount], of subcontract or

\_\_\_\_\_ [(%) percent and/or (\$) amount] of a purchase order of the total value of the

prime contract to \_\_\_\_\_ (Name of your firm).

License No. \_\_\_\_\_. **Type of SBE Certification:** \_\_\_\_\_

Nature of work to be performed by SBE: \_\_\_\_\_

### FORM OF OWNERSHIP FOR SMALL BUSINESS ENTERPRISE

Sole Proprietorship \_\_\_\_\_ Partnership \_\_\_\_\_ Joint Venture \_\_\_\_\_ Corporation \_\_\_\_\_

Limited Liability Partnership \_\_\_\_\_ Limited Liability Corporation \_\_\_\_\_

### LIST OWNERS

Name \_\_\_\_\_ Ethnicity\* \_\_\_\_\_ Gender \_\_\_\_\_ % of Ownership \_\_\_\_\_

Name \_\_\_\_\_ Ethnicity\* \_\_\_\_\_ Gender \_\_\_\_\_ % of Ownership \_\_\_\_\_

Name \_\_\_\_\_ Ethnicity\* \_\_\_\_\_ Gender \_\_\_\_\_ % of Ownership \_\_\_\_\_

Name \_\_\_\_\_ Ethnicity\* \_\_\_\_\_ Gender \_\_\_\_\_ % of Ownership \_\_\_\_\_

Percentage of SBE Stockholders: \_\_\_\_\_

\*Ethnic Codes: AI/AN = American Indian or Alaskan Native, A/PI = Asian or Pacific Islander, B = Black, F = Filipino, H = Hispanic, and W = White.

**LIST INSURANCE POLICIES AND BONDING ARRANGEMENTS**

Name of Policy \_\_\_\_\_ Party Insured \_\_\_\_\_

Name of Policy \_\_\_\_\_ Party Insured \_\_\_\_\_

Name of Policy \_\_\_\_\_ Party Insured \_\_\_\_\_

**For Prime Consultants and Subconsultants Only:**

List the firm's annual gross receipts for the last three fiscal years:

20\_\_\_\_\_ \$ \_\_\_\_\_, 20\_\_\_\_\_ \$ \_\_\_\_\_, 20\_\_\_\_\_ \$ \_\_\_\_\_

**For Suppliers or Manufacturers Only:**

List the number of employees for the last three fiscal years:

20\_\_\_\_\_ Number \_\_\_\_\_, 20\_\_\_\_\_ Number \_\_\_\_\_, 20\_\_\_\_\_ Number \_\_\_\_\_

**ADDITIONAL SUBCONTRACTING BY SUBCONSULTANTS:**

a. \_\_\_\_\_ We will not subcontract any portion of work to another subconsultant.

b. \_\_\_\_\_ We will subcontract \_\_\_\_\_ [% and/or \$ amount] of our work to \_\_\_\_\_

(Name of Subconsultant)

Indicate owners' ethnicity and gender \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California that the above information is true and correct; and that our firm is a certified SBE as defined under the City's Small Business Enterprise Program.

\_\_\_\_\_  
Owner/Authorized Representative (Signature)

\_\_\_\_\_  
Name & Title (Please Print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No.

**END OF SFMTA SBE FORM No. 5**

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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Administration

**BRIEF DESCRIPTION:**

This policy proposal recommends that the Executive Director/CEO be given greater authority to advertise solicitation requests and to approve and execute contracts and contract modifications.

**SUMMARY:**

- Authorize the Executive Director/CEO to advertise solicitation requests without SFTMA Board of Directors Approval.
- Authorize the Executive Director/CEO to approve and execute contracts equal to or less than \$500,000.
- Authorize the Executive Director/CEO to delegate to a designee his or her authority to approve and execute contracts equal to or less than \$500,000.
- Authorize the Executive Director/CEO or his or her designee to approve and execute contract modifications of expenditure contracts for contract amount, time or scope up to 20% of the original contract amount upon notice to the SFMTA Equal Opportunity Office.
- Contract modifications of expenditure contracts that increase contract amount, time or scope by 20% or more shall require prior approval: (1) by the SFMTA Equal Opportunity Office, and 2) by the Board.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Procurement Practices at Transit Agencies

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM \_\_\_\_\_

\_\_\_\_\_

FINANCE \_\_\_\_\_

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

\_\_\_\_\_

SECRETARY \_\_\_\_\_

\_\_\_\_\_

ADOPTED RESOLUTION  
BE RETURNED TO \_\_\_\_\_

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

## **PAGE 2.**

### **PURPOSE**

This policy amendment is intended to streamline the contracting process and shorten project timelines, while promoting efficiency and compliance with Local Business Enterprise, Disadvantaged Business Enterprise, and Small Business Enterprise requirements.

### **GOAL**

Approval of the proposed resolution will support the following SFMTA Strategic Plan goals:

Goal 4: To ensure financial stability and effective resource utilization.

4.2: Ensure efficient and effective use of resources.

### **DESCRIPTION**

The powers of the Executive Director/CEO (Director) were last broadened in 2002 in an effort to reduce administrative paperwork and streamline processing of contract approvals for relatively small dollar values. On November 6, 2007, the voters passed Proposition A, which among other things, added subsection (g) to Section 8A.102 of the City's Charter, which authorizes the SFMTA Board (Board) to adopt threshold amounts under which the Director, or his or her designees, may approve contracts, notwithstanding any provision of Chapters 6-21 of the City's Administrative Code.

Currently, the Executive Director/CEO must seek approval to advertise all solicitations. The Executive Director/CEO has the authority to award contracts up to \$100,000 and to delegate the authority to award contracts up to \$10,000. The Executive Director/CEO may also modify contract amount or duration up to 10% of the original contract value. Except for Public Works, or Professional Services contracts, the Executive Director/CEO has the authority to modify contracts up to \$10,000 as long as it does not exceed 10% of the original contract amount or duration.

Approval of this new resolution will allow the Executive Director/CEO to advertise Requests for Proposals or Bids (RFPs/RFBs) upon notice to the Board. Such notice would be disseminated on a biweekly basis and consist of the following information: 1) date of advertisement, 2) contract number and title, 3) brief description, 4) funding allocation and source, 5) SBE/DBE/LBE opportunities and 6) budget approval identification.

This proposal would not change the budgetary approval process, but would eliminate Board review of projects that have already been approved. The above-described notice would ensure the Board that staff acted upon its budgetary directives by advertising funded and approved projects.

In addition, on the rare occasion it would be necessary to do so, it would permit SFMTA staff to respond quickly and effectively to changing circumstances and needs by allowing staff to issue

### **Page 3.**

non-budgeted RFPs/RFBs upon identification of funding sources.

For the award of contracts under this new proposal, the Executive Director/CEO or his or her designee will have the authority to award contracts at the increased threshold amount of up to \$500,000. This policy would eliminate the need for Board approval for smaller contracts. In the event that a project or number of projects arise during the year and have not been pre-approved during the regular budgetary process, then Board notice may be used to identify and approve the addition of these new funding sources or projects. This proposal would streamline the contracting process and shorten project timelines, particularly for smaller projects.

Under this new contract modification proposal, the Executive Director/CEO or his or her designee will have the authority to modify expenditure contracts up to 20% of the original contract amount, time or scope upon notice to the SFMTA Equal Opportunity Office to ensure that the Small Business Enterprise/Disadvantaged Business Enterprise/Local Business Enterprise requirements are fully implemented.

However, modifications of expenditure contracts that increase the total contract amount, time or scope by 20% or more shall require prior approval: (1) by the Equal Opportunity Office, who shall review the proposed amendment, modification, supplement or change order to ensure that any new contracting opportunities are publicly solicited, and (2) by the SFMTA Board.

This policy proposal would: 1) allow the Equal Opportunity Office to work proactively with contractors to ensure that Small Business Enterprise/Disadvantaged Business Enterprise/Local Business Enterprise opportunities are maintained, and 2) bring the SFMTA inline with the San Francisco Administrative Code requirements for locally-funded projects. Consistent with existing City policy codified in Chapter 14B.13 (A)(10) and 14B.13(A)(12) of the San Francisco Administrative Code, this policy balances the Agency's need to conduct business expeditiously with sufficient Board and regulatory oversight. It also ensures full compliance with the Small Business Enterprise/Disadvantaged Business Enterprise/Local Business Enterprise requirements.

On construction projects, it also permits staff to expeditiously take into consideration and address site conditions that only become known after construction has begun that may have a drastic impact on the scope of work. On large professional services contracts, this policy reduces the possibility that a contract modification will add opportunities that should be bid as separate contracts.

If adopted, these new policies would be in line with procurement practices by large transit agencies in New York City, Washington D.C. and Philadelphia.

### **FUNDING IMPACT**

There are no anticipated impacts on funding. Streamlining the contracting process will save time and resources.

**Page 4.**

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney's Office has reviewed this calendar item.  
The Contract Compliance Office has approved this calendar item.

**RECOMMENDATION**

Staff recommends that this Board approve the grant of authority to the Director to advertise solicitation requests without Board approval, and award and modify contracts at higher threshold amounts.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION NO. \_\_\_\_\_

WHEREAS, In 2000, the San Francisco Municipal Transportation Agency Board of Directors (SFMTA Board) passed adopted Resolution No. 00-0125, and in 2002, the SFMTA Board adopted Resolution No. 02-110, which resolutions adopting a policy whereby procurement of commodities and services subject to the sole approval of the Purchaser prior to the formation of the San Francisco Municipal Transportation Agency (SFMTA) shall be subject to the sole approval of the Executive Director/CEO (Director), or his or her designee, without further approval of the SFMTA Board; and

WHEREAS, In 2002, the SFMTA Board adopted Resolution No. 02-110, which established contracting policies for the SFMTA, including setting limits on contractual amounts subject to the approval of the Director, requiring all contracts to be in writing , and other related matters; and

WHEREAS, On November 6, 2007, the voters passed Proposition A, which among other things, added subsection (g) to Section 8(A).102 of the City's Charter; subsection (g) authorizes the SFMTA Board to adopt threshold amounts under which the Director and his or her designees may approve contracts, notwithstanding any provision of Chapters 6 or 21 of the City's Administrative Code; and

WHEREAS, In order to minimize the administrative burden and streamline processing of contract approvals for relatively small dollar values, the SFMTA Board would like to modify the existing policy to give the Executive Director/CEO broader discretion to approve contracts; and

WHEREAS, The SFMTA Board intends that this resolution will update and amend Resolutions Nos. 02-110 and 02-125; now, therefore, be it

RESOLVED, That all contracts of the SFMTA shall be in writing; and be it

FURTHER RESOLVED, That the SFMTA Board shall approve all contracts and amendments to contracts, except as follows:

(a) The Executive Director/CEO is authorized to advertise solicitation requests without SFMTA Board approval.

(b) The Executive Director/CEO or his or her designee is authorized to approve and execute any contract having anticipated expenditures or revenues (the "contract amount") equal to or less than \$500,000;

(c) The Executive Director/CEO or his or her designee is authorized to approve and execute contract modifications of expenditure contracts for cumulative increases in contract amount, time or scope up to 20% of the original contract upon notice to the SFMTA Equal Opportunity Office to

ensure that the Small Business Enterprise/Disadvantaged Business Enterprise/Local Business Enterprise requirements are fully implemented;

(d) Contract modifications of expenditure contracts that cumulatively increase the total contract amount, time or scope by more than 20% shall require prior approval: (1) by the Equal Opportunity Office, who shall review the proposed modification to ensure that any new contracting opportunities are publicly solicited, and (2) by the SFMTA Board.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of \_\_\_\_\_.

---

Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency



**PROCUREMENT PRACTICES AT TRANSIT AGENCIES**

<b>TRANSIT AGENCY</b>	<b>Advertise</b>	<b>Award</b>	<b>Modification</b>
<b>LACMTA</b>	Only Design-Build must have 2/3 Board vote to advertise.	Public Works: CEO can award unlimited contract amounts, PUC 130051.9.C;  Prof Services/A-E: must be Board approved;  Capital Projects: case by case.	Public Works: requires board approval for mods over \$100,000, over life of contract;  Construction: requires Board approval for mods in excess of \$200,000
<b>MARTA (Atlanta)</b>	Under MARTA ACT, anything over \$100,000 requires Board approval; Under \$100,000, delegated authority may approve.	Under MARTA ACT, anything over \$100,000 requires Board approval; under \$100,000 ok for delegated authority.	Automatic 5% contingency added to all contracts. Change Order Delegation, staff includes GM; approves these changes, if greater than 5%. May exercise Option as well.
<b>NY City Transit</b>	Board approves budget 5 years at a time. All projects here are pre-approved.  For unplanned funds, like ARRA, draft a special Board Resolution, attaching all stimulus projects and request Board approval. Receive blanket approval.	Construction contracts/ competitive bids: management has progressively higher levels of authorization; \$1,000,000 – Dir. Of Capital Planning, \$5,000,000 - VP, \$10,000,000 – CEO.	Contracts include contingency for increased funds. If modification is greater than 5% of whole contract, then Board must approve.  Change Orders: requires Board approval if mod is over \$250,000.  Emergency, sole source or other non-competitive: first obtain executive authorization (usually signed by VP).

<b>TRANSIT AGENCY</b>	<b>Advertise</b>	<b>Award</b>	<b>Modification</b>
<b>WMATA (D.C.)</b>	<p>Projects are included in annual budget.</p> <p>For unplanned funds, see NY above.</p>	<p>CEO may award contracts from \$100,000 - \$1,000,000, if they have been specially listed in the budget book.</p> <p>Sole source and over \$100,000 must go to Board with justifications.</p>	<p>If over \$1,000,000 or greater than 10% of base contract value, requires Board approval.</p> <p>After hitting above thresholds, ok to modify up to \$200,000 without seeking Board approval.</p> <p>Sole source and over \$100,000 must go to Board with justifications.</p>
<b>SEPTA (Philly)</b>	<p>Awards and advertisements have same procedure, based on total contract value.</p> <p>Sr. Director of Contract Procurement has authority up to \$200,000;</p> <p>GM/CEO has authority up to \$500,000;</p> <p>Board Chairman has authority from \$500,000- \$1,000,000.</p>	<p>\$1,000,000 +, requires Board to approve.</p> <p>\$100,000, Board has option to review.</p>	<p>Sr. Director of Procurement can modify up to 5% of original contract value or \$100,000, which ever comes first.</p> <p>GM/CEO: 10% or \$500,000;</p> <p>Anything over 10% or \$500,000 requires Board approval.</p>
<b>MBTA (Boston)</b>	<p>Budget approval – 100% design and then ask Board to review</p> <p>Capital Investment Plan – every 5 years; sets the tone for which projects will be funded.</p>	<p>\$500,000+ Board approves every contract, usually Board authorizes and GM’s office executes</p>	<p>Any change or mod GM can mod up \$500,000</p> <p>Construction Contract: 7% of base or \$500,000+ Board approves</p>

<b>TRANSIT AGENCY</b>	<b>Advertise</b>	<b>Award</b>	<b>Modification</b>
<b>NJ Transit</b>	No Board approval.	<p>Board has all authority to contract, but has delegated authority to CEO -&gt; CFO -&gt; Chief of Procurement Support Services.</p> <p>Competitive Bid, \$1,000,000+ , requires Board approval;</p> <p>RFP, \$250,000+, requires Board approval;</p> <p>IFB, routine materials/services for normal operations, Board not required.</p>	<p>5% contingency in Board item: Change order must be negotiated through this 5% contingency and then signed off by contracting officer or Chief of Procurement.</p> <p>If over 5% change needed, then must get to Board for authorization</p>
<b>MDT (Miami)</b>	<p>Everything must go through County Commissioner's Board.</p> <p>Dept of Capital Improvement governs.</p>	Everything must go through County Commissioner's Board.	<p>PM's only authority is to modify up to 5% of the contract value for UNFORSEEN issues.</p> <p>Otherwise, go through County Board</p>
<b>CTA (Chicago)</b>	<p>State law requires anything \$10,000+ to be advertised.</p> <p>Internal approval process by VP of Purchasing.</p>	<p>Anything bid \$100,000+ requires Full Board; Competitively bid, \$50,000-100,000 requires signature by Chairman of Board; \$50,000 and below is approved by president/CEO.</p>	<p>Anything w/value \$100,000 or 10% of total contract value, requires Board approval.</p> <p>Less than \$100,000 or 10%, CEO can approve.</p>

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Operations

**BRIEF DESCRIPTION:**

Requesting authorization for the Executive Director/CEO to execute a contract with DriveCam Inc. using an existing DriveCam contract with the federal government under General Services Administration (GSA) contract number GS-35F-0623S to purchase equipment, installation and managed services that will enable the SFMTA to implement a Driver Risk Management System for the purpose of improving safety in SFMTA's revenue vehicles. The estimated cost of the equipment, installation and one year of managed services is \$1,200,000.

**SUMMARY:**

- On July 2008, San Francisco Municipal Transportation Agency (SFMTA) staff initiated a test program by installing five test DriveCam units in trolley coaches.
- The DriveCam units are event recorders that capture video and audio events of incidents in SFMTA's revenue vehicles when triggered by an excessive force such as sudden braking, swerving or acceleration.
- The recorded events will be downloaded to DriveCam's database server where they are analyzed and scored based on a pre-determined rating system. The storage, hosting of the recorded events in a database server, and analysis and scoring of the events is provided by DriveCam, Inc.
- These events will be used by staff to coach operators on their driving with the objective of improving their driving habits.
- On September 2008, staff concluded the test program and evaluated the results of the tests.
- SFMTA staff's evaluation revealed that the DriveCam System will provide an effective way of coaching operators on their driving behavior and improve their driving skills.

**ENCLOSURES:**

1. SFMTA Board Resolution
2. GSA contract number GS-35F-0623S
3. Statement of Work with Software Escrow Agreement and Software License Agreement.

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

FINANCE

\_\_\_\_\_

EXECUTIVE DIRECTOR/CEO

\_\_\_\_\_

SECRETARY

\_\_\_\_\_

**ADOPTED RESOLUTION**

**BE RETURNED TO:** Elson Hao

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

## **PAGE 2.**

### **PURPOSE**

Requesting authorization for the Executive Director/CEO to execute a contract with DriveCam Inc. using an existing DriveCam contract with the federal government under General Services Administration (GSA) contract number GS-35F-0623S to purchase equipment, installation and manage services that will enable the SFMTA to implement a Driver Risk Management System for the purpose of improving safety in SFMTA's revenue vehicles. The estimated cost of the equipment, installation and one year of manage services is \$1,200,000.

### **GOAL**

The objective of this project is to significantly contribute to improving the availability and reliability of the hybrid fleet to meet the following goals and objectives of the Strategic Plan:

#### Goal 1: Customer Focus

To provide safe, accessible, clean, environmentally sustainable service and encourage the use of auto-alternative modes through the Transit First Policy.

##### Objective 1.1 Improve safety and security across all modes of transportation

### **DESCRIPTION**

DriveCam is part of an industry called Driver Risk Management. The concept of Driver Risk Management concept is to identify and assess risks in the field and mitigate these risks by modifying the behavior of operators through coaching and guidance.

The DriveCam system consists of a palm-size event recorder that is mounted on the windshield and is triggered by an unusual force (sudden braking, swerving, collision, etc.) during the operation of a vehicle. The recorder records both video and audio information from inside and outside the vehicle. The events that are captured are downloaded directly to a database at the contractor's facility where they will be reviewed and assigned a risk score by DriveCam's risk analysts. The risk score will allow the agency to prioritize and focus on the riskiest driving behaviors. The captured events and risk scores can be viewed the next day by SFMTA staff and will allow fleet managers to effectively coach their operators according to SFMTA safe driving policies.

The event recorder, event review, and risk scoring are vital components of the DriveCam system. The storage, hosting of events in a database, review and assignment of risk scores are services provided by DriveCam Inc. referred to as managed services. The event recorder technology is approximately 10 years old and is being utilized by other transit organizations such as New Jersey Transit, Veolia Transportation, and MV Transit.

SFMTA conducted a study of the event recorder equipment over a period of three months on five trolley buses and determined that it will yield meaningful results. The data from the five DriveCam units recorded hundreds of events showing driving behaviors that may be improved. The most common driving behaviors observed consisted of hard braking, collisions, red light running, stop sign violation, inattentive driving and stopping in active roadways.

Under the GSA rules, state and local entities are permitted to place orders against an existing GSA Multiple Award Schedule contract without undergoing a separate competitive procurement process since the program is considered a competitive procedure under the Competition in Contracting Act of 1984. The program places no restrictions on how or when the products and services may be used.

Pursuant to San Francisco Administrative Code section 21.30, software license and escrow agreements in an

**PAGE 3.**

amount less than \$10 million dollars are exempt from City contracting requirements and may be procured under a sole source agreement.

The SFMTA has made a commitment to improve safety and reduce accidents in its fleet of revenue vehicles. DriveCam technology will help the SFMTA achieve that goal by:

- Identifying and assessing risks in the field
- Mitigating risks by:
  - Modifying employee behavior
  - Enhancing employee training
  - Expanding employee coaching and guidance
  - Improving employee performance
  - Reducing accidents and collisions

The City Attorney's Office has reviewed this calendar item.

The SFMTA's Contract Compliance Office has reviewed this calendar item.

If approved, a first article installation will be implemented on each of the ten models of rubber tired vehicles in the SFMTA fleet to determine the time needed to install DriveCam systems in the buses. Based on the installation time established during the first article installation, the project team will develop an installation schedule for the rest of the fleet. Staff estimates that the installation will be completed within six months after notice to proceed.

**ALTERNATIVES CONSIDERED**

SFMTA staff evaluated other Driver Risk Management systems. However, no other Driver Risk Management system is available that generates video and audio recordings that show actual incidents experienced by operators. The other Driver Risk Management systems evaluated relied mainly on driver interviews and training programs based on the driver interviews.

In view of the above, the other Driver Risk Management systems were considered inferior to the DriveCam system.

**FUNDING IMPACT**

This project will be funded from a \$2,000,000 grant from the San Francisco County Transportation Authority.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

Civil Service Commission will have to approve the use of contractor's labor to install the DriveCam units in the rubber tire vehicles.

**RECOMMENDATION**

Staff recommends that the San Francisco Municipal Transportation Agency Board authorize the Executive Director/CEO to execute a contract with DriveCam, Inc. using an existing DriveCam contract with the federal government under GSA contract number GS-35F-0623S to purchase equipment, installation and managed services that will enable the SFMTA to implement a Driver Risk Management System for the purpose of improving safety in SFMTA's revenue vehicles at a cost not to exceed \$1,200,000.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, On July 2008, San Francisco Municipal Transportation Agency (SFMTA) staff initiated a test program by installing five test DriveCam units in trolley coaches; and

WHEREAS, The DriveCam units are event recorders that capture video and audio events of incidents in SFMTA's revenue vehicles when triggered by an excessive g-force like sudden braking, sudden swerving, sudden acceleration or other similar actions; and

WHEREAS, The recorded events will be downloaded to DriveCam's database server where they are analyzed and scored based on a pre-determined rating system; and

WHEREAS, These scored events will be used by SFMTA staff to coach operators on their driving behavior with the objective of improving their driving habits; and

WHEREAS, The storage, hosting of the recorded events in a database server, and the analysis and scoring of the events is a service provided by DriveCam, Inc. that is referred to as managed services; and

WHEREAS, On September 2008, SFMTA staff concluded the test program and evaluated the results of the tests; and

WHEREAS, SFMTA staff's evaluation revealed that the DriveCam System will provide an effective way of coaching SFMTA operators on their driving behavior and improve their driving skills; and

WHEREAS, SFMTA is permitted to place orders against an existing GSA Multiple Award Schedule contract without undergoing a separate competitive procurement process since the program is considered a competitive procedure under the Competition in Contracting Act of 1984; and

WHEREAS, San Francisco Administrative Code section 21.30 provides that software license and escrow agreements in an amount less than \$10 million dollars are exempt from City contracting requirements and may be procured under a sole source agreement; now therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Executive Director/CEO to execute a contract with DriveCam, Inc. using the existing DriveCam contract with the General Services Administration contract number GS-35F-0623S to purchase equipment, installation and managed services that will enable the SFMTA to implement a Driver Risk Management System to improve safety in SFMTA's revenue vehicles at a cost not to exceed \$1,200,000.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**AUTHORIZED FEDERAL SUPPLY SERVICE  
INFORMATION TECHNOLOGY SCHEDULE PRICELIST  
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY  
EQUIPMENT, SOFTWARE AND SERVICES**

Special Item No. 132-8 Purchase of Equipment  
Special Item No. 132-12 Maintenance, Repair Service and Repair Parts/Spare Parts  
Special Item No. 132-32 Term Software Licenses  
Special Item No. 132-33 Perpetual Software Licenses  
Special Item No. 132-34 Maintenance of Software  
Special Item No. 132-50 Training Courses  
Special Item No. 132-52 Electronic Commerce Services

**SIN 132-8 PURCHASE OF EQUIPMENT**

**FSC CLASS 7010 - SYSTEM CONFIGURATION**

Other Systems Configuration Equipment, Not Elsewhere Classified

**FSC CLASS 7025 - INPUT/OUTPUT AND STORAGE DEVICES**

Network Equipment

Other Communications Equipment

Other Input/Output and Storage Devices, Not Elsewhere Classified

**FSC Class 7042 - MINI AND MICRO COMPUTER CONTROL DEVICES**

Microcomputer Control Devices

**FSC CLASS 5995 - CABLE, CORD, AND WIRE ASSEMBLIES:  
COMMUNICATIONS EQUIPMENT**

Communications Equipment Cables

**FSC CLASS 5895 - MISCELLANEOUS COMMUNICATION EQUIPMENT**

Miscellaneous Communications Equipment

**\*\*The following are included offered under Special Item Number 132-8.\*\***

- Installation (FPDS Code N070) for Equipment Offered

**NOTE:** Installation must be incidental to, in conjunction with and in direct support of the products sold under SIN 132-8 of this contract and cannot be purchased separately. If the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act apply. In applying the Davis-Bacon Act, ordering activities are required to incorporate wage rate determinations into orders, as applicable.

**SIN 132-12 - MAINTENANCE OF EQUIPMENT, REPAIR SERVICE, AND REPAIR PARTS/SPARE PARTS (FPDS Code J070 - Maintenance and Repair Service)(Repair Parts/Spare Parts - See FSC Class for basic equipment)**

- Maintenance



**SIN 132-32 - TERM SOFTWARE LICENSES**

FSC CLASS 7030 - INFORMATION TECHNOLOGY SOFTWARE

Large Scale Computers

Application Software

Electronic Commerce (EC) Software

Communications Software

Microcomputers

Application Software

Electronic Commerce (EC) Software

Communications Software

**SIN 132-33 – PERPETUAL SOFTWARE LICENSES**

FSC CLASS 7030 - INFORMATION TECHNOLOGY SOFTWARE

Large Scale Computers

Application Software

Electronic Commerce (EC) Software

Communications Software

Microcomputers

Application Software

Electronic Commerce (EC) Software

Communications Software

**SIN 132-34 - MAINTENANCE OF SOFTWARE**

**SIN 132-50 - TRAINING COURSES FOR INFORMATION TECHNOLOGY  
EQUIPMENT AND SOFTWARE (FPDS Code U012)**

**SIN 132-52 - ELECTRONIC COMMERCE (EC) SERVICES**

FPDS Code D301 Value Added Network Services (VANS)

FPDS Code D399 Other Data Transmission Services, Not Elsewhere Classified -  
Except “Voice” and Pager Services

NOTE: Electronic Commerce Services are not intended to supersede or be substitute for any voice requirements of FTS2001.

**DRIVECAM, Inc.**

**3954 Murphy Canyon road, D205, San Diego, CA 92123**

**(858)430-4000**

**[www.drivecam.com](http://www.drivecam.com)**

Contract Number: GS-35F-0623S

Period Covered by Contract: September 8, 2006 – September 7, 2011

General Services Administration  
Federal Supply Service

Pricelist current through Modification #PO-0019, dated September 7, 2008.

Products and ordering information in this Authorized FSS Information Technology Schedule Pricelist are also available on the GSA Advantage! System. Agencies can browse GSA Advantage! by accessing the Federal Supply Service's Home Page via the Internet at <http://www.fss.gsa.gov/>

TABLE OF CONTENTS

	Page
<b>INFORMATION FOR ORDERING OFFICES APPLICABLE TO ALL SPECIAL ITEM NUMBERS</b>	<b>4</b>
<b>TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF 11 GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT (SPECIAL ITEM NUMBER 132-8)</b>	
<b>TERMS AND CONDITIONS APPLICABLE TO MAINTENANCE, REPAIR 13 SERVICE AND REPAIR PARTS/SPARE PARTS FOR GOVERNMENT-OWNED GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT (AFTER EXPIRATION OF GUARANTEE/WARRANTY PROVISIONS AND/OR WHEN REQUIRED SERVICE IS NOT COVERED BY GUARANTEE/WARRANTY PROVISIONS) AND FOR LEASED EQUIPMENT (SPECIAL ITEM NUMBER 132-12)</b>	
<b>TERMS AND CONDITIONS APPLICABLE TO TERM 18 SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND MAINTENANCE (SPECIAL ITEM NUMBER 132-34)</b>	
<b>TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF 22 TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE (SPECIAL ITEM NUMBER 132-50)</b>	
<b>TERMS AND CONDITIONS APPLICABLE TO ELECTRONIC COMMERCE (EC) SERVICES (SPECIAL TIME NUMBER 132-52)</b>	<b>24</b>
<b>USA COMMITMENT TO PROMOTE SMALL BUSINESS PARTICIPATION 28 PROCUREMENT PROGRAMS</b>	
<b>BEST VALUE BLANKET PURCHASE AGREEMENT FEDERAL SUPPLY 29</b>	
<b>BASIC GUIDELINES FOR USING “CONTRACTOR TEAM ARRANGEMENTS” 32</b>	

## **DRIVECAM'S OFFERING AND PRICE TABLES**

### **33**

Special Item No. 132-8 Purchase of Equipment

Special Item No. 132-12 Equipment Maintenance

Special Item No. 132-32 Term Software License

Special Item No. 132-33 Perpetual Software License

Special Item No. 132-34 Maintenance of Software

Special Item No. 132-50 Training Courses

**Special Item No. 132-52 Electronic Commerce**

**INFORMATION FOR ORDERING ACTIVITIES  
APPLICABLE TO ALL SPECIAL ITEM NUMBERS**

**SPECIAL NOTICE TO AGENCIES: Small Business Participation**

SBA strongly supports the participation of small business concerns in the Federal Supply Schedules Program. To enhance Small Business Participation SBA policy allows agencies to include in their procurement base and goals, the dollar value of orders expected to be placed against the Federal Supply Schedules, and to report accomplishments against these goals.

For orders exceeding the micropurchase threshold, FAR 8.404 requires agencies to consider the catalogs/pricelists of at least three schedule contractors or consider reasonably available information by using the GSA Advantage!™ on-line shopping service ([www.fss.gsa.gov](http://www.fss.gsa.gov)). The catalogs/pricelists, GSA Advantage!™ and the Federal Supply Service Home Page ([www.fss.gsa.gov](http://www.fss.gsa.gov)) contain information on a broad array of products and services offered by small business concerns.

This information should be used as a tool to assist ordering activities in meeting or exceeding established small business goals. It should also be used as a tool to assist in including small, small disadvantaged, and women-owned small businesses among those considered when selecting pricelists for a best value determination.

For orders exceeding the micropurchase threshold, customers are to give preference to small business concerns when two or more items at the same delivered price will satisfy their requirement.

**1. Geographic Scope of Contract:**

*Domestic delivery* is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

*Overseas delivery* is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. Territories.

**The Geographic Scope of Contract will be domestic delivery only.**

**2. Contractor's Ordering Address and Payment Information:**

**Ordering Address: DriveCam, Inc. 3954 Murphy Canyon Road D205, San Diego, CA 92123**

**Payment Information: DriveCam, Inc. DEPT CH 17347, PALATINE, IL 60055-7347**

Contractors are required to accept credit cards for payments equal to or less than the micro-purchase threshold for oral or written delivery orders. Credit cards will not be acceptable for payment above the micro-purchase threshold. In addition, bank account information for wire transfer payments will be shown on the invoice.

The following telephone number(s) can be used by ordering activities to obtain technical and/or ordering assistance:

**Office: 858-430-4000**

**Fax: 858-430-4001**

### **3. LIABILITY FOR INJURY OR DAMAGE**

The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.

### **4. Statistical Data for Government Ordering Office Completion of Standard Form 279:**

Block 9: G. Order/Modification Under Federal Schedule

Block 16: Data Universal Numbering System (DUNS) Number: 02-649-9454

Block 30: Type of Contractor – B.

Block 31: Woman-Owned Small Business - No

Block 36: Contractor's Taxpayer Identification Number (TIN): 33-0794096

4a. CAGE Code: Not applicable

4b. Contractor has registered with the Central Contractor Registration Database.

### **5. FOB Destination**

### **6. DELIVERY SCHEDULE**

a. **TIME OF DELIVERY:** The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

<b>SPECIAL ITEM NUMBER</b>	<b>DELIVERY TIME (Days ARO)</b>
132-8	Within 30 days of receipt
132-12	Within 30 days of receipt
132-32	Within 30 days of receipt
132-33	Within 30 days of receipt
132-34	Within 30 days of receipt
132-50	Within 30 days of receipt
132-52	Within 30 days of receipt

**\*\*NOTE:** Expedited Delivery and/or Overnight and 2-Day Delivery are offered:

<b>ITEM OR GROUP OF ITEMS (special (Special Item No. of nomenclature)</b>	<b>Expedited delivery time (Hours/Days ARO)</b>
132-8	As agreed upon ordering agency
132-12	As agreed upon ordering agency
132-32	As agreed upon ordering agency

132-33	As agreed upon ordering agency
132-34	As agreed upon ordering agency
132-50	As agreed upon ordering agency
132-52	As agreed upon ordering agency

b. **URGENT REQUIREMENTS:** When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

**7. Discounts:** Prices shown are NET Prices; Basic Discounts have been deducted.

- a. Prompt Payment: 0% - 30 days from receipt of invoice or date of acceptance, whichever is later.
- b. Quantity - None
- c. Dollar Volume - None
- d. Government Educational Institutions - None
- e. Other - None

**8. Trade Agreements Act of 1979, as amended:**

All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.

**9. Statement Concerning Availability of Export Packing:** Not applicable.

**10. Small Requirements:** The minimum dollar value of orders to be issued is \$100.

**11. Maximum Order (All dollar amounts are exclusive of any discount for prompt payment.)**

- a. The Maximum Order value for the following Special Item Numbers (SINs) is \$500,000:
  - Special Item Number 132-8 - Purchase of Equipment
  - Special Item Number 132-12 – Maintenance of Equipment, Repair Service, and Repair Parts/Spare Parts
  - Special Item Number 132-32 - Term Software Licenses
  - Special Item Number 132-33 – Perpetual Software Licenses
  - Special Item Number 132-34 – Maintenance of Software

Special Item Number 132-52 - Electronic Commerce (EC) Services

- b. The Maximum Order value for the following Special Item Numbers (SINs) is \$25,000:  
Special Item Number 132-50 - Training Courses

## **12. ORDERING PROCEDURES FOR FEDERAL SUPPLY SCHEDULE CONTRACTS**

Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.

- a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.
- b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.

**13. FEDERAL INFORMATION TECHNOLOGY/TELECOMMUNICATION STANDARDS REQUIREMENTS:** ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index). Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be responded to promptly by the Contractor.

**13.1 FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS):** Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

**13.2 FEDERAL TELECOMMUNICATION STANDARDS (FED-STDS):** Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDS) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information



concerning the availability of FED-STDS should be obtained from the GSA, Federal Supply Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202)619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301)975-2833.

#### **14. CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2001)**

- (a) Security Clearances: The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.
- (b) Travel: The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. The Industrial Funding Fee does NOT apply to travel and per diem charges.

NOTE: Refer to FAR Part 31.205-46 Travel Costs, for allowable costs that pertain to official company business travel in regards to this contract.

- (c) Certifications, Licenses and Accreditations: As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.
- (d) Insurance: As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.
- (e) Personnel: The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.
- (f) Organizational Conflicts of Interest: Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.
- (g) Documentation/Standards: The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.

- (h) Data/Deliverable Requirements: Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.
- (i) Government-Furnished Property: As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.
- (j) Availability of Funds: Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.

**15. CONTRACT ADMINISTRATION FOR ORDERING ACTIVITIES:** Any ordering activity, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity's convenience, and (m) Termination for Cause (See C.1.)

**16. GSA Advantage!**

GSA Advantage! is an on-line, interactive electronic information and ordering system that provides on-line access to vendors' schedule prices with ordering information. GSA Advantage! will allow the user to perform various searches across all contracts including, but not limited to:

- (1) Manufacturer;
- (2) Manufacturer's Part Number; and
- (3) Product categories.

Agencies can browse GSA Advantage! by accessing the Internet World Wide Web utilizing a browser (ex.: NetScape). The Internet address is <http://www.fss.gsa.gov/>.

**17. PURCHASE OF OPEN MARKET ITEMS**

NOTE: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Schedule contract. ODCs (Other Direct Costs) are not part of this contract and should be treated as open market purchases. Ordering Activities procuring open market items must follow FAR 8.402(f).

For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Schedule blanket purchase agreement (BPA) or an individual task or delivery order, **only if-**

- (1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));

- (2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Schedule is fair and reasonable;
- (3) The items are clearly labeled on the order as items not on the Federal Supply Schedule; and
- (4) All clauses applicable to items not on the Federal Supply Schedule are included in the order.

## **18. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS**

a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:

- (1) Time of delivery/installation quotations for individual orders;
- (2) Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this schedule contract.
- (3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.

b. The above is not intended to encompass items not currently covered by the GSA Schedule contract.

## **19. OVERSEAS ACTIVITIES**

The terms and conditions of this contract shall apply to all orders for installation, maintenance and repair of equipment in areas listed in the pricelist outside the 48 contiguous states and the District of Columbia, except as indicated below:

None

---

Upon request of the Contractor, the ordering activity may provide the Contractor with logistics support, as available, in accordance with all applicable ordering activity regulations. Such ordering activity support will be provided on a reimbursable basis, and will only be provided to the Contractor's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract.

## **20. BLANKET PURCHASE AGREEMENTS (BPAs)**

The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).

## **21. CONTRACTOR TEAM ARRANGEMENTS**

Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clauses 552.238-74, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.

## **22. INSTALLATION, DEINSTALLATION, REINSTALLATION**

The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

## **23. SECTION 508 COMPLIANCE.**

If applicable, Section 508 compliance information on the supplies and services in this contract are available in Electronic and Information Technology (EIT) at the following:

[www.drivecam.com](http://www.drivecam.com)

The EIT standard can be found at: [www.Section508.gov/](http://www.Section508.gov/).

## **24. PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SCHEDULES.**

Prime Contractors (on cost reimbursement contracts) placing orders under Federal Supply Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order –

- (a) A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Schedule contractor); and
- (b) The following statement:

This order is placed under written authorization from \_\_\_\_\_ dated \_\_\_\_\_. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Supply Schedule contract, the latter will govern.

25. **INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)(FAR 52.228-5)**

**(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.**

**(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—**

**(1) For such period as the laws of the State in which this contract is to be performed prescribe; or**

**(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.**

**(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.**

**26. SOFTWARE INTEROPERABILITY.**

Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at <http://www.core.gov>.

**27. ADVANCE PAYMENTS**

A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 3324)

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF  
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT  
(SPECIAL ITEM NUMBER 132-8)**

1. MATERIAL AND WORKMANSHIP

All equipment furnished hereunder must satisfactorily perform the function for which it is intended.

2. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPA) agreements shall be the basis for purchase in accordance with the provisions of this contract. If time of delivery extends beyond the expiration date of the contract, the Contractor will be obligated to meet the delivery and installation date specified in the original order.

For credit card orders and BPAs, telephone orders are permissible.

3. TRANSPORTATION OF EQUIPMENT

FOB DESTINATION. Prices cover equipment delivery to destination, for any location within the geographic scope of this contract.

4. INSTALLATION AND TECHNICAL SERVICES

The DriveCam equipment is self-installable, however, DriveCam does offer installation services.

a. **INSTALLATION.** When the equipment provided under this contract is not normally self-installable, the Contractor's technical personnel shall be available to the ordering activity, at the ordering activity's location, to install the equipment and to train ordering activity personnel in the use and maintenance of the equipment. The charges, if any, for such services are listed below, or in the price schedule:

DriveCam provides installation services and training services to the ordering activity when requested.

b. **INSTALLATION, DEINSTALLATION, REINSTALLATION.** The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing

supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act applies.

The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8.

c. **OPERATING AND MAINTENANCE MANUALS.** The Contractor shall furnish the ordering activity with one (1) copy of all operating and maintenance manuals which are normally provided with the equipment being purchased.

## 5. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any equipment that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming equipment at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

## 6. WARRANTY

a. Unless specified otherwise in this contract, the Contractor's standard commercial warranty as stated in the contract's commercial pricelist will apply to this contract.

DriveCam offers 2 year warranty on products.

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

c. **Limitation of Liability.** Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

d. If inspection and repair of defective equipment under this warranty will be performed at the Contractor's plant, the address is as follows: **3954 MURPHY CANYON ROAD D205, SAN DIEGO, CALIFORNIA.**

## 7. PURCHASE PRICE FOR ORDERED EQUIPMENT

The purchase price that the ordering activity will be charged will be the ordering activity purchase price in effect at the time of order placement, or the ordering activity purchase price in effect on the installation date (or delivery date when installation is not applicable), whichever is less.

## 8. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City or otherwise) covering work of this character, and shall include all costs, if any, of such compliance in the prices quoted in this offer.

## 9. TRADE-IN OF INFORMATION TECHNOLOGY EQUIPMENT

When an ordering activity determines that Information Technology equipment will be replaced, the ordering activity shall follow the contracting policies and procedures in the Federal Acquisition Regulation (FAR), the policies and procedures regarding disposition of information technology excess personal property in the Federal Property Management Regulations (FPMR) (41 CFR 101-43.6), and the policies and procedures on exchange/sale contained in the FPMR (41 CFR part 101-46).



**TERMS AND CONDITIONS APPLICABLE TO MAINTENANCE, REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS FOR GOVERNMENT-OWNED GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY EQUIPMENT (AFTER EXPIRATION OF GUARANTEE/WARRANTY PROVISIONS AND/OR WHEN REQUIRED SERVICE IS NOT COVERED BY GUARANTEE/WARRANTY PROVISIONS) AND FOR LEASED EQUIPMENT (SPECIAL ITEM NUMBER 132-12)**

1. SERVICE AREAS

a. The maintenance and repair service rates listed herein are applicable to any ordering activity location within a 50 mile radius of the Contractor's service points. If any additional charge is to apply because of the greater distance from the Contractor's service locations, the mileage rate or other distance factor shall be stated in paragraphs 8.d and 9.d of this Special Item Number 132-12.

b. When repair services cannot be performed at the ordering activity installation site, the repair services will be performed at the Contractor's plant(s) listed below:

**3954 MURPHY CANYON ROAD D205, SAN DIEGO, CALIFORNIA**

2. MAINTENANCE ORDER

a. Agencies may use written orders, EDI orders, credit card orders, or BPAs, for ordering maintenance under this contract. The Contractor shall confirm orders within fifteen (15) calendar days from the date of receipt, except that confirmation of orders shall be considered automatic for renewals for maintenance (Special Item Number 132-12). Automatic acceptance of order renewals for maintenance service shall apply for machines which may have been discontinued from use for temporary periods of time not longer than 120 calendar days. If the order is not confirmed by the Contractor as prescribed by this paragraph, the order shall be considered to be confirmed by the Contractor.

b. The Contractor shall honor orders for maintenance for the duration of the contract period or a lesser period of time, for the equipment shown in the pricelist. Maintenance service shall commence on a mutually agreed upon date, which will be written into the maintenance order. Maintenance orders shall not be made effective before the expiration of any applicable maintenance and parts guarantee/warranty period associated with the purchase of equipment. Orders for maintenance service shall not extend beyond the end of the contract period.

c. Maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice, or shorter notice when agreed to by the Contractor; such notice to become effective thirty (30) calendar days from the date on the notification. However, the ordering activity may extend the original discontinuance date upon written notice to the Contractor, provided that such notice is furnished at least ten (10) calendar days prior to the original discontinuance date.

d. Annual Funding. When annually appropriated funds are cited on a maintenance order, the period of maintenance shall automatically expire on September 30th of the contract period, or at the end of the contract period, whichever occurs first. Renewal of a maintenance order citing the new appropriation shall be required, if maintenance is to continue during any remainder of the contract period.

e. Cross-year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month, fiscal year period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

f. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of maintenance service, if maintenance is to be terminated at that time. Orders for continued maintenance will be required if maintenance is to be continued during the subsequent period.

### 3. REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS ORDERS

a. Agencies may use written orders, EDI orders, credit card orders, blanket purchase agreements (BPAs), or small order procedures for ordering repair service and/or repair parts/spare parts under this contract. Orders for repair service shall not extend beyond the end of the contract period.

b. When repair service is ordered, only one chargeable repairman shall be dispatched to perform repair service, unless the ordering activity agrees, in advance, that additional repair personnel are required to effect repairs.

### 4. LOSS OR DAMAGE

When the Contractor removes equipment to his establishment for repairs, the Contractor shall be responsible for any damage or loss, from the time the equipment is removed from the ordering activity installation, until the equipment is returned to such installation.

### 5. SCOPE

a. The Contractor shall provide maintenance for all equipment listed herein, as requested by the ordering activity during the contract term. Repair service and repair parts/spare parts shall apply exclusively to the equipment types/models within the scope of this Information Technology Schedule.

b. Equipment placed under maintenance service shall be in good operating condition.

(1) In order to determine that the equipment is in good operating condition, the equipment shall be subject to inspection by the Contractor, without charge to the ordering activity.

(2) Costs of any repairs performed for the purpose of placing the equipment in good operating condition shall be borne by the Contractor, if the equipment was under the

Contractor's guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.

(3) If the equipment was not under the Contractor's responsibility, the costs necessary to place the equipment in proper operating condition are to be borne by the ordering activity, in accordance with the provisions of Special Item Number 132-12 (or outside the scope of this contract).

## 6. RESPONSIBILITIES OF THE ORDERING ACTIVITY

- a. Ordering activity personnel shall not perform maintenance or attempt repairs to equipment while such equipment is under the purview of a maintenance order, unless agreed to by the Contractor.
- b. Subject to security regulations, the ordering activity shall permit access to the equipment which is to be maintained or repaired.

## 7. RESPONSIBILITIES OF THE CONTRACTOR

For equipment not covered by a maintenance contract or warranty, the Contractor's repair service personnel shall complete repairs as soon as possible after notification by the ordering activity that service is required. Within the service areas, this repair service should normally be done within 4 hours after notification.

## 8. MAINTENANCE RATE PROVISIONS

a. The Contractor shall bear all costs of maintenance, including labor, parts, and such other expenses as are necessary to keep the equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the ordering activity.

### b. REGULAR HOURS

The basic monthly rate for each make and model of equipment shall entitle the ordering activity to maintenance service during a mutually agreed upon nine (9) hour principal period of maintenance, Monday through Friday, exclusive of holidays observed at the ordering activity location.

### c. AFTER HOURS

Should the ordering activity require that maintenance be performed outside of Regular Hours, charges for such maintenance, if any, will be specified in the pricelist. Periods of less than one hour will be prorated to the nearest quarter hour.

### d. TRAVEL AND TRANSPORTATION

If any charge is to apply, over and above the regular maintenance rates, because of the distance between the ordering activity location and the Contractor's service area, the charge will be:

**Negotiated on a case by case basis.**

### e. QUANTITY DISCOUNTS

Quantity discounts from listed maintenance service rates for multiple equipment owned and/or leased by a ordering activity are indicated below:

**Not applicable.**

9. REPAIR SERVICE RATE PROVISIONS

a. CHARGES. Charges for repair service will include the labor charge, computed at the rates set forth below, for the time during which repairmen are actually engaged in work, and, when applicable, the charge for travel or transportation.

b. MULTIPLE MACHINES. When repairs are ordered by a ordering activity on two or more machines located in one or more buildings within walking distance of each other, the charges will be computed from the time the repairman commences work on the first machine, until the work is completed on the last machine. The time required to go from one machine to another, or from one building to another, will be considered actual work performance, and chargeable to the ordering activity, provided the time consumed in going between machines (or buildings) is reasonable.

c. TRAVEL OR TRANSPORTATION

(1) AT THE CONTRACTOR'S SHOP

(a) When equipment is returned to the Contractor's shop for adjustments or repairs which are not covered by the guarantee/warranty provision, the cost of transportation, packing, etc., from the ordering activity location to the Contractor's plant, and return to the ordering activity location, shall be borne by the ordering activity.

(b) The ordering activity should not return defective equipment to the Contractor for adjustments and repairs or replacement without his prior consultation and instruction.

(2) AT THE ORDERING ACTIVITY LOCATION (Within Established Service Areas)

When equipment is repaired at the ordering activity location, and repair service rates are established for service areas or zones, the listed rates are applicable to any ordering activity location within such service areas or zones. No extra charge, time, or expense will be allowed for travel or transportation of repairmen or machines to or from the ordering activity office; such overhead is included in the repair service rates listed.

(3) AT THE ORDERING ACTIVITY LOCATION (Outside Established Service Areas)

(a) The repair service rates listed for subparagraph (2) above apply, except that a travel charge of "**Negotiated on a case by case basis**" per mile for repairmen will apply to the round-trip distance between the geographic limits of the applicable service area and the ordering activity location. Such charge will apply as an additional charge, but it will be limited to one round trip for each request that is made by the ordering activity for repair service, regardless of

whether repairs are performed at the ordering activity location or at the Contractor's shop.

(b) When the overall travel charge computed at the above mileage rate is unreasonable (considering the time required for travel, actual and necessary transportation costs, and the allowable ordering activity per diem rate for each night the repairman is required to remain overnight at the ordering activity location), the ordering activity shall have the option of reimbursing the Contractor for actual costs, provided that the actual costs are reasonable and allowable. The Contractor shall furnish the ordering activity with a report of travel performed and related expenses incurred. The report shall include departure and arrival dates, times, and the applicable mode of travel.

d. LABOR RATES

(1) REGULAR HOURS

The Regular Hours repair service rates listed herein shall entitle the ordering activity to repair service during the period 8:00 a.m. to 5:00 p.m., Monday through Friday, exclusive of holidays observed at the ordering activity location. There shall be no additional charge for repair service which was requested during Regular Hours, but performed outside the Regular Hours defined above, at the convenience of the Contractor.

(2) AFTER HOURS

When the ordering activity requires that repair service be performed outside the Regular Hours defined above, except Sundays and Holidays observed at the ordering activity location, the After Hours repair service rates listed herein shall apply. The Regular Hours rates defined above shall apply when repair service is requested during Regular Hours, but performed After Hours at the convenience of the Contractor.

(3) SUNDAYS AND HOLIDAYS

When the ordering activity requires that repair service be performed on Sundays and Holidays observed at the ordering activity location, the Sundays and Holidays repair service rates will be negotiated with the ordering activity on a case by case basis. When repair service is requested to be performed during Regular Hours and/or After Hours, but is performed at the convenience of the Contractor on Sundays or Holidays observed at the ordering activity location, the Regular Hours and/or After Hours repair service rates, if applicable, shall apply.

10. REPAIR PARTS/SPARE PARTS RATE PROVISIONS

All parts, furnished as spares or as repair parts in connection with the repair of equipment, unless otherwise indicated in this pricelist, shall be new, standard parts manufactured by the equipment manufacturer. All parts shall be furnished at prices indicated in the Contractor's commercial pricelist dated, at a discount of 5 % from such listed prices.

11. GUARANTEE/WARRANTY—REPAIR SERVICE AND REPAIR PARTS/SPARE PARTS

a. REPAIR SERVICE

All repair work will be guaranteed/warranted for a period of 90 day period.

b. REPAIR PARTS/SPARE PARTS

All parts, furnished either as spares or repairs parts will be guaranteed/warranted for a 90 day period.

12. INVOICES AND PAYMENTS

a. Maintenance Service

(1) Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

(2) Payment for maintenance service of less than one month's duration shall be prorated at 1/30th of the monthly rate for each calendar day.

b. Repair Service and Repair Parts/Spare Parts

Invoices for repair service and parts shall be submitted by the Contractor as soon as possible after completion of work. Payment under blanket purchase agreements will be made quarterly or monthly, except where cash payment procedures are used. Invoices shall be submitted separately to each ordering activity office ordering services under the contract. The cost of repair parts shall be shown as a separate item on the invoice, and shall be priced in accordance with paragraph #10, above. PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

**TERMS AND CONDITIONS APPLICABLE TO  
TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-32),  
PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBER 132-33) AND  
MAINTENANCE (SPECIAL ITEM NUMBER 132-34) OF GENERAL PURPOSE  
COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

1. INSPECTION/ACCEPTANCE

The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.

2. GUARANTEE/WARRANTY

a. Unless specified otherwise in this contract, the Contractor's standard commercial guarantee/warranty as stated in the contract's commercial pricelist will apply to this contract.

DriveCam warrants to the person or entity that first purchases a license for the Software for use pursuant to the terms of this license, that the Software will perform substantially in accordance with the Documentation for the ninety (90) day period following receipt of the Software when used on the recommended hardware configuration. Non-substantial variations of performance from the Documentation does not establish a warranty right.

b. The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

c. Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items.

3. TECHNICAL SERVICES

The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number 858-430-4000 for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from 9 am PST to 5 pm PST.

4. SOFTWARE MAINTENANCE

a. Software maintenance service shall include the following:

Maintenance to Driving Behavior Management Systems.

b. Invoices for maintenance service shall be submitted by the Contractor on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.

5. PERIODS OF TERM LICENSES (132-32) AND MAINTENANCE (132-34)

a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.

b. Term licenses and/or maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.

c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.

d. Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.

e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

6. CONVERSION FROM TERM LICENSE TO PERPETUAL LICENSE

a. The ordering activity may convert term licenses to perpetual licenses for any or all software at any time following acceptance of software. At the request of the ordering activity the Contractor shall furnish, within ten (10) calendar days, for each software product that is contemplated for conversion, the total amount of conversion credits which have accrued while the software was on a term license and the date of the last update or enhancement.

b. Conversion credits which are provided shall, within the limits specified, continue to accrue from one contract period to the next, provided the software remains on a term license within the ordering activity.

c. The term license for each software product shall be discontinued on the day immediately preceding the effective date of conversion from a term license to a perpetual license.

d. The price the ordering activity shall pay will be the perpetual license price that prevailed at the time such software was initially ordered under a term license, or the perpetual license price prevailing at the time of conversion from a term license to a perpetual license, whichever is the



less, minus an amount equal to N/A % of all term license payments during the period that the software was under a term license within the ordering activity.

## 7. TERM LICENSE CESSATION

a. After a software product has been on a continuous term license for a period of 60 months, a fully paid-up, non-exclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid-up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to be available for software that is initially ordered under this contract, until a fully paid-up perpetual license accrues to the ordering activity. However, should the term license of the software be discontinued before the specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited.

b. The Contractor agrees to provide updates and maintenance service for the software after a perpetual license has accrued, at the prices and terms of Special Item Number 132-34, if the licensee elects to order such services. Title to the software shall remain with the Contractor.

## 8. UTILIZATION LIMITATIONS - (132-32, 132-33, AND 132-34)

a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.

b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:

(1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.

(2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.

(3) Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion

thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.

(4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of disaster recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

#### 9. SOFTWARE CONVERSIONS - (132-32 AND 132-33)

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual license (132-33), the purchase price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term license (132-32), conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

#### 10. DESCRIPTIONS AND EQUIPMENT COMPATIBILITY

The Contractor shall include, in the schedule pricelist, a complete description of each software product and a list of equipment on which the software can be used. Also, included shall be a brief, introductory explanation of the modules and documentation which are offered.

#### 11. RIGHT-TO-COPY PRICING

The Contractor shall insert the discounted pricing for right-to-copy licenses.

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF  
TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE  
(SPECIAL ITEM NUMBER 132-50)**

1. SCOPE

- a. The Contractor shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.
- b. The Contractor shall provide training at the Contractor's facility and/or at the ordering activity's location, as agreed to by the Contractor and the ordering activity.

2. ORDER

Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.

3. TIME OF DELIVERY

The Contractor shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the ordering activity.

4. CANCELLATION AND RESCHEDULING

- a. The ordering activity will notify the Contractor at least seventy-two (72) hours before the scheduled training date, if a student will be unable to attend. The Contractor will then permit the ordering activity to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.
- b. In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the ordering activity to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge.
- c. The ordering activity reserves the right to substitute one student for another up to the first day of class.

d. In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the ordering activity, the Contractor must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.

## 5. FOLLOW-UP SUPPORT

The Contractor agrees to provide each student with unlimited telephone support for a period of one (1) year from the completion of the training course. During this period, the student may contact the Contractor's instructors for refresher assistance and answers to related course curriculum questions.

## 6. PRICE FOR TRAINING

The price that the ordering activity will be charged will be the ordering activity training price in effect at the time of order placement, or the ordering activity price in effect at the time the training course is conducted, whichever is less.

## 7. INVOICES AND PAYMENT

Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). **PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.**

## 8. FORMAT AND CONTENT OF TRAINING

a. The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.

b. **\*\*If applicable\*\*** For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.

c. The Contractor shall provide each student with a Certificate of Training at the completion of each training course.

d. The Contractor shall provide the following information for each training course offered:

- (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);
- (2) The length of the course;
- (3) Mandatory and desirable prerequisites for student enrollment;
- (4) The minimum and maximum number of students per class;
- (5) The locations where the course is offered;
- (6) Class schedules; and
- (7) Price (per student, per class (if applicable)).

e. For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.

9. "NO CHARGE" TRAINING

The Contractor shall describe any training provided with equipment and/or software provided under this contract, free of charge, in the space provided below.

None

## **TERMS AND CONDITIONS APPLICABLE TO ELECTRONIC COMMERCE (EC) SERVICES (SPECIAL ITEM NUMBER 132-52)**

### **1. SCOPE**

- a. The prices, terms and conditions stated under Special Item Number 132-52 Electronic Commerce Services apply exclusively to EC Services within the scope of this Information Technology Schedule.
- b. The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.

### **2. PERFORMANCE INCENTIVES**

- a. Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract in accordance with this clause.
- b. The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.
- c. Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.

### **3. ORDER**

- a. Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.
- b. All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.

### **4. PERFORMANCE OF SERVICES**

- a. The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.

b. The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.

c. The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.

d. Any Contractor travel required in the performance of IT/EC Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.

#### 5. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

## 6. INSPECTION OF SERVICES

The Inspection of Services–Fixed Price (AUG 1996) (Deviation – May 2003) clause at FAR 52.246-4 applies to firm-fixed price orders placed under this contract. The Inspection–Time-and-Materials and Labor-Hour (JAN 1986) (Deviation – May 2003) clause at FAR 52.246-6 applies to time-and-materials and labor-hour orders placed under this contract.

## 7. RESPONSIBILITIES OF THE CONTRACTOR

The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Deviation – May 2003) Rights in Data – General, may apply.

## 8. RESPONSIBILITIES OF THE ORDERING ACTIVITY

Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT/EC Services.

## 9. INDEPENDENT CONTRACTOR

All IT/EC Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.

## 10. ORGANIZATIONAL CONFLICTS OF INTEREST

### a. Definitions.

“Contractor” means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.

“Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.

An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.

b. To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest



that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.

#### 11. INVOICES

The Contractor, upon completion of the work ordered, shall submit invoices for IT/EC services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.

#### 12. PAYMENTS

For firm-fixed price orders the ordering activity shall pay the Contractor, upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.232-7 (DEC 2002), (Alternate II – Feb 2002) (Deviation – May 2003)) applies to labor-hour orders placed under this contract.

#### 13. RESUMES

Resumes shall be provided to the GSA Contracting Officer or the user ordering activity upon request.

#### 14. INCIDENTAL SUPPORT COSTS

Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.

#### 15. APPROVAL OF SUBCONTRACTS

The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.

#### 16. DESCRIPTION OF IT/EC SERVICES AND PRICING

See DriveCam's GSA Price List

## **USA COMMITMENT TO PROMOTE SMALL BUSINESS PARTICIPATION PROCUREMENT PROGRAMS**

### **PREAMBLE**

DriveCam, Inc. provides commercial products and services to ordering activities. We are committed to promoting participation of small, small disadvantaged and women-owned small businesses in our contracts. We pledge to provide opportunities to the small business community through reselling opportunities, mentor-protégé programs, joint ventures, teaming arrangements, and subcontracting.

### **COMMITMENT**

To actively seek and partner with small businesses.

To identify, qualify, mentor and develop small, small disadvantaged and women-owned small businesses by purchasing from these businesses whenever practical.

To develop and promote company policy initiatives that demonstrate our support for awarding contracts and subcontracts to small business concerns.

To undertake significant efforts to determine the potential of small, small disadvantaged and women-owned small business to supply products and services to our company.

To insure procurement opportunities are designed to permit the maximum possible participation of small, small disadvantaged, and women-owned small businesses.

To attend business opportunity workshops, minority business enterprise seminars, trade fairs, procurement conferences, etc., to identify and increase small businesses with whom to partner.

To publicize in our marketing publications our interest in meeting small businesses that may be interested in subcontracting opportunities.

We signify our commitment to work in partnership with small, small disadvantaged and women-owned small businesses to promote and increase their participation in ordering activity contracts.

To accelerate potential opportunities please contact:

David Blackledge  
Manager, Government Sales  
Drivecam, Inc  
[www.drivecam.com](http://www.drivecam.com)

[gsa@drivecam.com](mailto:gsa@drivecam.com)  
o 858-430-3090  
c 760-207-2444

BEST VALUE  
BLANKET PURCHASE AGREEMENT  
FEDERAL SUPPLY SCHEDULE

San Francisco Municipal Transportation Agency

In the spirit of the Federal Acquisition Streamlining Act San Francisco Municipal Transportation Agency and DriveCam, Inc. enter into a cooperative agreement to further reduce the administrative costs of acquiring commercial items from the General Services Administration (GSA) Federal Supply Schedule Contract(s) GS-35F-0623S.

Federal Supply Schedule contract BPAs eliminate contracting and open market costs such as: search for sources; the development of technical documents, solicitations and the evaluation of offers. Teaming Arrangements are permitted with Federal Supply Schedule Contractors in accordance with Federal Acquisition Regulation (FAR) 9.6.

This BPA will further decrease costs, reduce paperwork, and save time by eliminating the need for repetitive, individual purchases from the schedule contract. The end result is to create a purchasing mechanism for the ordering activity that works better and costs less.

Signatures

\_\_\_\_\_  
Nathaniel P. Ford Sr.                      Date  
Executive Director/CEO  
San Francisco Municipal Transportation Agency

\_\_\_\_\_  
William Ruff                                      Date  
Senior Finance Director  
DriveCam, Inc.

(SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY)  
BLANKET PURCHASE AGREEMENT

Pursuant to GSA Federal Supply Schedule Contract Number(s) GS-35F-0623S, Blanket Purchase Agreements, the Contractor agrees to the following terms of a Blanket Purchase Agreement (BPA) EXCLUSIVELY WITH San Francisco Municipal Transportation Agency (SFMTA):

(1) The following contract items can be ordered under this BPA. All orders placed against this BPA are subject to the terms and conditions of the contract and the SFMTA Statement of Work, Three-Party Escrow Service Agreement, and Software License and Maintenance Services Agreement which are incorporated into this BPA by reference:

MODEL NUMBER/PART NUMBER		*SPECIAL
BPA DISCOUNT/PRICE		
<u>ALL</u>	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

(2) Delivery:

DESTINATION	DELIVERY SCHEDULES / DATES
<u>As required by delivery order</u>	<u>As required by delivery order</u>
_____	_____
_____	_____

(3) The San Francisco Municipal Agency estimates, but does not guarantee, that the volume of purchases through this agreement will be 850.

(4) This BPA does not obligate any funds.

(5) This BPA expires on 4/15/2010 or at the end of the contract period, whichever is earlier.

(6) The following office(s) is hereby authorized to place orders under this BPA:

OFFICE	POINT OF CONTACT
<u>Operations Engineering</u>	<u>Elson Hao</u>
_____	_____
_____	_____

(7) Orders will be placed against this BPA via Electronic Data Interchange (EDI), FAX, or paper.

(8) Unless otherwise agreed to, all deliveries under this BPA must be accompanied by delivery tickets or sales slips that must contain the following information as a minimum:

- (a) Name of Contractor;
- (b) Contract Number;
- (c) BPA Number;
- (d) Model Number or National Stock Number (NSN);
- (e) Purchase Order Number;
- (f) Date of Purchase;
- (g) Quantity, Unit Price, and Extension of Each Item (unit prices and extensions need not be shown when incompatible with the use of automated systems; provided, that the invoice is itemized to show the information); and
- (h) Date of Shipment.

(9) The requirements of a proper invoice are specified in the Federal Supply Schedule contract. Invoices will be submitted to the address specified within the purchase order transmission issued against this BPA.

(10) The terms and conditions included in this BPA apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of this BPA and the Contractor's invoice, the provisions of this BPA will take precedence.

BASIC GUIDELINES FOR USING  
“CONTRACTOR TEAM ARRANGEMENTS”

Federal Supply Schedule Contractors may use “Contractor Team Arrangements” (see FAR 9.6) to provide solutions when responding to a ordering activity requirements.

These Team Arrangements can be included under a Blanket Purchase Agreement (BPA). BPAs are permitted under all Federal Supply Schedule contracts.

Orders under a Team Arrangement are subject to terms and conditions or the Federal Supply Schedule Contract.

Participation in a Team Arrangement is limited to Federal Supply Schedule Contractors.

Customers should refer to FAR 9.6 for specific details on Team Arrangements.

Here is a general outline on how it works:

- The customer identifies their requirements.
- Federal Supply Schedule Contractors may individually meet the customers needs, or -
- Federal Supply Schedule Contractors may individually submit a Schedules “Team Solution” to meet the customer’s requirement.
- Customers make a best value selection.

# **DriveCam's GSA PRICE LIST**

GSA Price List SIN 132-8- Purchase of Equipment

Line #	Item #	Description	# of Units	GSA Price (Inclusive of IFF)
1	VER-DC3-0003	DriveCam Wireless Event Recorder with 2 year warranty	Per each unit	\$ 382.87
2	SRV-MGS-0003	<i>Manually Generated Cellular Upload Access</i>	<i>Per each trigger access attempt</i>	\$ 0.50
3	VER-DC3-0004	<i>DriveCam Cellular Event Recorder - instant notification of events through forced download - daily updates that do not require return to central location - GPS on events with capability for full-time GPS. - DriverID-capable - automatic updates via downloads</i>	Per each unit	\$ 473.80
4	1405-00106-0000	3M tape removal tool (08978)	1 - 500 units	\$ 38.29
5	1405-00106-0000	3M tape removal tool (08978)	501 - 1000 units	\$ 36.27
6	1405-00106-0000	3M tape removal tool (08978)	1001 + units	\$ 34.26
7	2015-00031-0000	DC power cable (additional)	1 - 500 units	\$ 14.36
8	2015-00031-0000	DC power cable (additional)	501 - 1000 units	\$ 13.60
9	2015-00031-0000	DC power cable (additional)	1001 + units	\$ 12.85
10	2015-00007-0000	Extended bracket - non windshield mount	1 - 500 units	\$ 14.36
11	2015-00007-0000	Extended bracket - non windshield mount	501 - 1000 units	\$ 13.60
12	2015-00007-0000	Extended bracket - non windshield mount	1001 + units	\$ 12.85
13	2005-00025-0002	External power supply	1 - 500 units	\$ 23.93
14	2005-00025-0002	External power supply	501 - 1000 units	\$ 22.67



Line #	Item #	Description	# of Units	GSA Price (Inclusive of IFF)
15	2005-00025-0002	External power supply	1001 + units	\$ 21.41
16	2015-00005-0005	GPS cable	1 - 500 units	\$ 17.23
17	2015-00005-0005	GPS cable	501 - 1000 units	\$ 16.32
18	2015-00005-0005	GPS cable	1001 + units	\$ 15.42
19	2005-00028-0003	Illuminator module	1 - 500 units	\$ 47.86
20	2005-00028-0003	Illuminator module	501 - 1000 units	\$ 45.34
21	2005-00028-0003	Illuminator module	1001 + units	\$ 42.82
22	2015-00005-0006	Remote Panic Button	1 - 500 units	\$ 38.29
23	2015-00005-0006	Remote Panic Button	501 - 1000 units	\$ 49.87
24	2015-00005-0006	Remote Panic Button	1001 + units	\$ 47.10
25	2015-00006-0008	Replacement kit: 2 pwr cbls, 2 brkts, & 1yd tape	1 - 500 units	\$ 52.64
26	2015-00006-0008	Replacement kit: 2 pwr cbls, 2 brkts, & 1yd tape	501 - 1000 units	\$ 49.87
27	2015-00006-0008	Replacement kit: 2 pwr cbls, 2 brkts, & 1yd tape	1001 + units	\$ 47.10
28	1130-00119-0000	Torx key	1 - 500 units	\$ 9.57
29	1130-00119-0000	Torx key	501 - 1000 units	\$ 9.07
30	1130-00119-0000	Torx key	1001 + units	\$ 8.56
31	1130-00109-0000	Torx Screw, 1/4" - 20 x 1/2"	1 - 500 units	\$ 0.48
32	1130-00109-0000	Torx Screw, 1/4" - 20 x 1/2"	501 - 1000 units	\$ 0.45
33	1130-00109-0000	Torx Screw, 1/4" - 20 x 1/2"	1001 + units	\$ 0.43
34	2015-00001-0000	Universal Module (for PTM and other complex installations)	1 - 500 units	\$ 52.64

Line #	Item #	Description	# of Units	GSA Price (Inclusive of IFF)
35	2015-00001-0000	Universal Module (for PTM and other complex installations)	501 - 1000 units	\$ 49.87
36	2015-00001-0000	Universal Module (for PTM and other complex installations)	1001 + units	\$ 47.10
37	1405-00102-0000	VHB two-sided adhesive tape - per yard	1 - 500 units	\$ 4.79
38	1405-00102-0000	VHB two-sided adhesive tape - per yard	501 - 1000 units	\$ 4.53
39	1405-00102-0000	VHB two-sided adhesive tape - per yard	1001 + units	\$ 4.28
40	2015-00006-0009	Windshield bracket, DC II	1 - 500 units	\$ 9.57
41	2015-00006-0009	Windshield bracket, DC II	501 - 1000 units	\$ 9.07
42	2015-00006-0009	Windshield bracket, DC II	1001 + units	\$ 8.56
43	7000-00ACC-0005	DriveCam II Five-Unit AccessoryKit, includes (5) bracket-windshield mount, (5) Event Recorder harness for power - 24V, (1) VHB two-sided adhesive tape - per yard, (10) torx screws, 1/4" - 30x1/2", (1) torx key	Each	\$ 113.90
44	7000-00ACC-0010	DriveCam II Five-Unit AccessoryKit, includes (10) bracket-windshield mount, (10) Event Recorder harness for power - 24V, (1) VHB two-sided adhesive tape - per yard, (20) torx screws, 1/4" - 30x1/2", (1) torx key	Each	\$ 208.11
45	7000-00ACC-0020	DriveCam II Five-Unit AccessoryKit, includes (20) bracket-windshield mount, (20) Event Recorder harness for power - 24V, (1) VHB two-sided adhesive tape - per yard, (40) torx screws, 1/4" - 30x1/2", (1) torx key	Each	\$ 381.96

Line #	Item #	Description	# of Units	GSA Price (Inclusive of IFF)
46	7000-00EXT-0005	DriveCam II Five-Unit Extended AccessoryKit, includes (5) extended bracket-windshield mount, (5) Event Recorder harness for power - 24V, (1) VHB two-sided adhesive tape - per yard, (10) torx screws, 1/4" - 30x1/2", (1) torx key	Each	\$ 132.75
47	4225-00014-0000	Installation of Wireless Access Point	Not applicable	\$ 1,914.36
48	4225-00015-0000	Installation, Cable - On Site	Not applicable	\$ 957.18
49	4225-00016-0000	Event Recorder Intialization - On Site (Client installed vehicles)	Not applicable	\$ 4.79
50	SRV-INS-0002	DriveCam vehicle installation, per day/per Technician (Actual Vehicle Installs Per Day Based on Vehicle Type)	Subsequent Days	\$ 957.18
51	SRV-INS-0001	DriveCam vehicle installation, per day/per Technician (Actual Vehicle Installs Per Day Based on Vehicle Type)	For 1st Day	\$ 1,435.77
52	SRV-INS-0003	Implementation Services	One-time Set Up Fee	\$ 1,148.61

SIN 132-12 - Equipment Maintenance

Line #	Model#	Item #	Description	GSA Price (Inclusive of IFF)
1	WARRANTY	4510-00001-0000	DriveCam Event Recorder Extended Warranty beyond year 2 (per unit/per month)	\$3.99
2	IR	2005-00028-0003	Illuminator module (per unit/per month)	\$1.60
3	RT-100	2015-00005-0006	Remote Panic Button (per unit/per month)	\$1.60
4	UM05	2015-00001-0000	Universal Module (for PTM and other complex installations) (per unit/per month)	\$1.60

SIN 132-32 - Term Software License

Line #	Item #	Description	GSA Price (inclusive of IFF)
1	3235-00200-0530	HindSight 20/20*	\$ 114.86
2	4225-00005-05XO	Installation, Software – HindSight 20/20 - On Site (when purchased with 4225-00014-0000 or 4225-00019-0000)	\$ 478.59
3	4230-00009-0000	Data Recovery (no guarantees) per Hour	\$ 143.58

*\*Current version of software will be supplied to the ordering agency. Software term license includes annual license, tech support and software upgrades.*

SIN 132-33 – Perpetual Software License

Line #	Item #	Description	GSA Price (includes IFF)
1	3235-00200-0530	HindSight 20/20	\$ 459.45
2	3235-00200-0GK	HindSight 20/20 with Gold Key Option	\$ 831.23

**Note:**

**\*Requires the concurrent purchase of a DriveCam video event recorder (camera) under this GSA schedule.**

**\*Gold Key Users will have a perpetual Right-To-Use license. Purchaser will have the ability for license floating to other newly purchased government vehicles. Also provides for direct access to DriveCam engineers and technical support Level 1 and 2. Direct first level participation in HindSight Beta program.**

SIN 132-34 – Software Maintenance

Line #	Model#	Item #	Description	GSA Price (inclusive of IFF)
1	HS-5.2	3235-00191-0014	Monthly Maintenance: HindSight 20/20 Rev.5.2 License, tech support and software upgrades	\$ 5.74

**Note:**

*Beginning at 61 months after term license.*

*Beginning at month 13 for perpetual license.*

SIN 132-50 – Training

Title of Course	Length of Course (Hours)	Unit Price	GSA PRICE W/IFF (\$)
<b>DriveCam Academy</b>	<b>7 hours</b>	<b>per individual student</b>	<b>\$ 263.22</b>
<b>Training for Software Usage, Event Review, Driver Coaching - Dedicated Web Ex Training Session (Per Session)</b>	<b>3 Hours</b>	<b>per class/group session</b>	<b>\$ 502.52</b>
<b>Training for Software Usage, Event Review, Driver Coaching (On-Site/Per Day)</b>	<b>8 hours</b>	<b>Per Day</b>	<b>\$ 2,297.23</b>
<b>Training for Software Usage, Event Review, Driver Coaching (Open Enrollment WebEx Training Per Participant)</b>	<b>8 hours</b>	<b>Per Participant</b>	<b>\$ 90.93</b>



SIN 132-50: TRAINING COURSE DESCRIPTIONS

<b>Training Course</b>	<b>DriveCam Academy</b>
<b>Brief description</b>	<p>This session focuses on how to get more from your already operating DriveCam program. Topics in this session include: Best practices with the DriveCam program, legal updates on the use of cameras in the vehicle, effective event review and new products at DriveCam.</p> <p>This is a per student charge. Training is held at a site provided by DriveCam. Expenses for student travel and per diem are at additional costs.</p>
<b>Length of Course</b>	<b>7 hours</b>
<b>Mandatory Requirements</b>	<b>Must be deployed with DriveCam</b>
<b>Minimum/Maximum number of students per class</b>	<b>1 min/ 30 max</b>
<b>Locations where the course is offered</b>	<b>Los Angeles, Dallas, Chicago, Northern New Jersey</b>
<b>Class Schedule</b>	<b>Contact DriveCam for complete schedule</b>

<b>Training Course</b>	<b>Training for Software Usage, Event Review, Driver Coaching - Dedicated Web Ex Training Session (Per Session)</b>
<b>Brief description</b>	<p>Conducted via WebEx. Key topics covered include: how to use the software, tips on reviewing events, counseling drivers effectively and tracking program success. There will also be time dedicated to best practices for management of the program.</p> <p>This is training done via the web, not at site.</p>
<b>Length of Course</b>	<b>3 Hours</b>

<b>Mandatory Requirements</b>	<b>Must be deployed with DriveCam equipment</b>
<b>Minimum/Maximum number of students per class</b>	<b>1 min/ 25 max</b>
<b>Locations where the course is offered</b>	<b>Web Based</b>
<b>Class Schedule</b>	<b>Per client's request</b>

<b>Training Course</b>	<b>Training for Software Usage, Event Review, Driver Coaching (On-Site/Per Day)</b>
<b>Brief description</b>	<p><b>DriveCam Training staff comes on site to present a comprehensive training session on how to: use the software, accurately review events, counseling drivers effectively and tracking program success. There will also be time dedicated to best practices for management of the program.</b></p> <p><b>This is a per class/group charge. Training is held at the client's location. Travel and per diem for instructor are at additional costs.</b></p>
<b>Length of Course</b>	<b>8 Hours</b>
<b>Mandatory Requirements</b>	<b>Must be deployed with DriveCam equipment</b>
<b>Minimum/Maximum number of students per class</b>	<b>1 minimum/ 20 maximum</b>
<b>Locations where the course is offered</b>	<b>Buying Activity Site</b>
<b>Class Schedule</b>	<b>Per client's request</b>

<b>Training Course</b>	<b>Training for Software Usage, Event Review, Driver Coaching (Open Enrollment WebEx Training Per Participant)</b>
<b>Brief description</b>	<b>A comprehensive training session on how to: use the software, accurately review events, counseling drivers effectively and tracking program success. Review of best practices for management of the program.</b>

<b>Length of Course</b>	<b>8 Hours</b>
<b>Mandatory Requirements</b>	<b>Must be deployed with DriveCam equipment</b>
<b>Minimum/Maximum number of students per class</b>	<b>Per Participant</b>
<b>Locations where the course is offered</b>	<b>Online course</b>
<b>Class Schedule</b>	<b>Per client's request</b>

Line #	Item #	Description	GSA Price (inclusive of IFF)
1	7000-000MS-0001- CUA	<b>DriveCam Managed Services Upgrade for Capital Purchase Speciality and Emergency Vehicles, (Year 1 and beyond): Wireless Event Recorder – Hindsight Software, video clip event analysis, tech support and upgrades; cellular hosting access</b>	\$ 442.22
2	4230-00ASP-PILO	<b>Self Managed Pilot (Per Month)</b>	\$ 43.00
3	4230-000MS-PILO	<b>Managed Service Pilot (Per Month)</b>	\$ 76.00
4	3235-000HS-INIT	<b>Initial Year Hindsight License – Requires 4230-00ASP-INIT (Annual Fee)</b>	\$ 114.00
5	4230-00ASP-INIT	<b>ASP Hosting Fee – Requires 3235-000HS-INIT; Applicable Cellular Transport Plan Subscription for Appropriate Tier Usage (Annual Fee)</b>	\$ 57.00
6	4230-00SEM-INIT	<b>Safety Enhancement Module Subscription – Requires 3235-000HS-INIT AND 4230-00ASP-INIT (Annual Fee)</b>	\$ 86.00
7	4230-0XDUR-INIT	<b>20 Second Clip Duration – Requires 3235-000HS-INIT AND 4230-00ASP-INIT (Annual Fee)</b>	\$ 114.00
8	4230-00GPS-INIT	<b>Real-Time GPS Tracking and API – Requires 3235-000HS-INIT AND 4230-00ASP-INIT AND 4230-0CELL-INIT (Annual Fee)</b>	\$ 114.00
9	4230-0CELL-INIT (TIER 1)	<b>Cellular Transport Plan Subscription (Tier 1) – Requires 3235-000HS-INIT AND 4230-00ASP-INIT (Annual Fee)</b>	\$ 40.00
10	4230-0CELL-INIT (TIER 2)	<b>Cellular Transport Plan Subscription (Tier 2) – Requires 3235-000HS-INIT AND 4230-00ASP-INIT (Annual Fee)</b>	\$ 76.00
11	4230-0CELL-INIT (TIER 3)	<b>Cellular Transport Plan Subscription (Tier 3) – Requires</b>	\$ 128.00

Line #	Item #	Description	GSA Price (inclusive of IFF)
		<b>3235-000HS-INIT AND 4230-00ASP-INIT (Annual Fee)</b>	
12	<b>4230-000MS-INIT (TIER 1)</b>	<b>Managed Service Review (Tier 1) – Requires 3235-000HS-INIT; 4230-00ASP-INIT; AND 4230-0CELL-INIT(TIER 1) (Annual Fee)</b>	<b>\$ 80.00</b>
13	<b>4230-000MS-INIT (TIER 2)</b>	<b>Managed Service Review (Tier 2) – Requires 3235-000HS-INIT; 4230-00ASP-INIT; AND 4230-0CELL-INIT(TIER 2) (Annual Fee)</b>	<b>\$ 232.00</b>
14	<b>4230-000MS-INIT (TIER 3)</b>	<b>Managed Service Review (Tier 3) – Requires 3235-000HS-INIT; 4230-00ASP-INIT; AND 4230-0CELL-INIT(TIER 3) (Annual Fee)</b>	<b>\$ 496.00</b>
15	<b>3235-000HS-SUBS</b>	<b>1 Year Hindsight License (Renewal) – Requires 4230-00ASP-INIT</b>	<b>\$ 114.00</b>
16	<b>4230-00ASP-SUBS</b>	<b>ASP Hosting Fee (Renewal) – Requires 3235-000HS-INIT (Annual Fee)</b>	<b>\$ 57.00</b>
17	<b>4230-00SEM-SUBS</b>	<b>Safety Enhancement Module Subscription (Renewal) – Requires 3235-000HS-INIT AND 4230-00ASP-INIT (Annual Fee)</b>	<b>\$ 86.00</b>
18	<b>4230-0XDUR-SUBS</b>	<b>20 Second Clip Duration (Renewal) – Requires 3235-000HS-INIT AND 4230-00ASP-INIT (Annual Fee)</b>	<b>\$ 114.00</b>
19	<b>4230-00GPS-SUBS</b>	<b>Real-Time GPS Tracking and API (Renewal) – Requires 3235-000HS-INIT AND 4230-00ASP-INIT AND 4230-0CELL-INIT (Annual Fee)</b>	<b>\$ 114.00</b>
20	<b>4230-0CELL-SUBS (TIER 1)</b>	<b>Cellular Transport Plan Subscription (Tier 1) (Renewal) – Requires 3235-000HS-INIT AND 4230-00ASP-INIT (Annual Fee)</b>	<b>\$ 40.00</b>
21	<b>4230-0CELL-SUBS (TIER 2)</b>	<b>Cellular Transport Plan Subscription (Tier 2) (Renewal) – Requires 3235-000HS-INIT AND 4230-00ASP-INIT (Annual Fee)</b>	<b>\$ 76.00</b>
22	<b>4230-0CELL-SUBS (TIER 3)</b>	<b>Cellular Transport Plan Subscription (Tier 3) (Renewal) – Requires 3235-000HS-INIT AND 4230-00ASP-INIT (Annual Fee)</b>	<b>\$ 128.00</b>
23	<b>4230-000MS-SUBS</b>	<b>Managed Service Review (Tier 1)</b>	<b>\$ 80.00</b>

Line #	Item #	Description	GSA Price (inclusive of IFF)
	(TIER 1)	(Renewal) - Requires 3235-000HS-INIT; 4230-00ASP-INIT; AND 4230-0CELL-INIT(TIER 1) (Annual Fee)	
24	4230-000MS-SUBS (TIER 2)	Managed Service Review (Tier 2) (Renewal) - Requires 3235-000HS-INIT; 4230-00ASP-INIT; AND 4230-0CELL-INIT(TIER 2) (Annual Fee)	\$ 232.00
25	4230-000MS-SUBS (TIER 3)	Managed Service Review (Tier 3) (Renewal) – Requires 3235-000HS-INIT; 4230-00ASP-INIT; AND 4230-0CELL-INIT(TIER 3) (Annual Fee)	\$ 496.00

Note:

\* Tier Level Classification is included.

\* One year minimum of DriveCam Managed Services

\* DriveCam is aware that the Annual Fees noted may need to be prorated to meet Government's procurement requirement. Monthly prorated fees can be negotiated at the task order level.

**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

The following terms and conditions are incorporated into the Blanket Purchase Agreement (“Blanket Purchase Agreement” or “BPA”) between the City and County of San Francisco, through its San Francisco Municipal Transportation Agency (“SFMTA” or “City”), and DriveCam, Inc. (“DriveCam” or “Contractor”) under GSA Federal Supply Schedule Contract GS-35F-0623S.

The following describes all possible equipment and services for which the SFMTA may issue a purchase order until April 15, 2010, but shall not obligate the SFMTA, in any manner, to procure any or all of the equipment or services specified. By executing the Blanket Purchase Agreement, DriveCam, Inc. agrees to provide the equipment and services as specified in any purchase order issued in compliance with GSA Federal Supply Schedule Contract GS-35F-0623S and the Blanket Purchase Agreement.

**PART 1 – GENERAL**

**1.01 DESCRIPTION**

- A. The work specified in this section shall consist of furnishing, installing and programming the DriveCam equipment and accessories in ten (10) different makes of SFMTA rubber tire revenue vehicles to provide monitoring and recording capability for a fully functional event recorder system as specified herein (the “Specifications”).
- B. The DriveCam system (“DriveCam System”) shall include the DC3 Cellular Event Recorder (“Event Recorder”) with audio front and rear video views and internal IR, DriveCam GPS system with GPS antenna (internal or external), remote push button assembly, 5-port or 6-port (as available) access terminal, wiring bundle, electrical connects, securing tie down straps, mounting brackets, miscellaneous hardware and all associated equipment to provide an operational event recorder system that meets the written software and hardware related specifications DriveCam provided to SFMTA in connection herewith.
- C. The rubber tire revenue vehicles for which the DriveCam system will be installed shall include:
  - 1. Neoplan 40-ft diesel bus
  - 2. Neoplan 60-ft diesel bus
  - 3. NABI 40-ft diesel bus
  - 4. Orion 40-ft hybrid electric-diesel bus
  - 5. Orion 30-ft hybrid electric-diesel bus
  - 6. Gillig 40-ft diesel bus
  - 7. ETI 40-ft trolley bus
  - 8. ETI 60-ft trolley bus
  - 9. New Flyer 60-ft trolley bus
  - 10. New Flyer 60-ft diesel bus

**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

- D. The Contractor shall provide Managed Services identified in the GSA Schedule as 4230-000MS-INIT (TIER 3) Managed Service Review. The Managed Services shall include program management, training and implementation, daily (to the extent applicable vehicles are used daily) downloads of recorded events from all SFMTA vehicles in which an Event Recorder is installed and operational, filtering of these events, analysis of driving behavior, performance and results reporting, and hosting and system maintenance.
- E. The SFMTA may purchase up to a maximum of 850 DriveCam Systems and both parties agree to use reasonable efforts to have at least 824 DriveCam Systems installed for SFMTA rubber tired vehicles by August 1, 2009.
- F. The SFMTA will issue multiple purchase orders against the BPA for the purchase of a specific quantity of DriveCam Systems and related services.
- G. A prototype installation will be the first purchase order that will be issued against the BPA and shall serve as the basis for the Contractor to accurately determine the labor time needed to install a DriveCam System in each of the different makes of rubber tire revenue vehicles in the SFMTA fleet.

**1.02 QUALITY ASSURANCE/QUALITY CONTROL**

- A. The Contractor shall use only skilled workers who are thoroughly trained and experienced in the necessary crafts methods for proper performance of the work required under these Specifications.
- B. All materials and equipment installed under the BPA shall be new, unused, the version/model specified herein, and free of material defects. All software shall be the most current, stable version available for the proposed equipment.
- C. The Contractor shall establish, maintain and enforce a Quality Assurance Program. The Quality Assurance Program shall demonstrate that all activities affecting quality are correctly performed by competent people and is subject to SFMTA review upon reasonable request. These requirements shall apply to all BPA activities, including design, procurement, manufacturing, assembly, inspection and transportation of the DriveCam Systems.

**1.03 TRAINING**

- A. After completing any installation, the Contractor shall train the designated SFMTA staff on the following:
  - 1. DriveCam equipment replacement in the bus.



**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

2. HindSight (event scoring and documentation database) login and access.
- B. As part of the order to purchase DriveCam Systems, the SFMTA will purchase on-site training classes for designated staff on software usage, event review and driver coaching. The total number of training classes purchase shall not exceed five (5) sessions.
- C. All Contractor employees who will be working on this project shall undergo SFMTA conducted safety training. Time spent by Contactor's employees in any SFMTA training will be billed to SFMTA at DriveCam's then current hourly rates as indicated in purchase order.

**1.04 SUBMITTALS**

- A. Prior to starting any work, the Contractor shall submit the following to the designated SFMTA Engineer for review and approval:
1. Manufacturer's catalog data, photographs for all items including wiring product information, test equipment and special fabrications.
  2. A test checklist listing each component, subsystem and complete system to be tested. This list shall have a check-off and sign-off space for both Contractor and the designated SFMTA Engineer to indicate that all items have been tested.
  3. Detailed testing procedure to ensure all items on the test checklist are properly installed.
- B. After completing any installation, the Contractor shall submit the following to the designated SFMTA Engineer for review and approval:
1. Photographs clearly indicating actual routing of all wiring; installed wire types and sizes; installed system wiring diagrams; connection diagrams and interface of all system components.
  2. Photographs clearly indicating the exact location of the DC-3 event recorder on the windshield, the remote pushbutton, the GPS puck and 5-port or 6-port (as available) access terminal.
  3. Documentation indicating vehicle assignments on standard DriveCam Vehicle Tracking Form.
  4. For the first article installation, documentation of the first article

**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

installation techniques for each make of bus, with an applicable installation guide for future installation rollout and deployment of applicable vehicles at SFMTA.

5. A summary of installation work completed on a daily basis.

**PART 2 – PRODUCTS**

**2.01 Hardware**

A. The Contractor shall provide the following hardware:

1. DriveCam 3 Video Event Recorder – Cell – part number VER-DC3-0004 including:
  - 1.1 GPS Antenna – part number PER-GPS-0001 (not applicable for internal GPS)
  - 1.2 VER 6 Port Hub Installation Doc – part number DRC-302 (not applicable for 5-port hub)
  - 1.3 Instructions for Mounting Pushbutton Collar – part number DRC-929
2. Remote Panic Button – part number 2015-00005-0006
3. Torx Wrench DC3 – part number 1130-00101-0000
4. 5-Port or 6-Port (as available) Hub Connector – part number PER-CAT-0002
5. Mounting hardware, accessories and power harness

**2.02 Software**

A. The Contractor shall provide the following software including any updates or patches:

1. Initial Year Hindsight License – part number 3235-000HS -INIT
2. ASP Hosting – part number 4230-00ASP-INIT

**2.03 Services**

A. The Contractor shall provide the following services:

1. Cellular Transport Plan (Tier 3) – part number 4230-0CELL-INIT
2. Managed Service (Tier 3) – part number 4230-000MS-INIT

**2.04 Wires and Cables**

A. All wire sizes and insulation shall be based on the current carrying capability, voltage drop, mechanical strength, temperature and flexibility requirements, as

**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

well as fire resistance requirements for vehicle applications in accordance with DriveCam specifications.

- B. Wiring shall be uniformly color coded and tagged.
- C. Wiring shall be prefabricated into standardized harnesses, wrapped and tied with “all weather UV type” nylon ties.
- D. The power source wires must be sized appropriately to meet specified requirements for unit. Wherever there is a possibility of interference, wiring and interconnecting cables shall be properly shielded.
- E. A protective plastic or rubber grommet must be installed in every hole that provides passage for conduit or wiring to avoid chaffing or cutting of the conduit or wiring.
- F. Start up and normal operation should prevent unacceptable voltage drops

**2.05 SFMTA Pricing Schedule**

- A. The price of the hardware and managed services are provided in Addendum A, SFMTA Pricing Schedule, of this Statement of Work.

**2.06 Additional Services and Costs**

- A. Additional costs for equipment, software, services, maintenance, and other work not specified in the GSA Schedule shall be provided in Addendum A, SFMTA Pricing Schedule, of this Statement of Work.

**PART 3 – EXECUTION**

**3.01 GENERAL**

- A. The Contractor shall install equipment in accordance with manufacturer’s instructions and as specified herein.
- B. The Contractor shall work with the designated SFMTA Engineer to determine the acceptable mounting location of the DC-3, remote pushbutton, 5-port or 6-port (as available) hub connector and GPS puck (if necessary).
- C. The Contractor shall work with the designated SFMTA Engineer to determine the appropriate cable routing and power connection points and sources.

**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

- D. The Contractor shall verify functionality of the DC3 event recorder, GPS and remote push button assemblies in each of the vehicles.
- E. Contractor shall document installation by taking pictures of any installation for each of the 10 different types of buses. The installation shall include:
  - 1. DriveCam unit and hardware placement on windshield
  - 2. Remote pushbutton placement
  - 3. GPS antenna placement
  - 4. Cable and wire routing to power and connection points
  - 5. Power, switched power and ground connection points.
- F. Contractor shall comply with all SFMTA safety-related policies while on-site during installation of the DriveCam system in the buses.
- G. Contractor employees shall check-in and check-out with the Division superintendent or designated supervisor before starting work and after completing work on a daily basis and shall inform the Division superintendent or designated supervisor daily on the status of the vehicle they are working on.
- H. The Contractor shall inform SFMTA staff of any damage to a vehicle as a result of installing the DriveCam equipment. SFMTA will repair the damage or send the vehicle out for repair if necessary. The Contractor shall reimburse the SFMTA for reasonable costs of any and all such damage.

**3.02 CONTRACTOR'S HINDSIGHT DATABASE SERVICES**

- A. The Contractor shall update the HindSight database for each vehicle after completing any installation.
- B. The video footage recorded by the DriveCam system of events in SFMTA's revenue vehicles shall be stored and available on the Contractor's website.
- C. Designated SFMTA staff shall be provided access by logging into the website and shall be able to view these video footages using Microsoft Windows 2000, XP or Vista, Internet Explorer 6.x or 7.x and network connections that permit streaming Silverlight 2.0 video (or at a minimum wmv video).
- D. In accordance with the terms of DriveCam's standard video clip retention policy, which may be updated by DriveCam from time to time, the video footage shall be accessible on the Contractor's website for a period of 90 days after the event has been received.
- E. In accordance with the terms of DriveCam's standard video clip retention policy, which may be updated by DriveCam from time to time, after 90 days, the

**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

Contractor shall archive the video footage for a period of 275 days and then destroy it. After the initial ninety (90) day period, DriveCam will charge SFMTA its standard fee on a per event basis to retrieve any video event file from storage.

- F. The SFMTA shall have the capability to download every video footage from the website and store onto an electronic media during the initial 90-day period.
- G. The Contractor shall utilize DriveCam's standard Scoring System.

**3.03 TESTING AND ACCEPTANCE**

- A. Contractor shall verify an end-to-end test following installation by confirming successful DriveCam unit power-up and successful communication with DriveCam's backend server.
- B. Contractor shall submit a test procedure for approval by the SFMTA. The test procedure must show that the equipment complies with both the manufacturer's product specifications and the Specifications.
- C. All equipment tested and found defective must be removed and an adequate replacement installed promptly.
- D. Acceptance of each installation shall be verified by designated SFMTA staff after the Contractor and designated SFMTA staff complete a visual inspection, vehicle identification and test video review. A system that records and transmits data in accordance with DriveCam specifications for a period of one (1) week continuously (other than downtime due to Unforeseen Events or regularly scheduled downtime) shall be deemed acceptable. "Unforeseen Events" means strikes, shortages, riots, fire, flood, storm, earthquake, acts of God, hostilities, or any other cause beyond DriveCam's reasonable control.

**3.04 DISASTER RECOVERY**

- A. The Contract shall implement the following for data recovery and uptime:
  - 1. 98% up time (other than downtime due to Unforeseen Events or regularly scheduled downtime)
  - 2. 24/7 monitoring
  - 3. Biometric access only
  - 4. Fire/Water resistant data center
  - 5. Redundant power
- B. The Contractor shall implement redundancy for all critical systems.

**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

- C. The Contractor shall provide near time replication of all data in a separate data center to allow for disaster recovery.

**3.05 WARRANTY**

- A. The warranty provisions of GSA Schedule GS-35F-0623S shall apply to this installation.

**PART 4 – CITY OWNERSHIP OF EQUIPMENT, DATA, DATABASE AND WORK PRODUCT**

**4.01 ESCROW AGREEMENT**

As part of this Agreement, the SFMTA and Contractor shall enter into the Three-Party Escrow Service Agreement, in substantially the same form as attached hereto as **Attachment A** (the “Escrow Agreement”), the terms of which are incorporated into this Agreement. The terms of the Software License and Maintenance Services Agreement (“License Agreement”) are set forth in **Attachment B** and are hereby incorporated into this Agreement.

**4.02 OWNERSHIP OF EQUIPMENT, DATABASE AND WORK PRODUCT**

Title to the products purchased by SFMTA hereunder (excluding title to the software) will pass to SFMTA upon DriveCam’s delivery to the SFMTA. The software and data license and ownership provisions of the License Agreement shall apply to the BPA.

**4.03 MAINTENANCE OF HINDSIGHT DATABASE**

The Contractor shall maintain the HindSight database and provide access to the SFMTA as described in Section 3.02 above.

**4.04 CELLULAR TRANSMISSIONS**

As part of the Escrow Agreement, the Contractor shall provide all necessary cellular transmission protocol information to the SFMTA to enable the SFMTA to redirect all cellular transmissions of the video recordings to the SFMTA.

**PART 5 – EXPERT WITNESS**

The Contractor shall provide a knowledgeable employee to serve as an expert witness and provide deposition and court testimony regarding DriveCam equipment, technology, policies and procedures, training, and services provided to the City as reasonably required by the City. Such services shall be provided as set forth in Addendum A, SFMTA Pricing Schedule, of this Statement of Work.

**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

**PART 6 –CUSTOMIZED REPORTS**

The Contractor shall provide reports covering the following areas as requested by the SFMTA: (1) Program Performance Tools, are reports that show trends and comparisons by group, vehicle, and drivers, (2) Coaches Tools are reports that show how the fleet, vehicle and drivers are performing, and (3) and Monitoring Tools are operational reports that show overdue statistics by group, vehicle, and driver.

**PART 7 – INSURANCE REQUIREMENTS**

- A. Without in any way limiting Contractor’s liability pursuant to the “Indemnification” section of this Agreement, Contractor must maintain in force, during the full Term of the Agreement, insurance in the following amounts and coverages:
1. Workers’ Compensation, in statutory amounts, with Employers’ Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
  2. Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
  3. Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
  4. Shipping Insurance with limits not less than the price charged by Contractor to the SFMTA for all Equipment Contractor shall provide to the SFMTA under this Agreement; said insurance coverage to be effective at anytime the Equipment or any part of the Equipment is not in the possession of the Contractor or of the SFMTA. Contractor shall fully indemnify the City for any applicable deductible for any claim under said Shipping Insurance.
- B. Commercial General Liability, Commercial Automobile Liability Insurance, and Shipping Insurance and Inventory Insurance policies must provide the following:
1. Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
  2. That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this

**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

- C. Each policy on which SFMTA is an additional insured shall be endorsed to provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:
- Elson Hao, Principal Engineer - SFMTA Operations  
San Francisco Municipal Transportation Agency  
700 Pennsylvania, San Francisco, CA 94107
- D. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the Term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract Term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- E. Should any 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.
- F. 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.
- G. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.
- H. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.
- I. Contractor currently subcontracts with Velociti, Inc. ("Velociti") to provide the installation services to be performed under this agreement, and the Contractor shall ensure that Velociti shall provide all insurance required by subsection A



**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

above and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds. In addition, Contractor will accept liability for all subcontractors work in performance of this contract and any sub-contractor work product, negligence, gross, or willful misconduct shall not be excluded from Contractor's insurance coverage as required under this agreement. Notwithstanding the foregoing, in no event shall Contractor's insurance coverage for actions by its subcontractors be required to exceed the coverage that would be afforded to actions by Contractor under such policies.

**PART 8 – INDEMNIFICATION; INCIDENTAL AND CONSEQUENTIAL DAMAGES; LIMITATIONS OF LIABILITY**

Subject to the limitations set forth below, Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to Contractor's property, resulting directly from Contractor's negligence or willful misconduct in performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except to the extent such loss, damage, injury, liability or claim is the result of negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts. Notwithstanding the foregoing, (i) the City acknowledges and agrees that Contractor makes no guarantee that driving will be risk-free as a result of the use of Contractor's products and services, (ii) in no event shall Contractor be required to indemnify City for damages caused by City employees, and (iii) Contractor shall not have any obligation to indemnify City against wrongful discharge or similar employment claims by City's employees except to the extent a wrongful discharge is due to Contractor tampering with video events or otherwise providing City with a video event containing a material inaccuracy due to Contractor's actions.

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.

Subject to the limitations set forth below, Contractor shall be responsible for incidental and consequential damages resulting from its indemnification obligations above. Nothing in this Agreement shall constitute a waiver of limitation of any rights that SFMTA may have under applicable law.

**IN NO EVENT SHALL CONTRACTOR OR ITS LICENSORS, SUPPLIERS, OR DISTRIBUTORS (COMBINED) BE LIABLE UNDER THIS AGREEMENT, THE BLANKET PURCHASE AGREEMENT, THE GSA CONTRACT OR ANY OTHER AGREEMENT INCORPORATED INTO SUCH AGREEMENTS BE REFERENCE, FOR ANY AMOUNTS EXCEEDING THE LESSER OF (i) THOSE ACTUALLY PAID BY SFMTA TO**

**BLANKET PURCHASE AGREEMENT ATTACHMENT  
STATEMENT OF WORK**

CONTRACTOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION ACCRUES OR (ii) ONE MILLION DOLLARS (\$1,000,000).

**PART 9 - PROPRIETARY OR CONFIDENTIAL INFORMATION**

Contractor understands and agrees that, in the performance of the work or services, all information provided from the SFMTA shall be treated as confidential and not disclosed to any other third party. Further, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

Contractor agrees to provide access to any and all video recordings and database information to only those SFMTA employees who have been designated by the SFMTA to receive such information. Contractor shall not provide access to any SFMTA employee who has not be designated to receive this information.

**PART 10 – PAYMENT**

The Contractor shall invoice the SFMTA after tasks are completed in accordance with Addendum B, SFMTA Acceptance Terms, of this Statement of Work. The SFMTA shall pay for the cost of the equipment, hardware and installation that are accepted by the designated SFMTA Engineer as specified in GSA Schedule GS-35F-0623S within 30 days after the date indicated on DriveCam's invoice(s).

The Contractor shall invoice the SFMTA on a quarterly basis for Managed Services including program management, training and implementation, daily downloads of recorded events from all SFMTA vehicles, filtering of these events, analysis of driving behavior, performance and results reporting, and hosting and system maintenance after the services have been performed. Payment for Managed Services shall be due upon completion of such services.

The Contractor shall invoice the SFMTA for training classes after the classes have been performed as specified in GSA Schedule GS-35F-0623S.

**END OF SECTION**

**Addendum A**  
**SFMTA Pricing Schedule**

<b>HARDWARE/MANAGED SERVICES</b>	<b>QTY</b>	<b>UNIT COST</b>	<b>GSA CL#</b>	<b>EXTENDED COST</b>
DriveCam Cellular Event Recorder Part Number VER-DC3-0004	824	\$455.25	Page 34, Line 3	\$375,126.00
Remote Panic Buttons Part Number 2015-00005-0006	824	\$38.29	Page 35, Line 22	\$31,550.96
Initial Year Hindsight License Part Number 3235-000HS-INIT	824	\$114.00	Page 44, Line 4	\$93,936.00
Initial Year ASP Hosting Fee Part Number 4230-00ASP-init	824	\$57.00	Page 44, Line 5	\$46,968.00
Initial Year Cellular Transport Plan Fee (Tier 3) Part Number 4230-0CELL-INIT	824	\$76.00	Page 44, Line 10	\$62,624.00
Initial Year Managed Service Fee (Tier 3) Part Number 4230-000MS-INIT	824	\$232.00	Page 44, Line 13	\$191,168.00
Windshield Bracket (spares) Part Number 2015-00006-0009	82	\$9.57	Page 36, Line 40	\$784.74
Remote Panic Button (spares) Part Number 2015-00005-0006	82	\$38.29	Page 35, Line 22	\$3,139.78
Extended Power Harness Part Number XXXX-XXXXX-XXX	824	\$15.00	Not in GSA	\$12,360.00
Torx Wrench DC 3 Part Number 1130-00119-0000	10	\$9.57	Page 35, Line 28	\$95.70
<b>Total Hardware and Managed Services</b>				<b>\$817,753.18</b>

<b>TRAINING</b>	<b>QTY</b>	<b>UNIT COST</b>	<b>GSA CL#</b>	<b>EXTENDED COST</b>
On Site Direct Training 5 Sessions Recommended	5	\$2,297.23	Page 41, 3rd Item	\$11,486.15

<b>Miscellaneous Items</b>	<b>QTY</b>	<b>UNIT COST</b>	<b>GSA CL#</b>	<b>EXTENDED COST</b>
Expert Witness Support	N/A	\$150 per hour	N/A	N/A
Senior Engineer Consulting	N/A	\$250 per hour	N/A	N/A
Archived Clip Retrieval	N/A	\$500 per hour	N/A	N/A

## ADDENDUM B SFMTA ACCEPTANCE TERMS

### **Acceptance Terms**

The terms of acceptance for each Phase of the SFMTA installation will be achieved by DriveCam and the Installation team by completing the following steps in a professional, workmanlike manner:

- VER Placement – Meets DOT requirement (if applicable) and First Article Install guidelines as approved by customer and published for this vehicle type
- Securely Mounted – Mounting bracket for VER and peripherals are securely attached/affixed to vehicle mounting surface(s).
- Forward Facing Lens Position – Forward facing lens is free from obstructions and positioned in best possible position to capture activity in front of the vehicle
- Rear Facing Lens Position – Rear facing lens is free from obstructions and positioned to achieve maximum visibility of Driver/Operator
- Cable Routing – Power cables for VER and peripherals are neatly routed to power source, securely attached and away from moving parts/mechanisms
- Power Connections – VER constant and switched power connections are completed by DriveCam installation guidelines with connection methods identified in this procedure. All connections are secure and made in manner identified and approved in the First Article Install guideline. Ground connection is secure and made to approved grounding location.
- Vehicle Systems Testing – Confirm things like lights, wipers, radios, etc are all working normally and were not affected by the DriveCam installation
- DriveCam Peripherals – DriveCam peripherals installed will include the following:
  - Remote Panic Button and GPS
- DriveCam peripherals will be installed in accordance to DriveCam installation guidelines with connection methods identified in this procedure.
  - Placement of each peripheral is identified and approved by customer during First Article Installation.
- Confirm successful VER download to HindSight
- Record results on Vehicle Tracking Sheet, results communicated and updated in HindSight Backend database.

Upon completion of the installation, Client will review the work per the criteria above to ensure that the installation has been accomplished in a professional and workmanlike manner, and then sign the Installation Acceptance and Customer Installation Acceptance Forms, indicating completion and Client's acceptance of the work performed and solution installed.



EFFECTIVE DATE: \_\_\_\_\_

DEPOSIT ACCOUNT NUMBER: \_\_\_\_\_

## **THREE-PARTY ESCROW SERVICE AGREEMENT**

### **1. Introduction.**

This Three Party Escrow Service Agreement (the “**Agreement**”) is entered into by and between DriveCam, Inc (the “**Depositor**”), and by City and County of San Francisco (the “**Beneficiary**”) and by Iron Mountain Intellectual Property Management, Inc. (“**Iron Mountain**”). Depositor, Beneficiary, and Iron Mountain may be referred to individually as a “Party” or collectively as the “Parties” throughout this Agreement.

(a) The use of the term services in this Agreement shall refer to Iron Mountain services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit A attached hereto (“**Services**”). A Party shall request Services under this Agreement by submitting a work request for certain Iron Mountain Services (“**Work Request**”) via written instruction or the online portal maintained at the website located at [www.ironmountainconnect.com](http://www.ironmountainconnect.com), or other websites owned or controlled by Iron Mountain that are linked to that website (collectively the “**Iron Mountain Website**”).

(b) The Beneficiary and Depositor have, or will have, entered into the GSA Federal Supply Schedule Contract GS-35F-0623S (“GSA Contract”) and the attached Software License Agreement, referred to herein as the “GSA Contract and Software License Agreement” (collectively referred to herein as the “License Agreement(s)”) conveying intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to such agreements, pursuant to Title 11 United States [Bankruptcy] Code, Section 365(n).

### **2. Depositor Responsibilities and Representations.**

- (a) Depositor shall make an initial deposit that is complete and functional of all proprietary technology and other materials covered under this Agreement (“**Deposit Material**”) to Iron Mountain within thirty (30) days of the Effective Date. Depositor may also update Deposit Material from time to time during the Term (as defined below) of this Agreement provided a minimum of one (1) complete and functional copy of Deposit Material is deposited with Iron Mountain at all times. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to Iron Mountain using the form attached hereto as Exhibit B.
- (b) Depositor represents that it lawfully possesses all Deposit Material provided to Iron Mountain under this Agreement and that any current or future Deposit Material liens or encumbrances will not prohibit, limit, or alter the rights and obligations of Iron Mountain under this Agreement. Depositor warrants that with respect to the Deposit Material, Iron Mountain’s proper administration of this Agreement will not violate the rights of any third parties.
- (c) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously.
- (d) Depositor agrees, upon request by Iron Mountain, in support of Beneficiary’s request for verification Services, to promptly complete and return the Escrow Deposit Questionnaire attached hereto as Exhibit Q. Depositor consents to Iron Mountain’s performance of any level(s) of verification Services described in Exhibit A attached hereto and Depositor further consents to Iron Mountain’s use of a subcontractor to perform verification Services. Any such subcontractor shall be bound by the same confidentiality obligations as Iron Mountain and shall not be a direct competitor to either Depositor or Beneficiary. Iron Mountain shall be responsible for the delivery of Services of any such subcontractor as if Iron Mountain had performed the Services. Depositor represents that all Deposit Material is provided with all rights necessary for Iron Mountain to verify such proprietary technology and materials upon receipt of a Work Request for such Services or agrees to use commercially reasonable efforts to provide Iron Mountain with any necessary use rights or permissions to use materials necessary to perform verification of the Deposit Material. Depositor agrees to reasonably cooperate with Iron Mountain by providing reasonable access to its technical personnel for verification Services whenever reasonably necessary.

### **3. Beneficiary Responsibilities and Representations.**

- (a) Beneficiary acknowledges that, as between Iron Mountain and Beneficiary, Iron Mountain’s obligation is to maintain the Deposit Material as delivered by the Depositor and that, other than Iron Mountain’s inspection of the Deposit Material (as described in Section 4) and the performance of any of the optional verification Services listed in Exhibit A, Iron Mountain has no other obligation regarding the completeness, accuracy, or functionality of the Deposit Material.
- (b) Beneficiary may submit a verification Work Request to Iron Mountain for one or more of the Services defined in Exhibit A attached hereto and consents to Iron Mountain’s use of a subcontractor if needed to provide such Services. Beneficiary

warrants that Iron Mountain's use of any materials supplied by Beneficiary to perform the verification Services described in Exhibit A is lawful and does not violate the rights of any third parties.

- (c) As between the Depositor and the Beneficiary, in the event of a release of the Deposit Material in accordance with this Agreement, the Beneficiary warrants that it shall comply strictly with the provisions set forth in Exhibit C with respect to its "Right to Use Following Release." Accordingly, Beneficiary will indemnify, defend, and hold the Depositor harmless from any and all loss, damage, injury, or liability, including reasonable legal fees and expenses, which the Depositor may suffer as a result of any unauthorized use of the Deposit Material or any change not approved by the Depositor that is made to the Deposit Material following the release of the Deposit Material to the Beneficiary. The foregoing indemnity shall include, but is not limited to, any and all losses, damages, injury or liabilities, which the Depositor suffers under any alleged negligence claim or action, or any product liability, strict liability, or infringement claim or action arising from any unauthorized modification or variation of the Deposit Material by the Beneficiary.

#### **4. Iron Mountain Responsibilities and Representations.**

- (a) Iron Mountain agrees to use commercially reasonable efforts to provide the Services requested by Authorized Person(s) (as identified in the "Authorized Person(s)/Notices Table" below) representing the Depositor or Beneficiary in a Work Request. Iron Mountain may reject a Work Request (in whole or in part) that does not contain all required information at any time upon notification to the Party originating the Work Request.
- (b) Iron Mountain will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit B. If Iron Mountain determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B, Iron Mountain will notify Depositor of such discrepancies and notate such discrepancy on the Exhibit B.
- (c) Iron Mountain will provide notice to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement.
- (d) Iron Mountain will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill any standard verification Services Work Request or develop a custom Statement of Work ("SOW"). Iron Mountain and the requesting Party will mutually agree in writing to an SOW on terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of verification testing; requesting Party responsibilities; Iron Mountain responsibilities; Service Fees; invoice payment instructions; designation of the paying Party; designation of authorized SOW representatives for both the requesting Party and Iron Mountain with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth therein. If the verification Services extend beyond those described in Exhibit A, the Depositor shall be a necessary Party to the SOW governing the Services.
- (e) Iron Mountain will hold and protect Deposit Material in physical or electronic vaults that are either owned or under the control of Iron Mountain, unless otherwise agreed to by all the Parties.
- (f) Upon receipt of written instructions by both Depositor and Beneficiary, Iron Mountain will permit the replacement or removal of previously submitted Deposit Material. The Party making such request shall be responsible for getting the other Party to approve the joint instructions.
- (g) Should transport of Deposit Material be necessary in order for Iron Mountain to perform Services requested by Depositor or Beneficiary under this Agreement, Iron Mountain will use a commercially recognized overnight carrier such as Federal Express or United Parcel Service. Iron Mountain will not be responsible for any loss or destruction of, or damage to, such Deposit Material while in the custody of the common carrier.

#### **5. Payment.**

The Party responsible for payment designated in Exhibit A ("**Paying Party**") shall pay to Iron Mountain all fees as set forth in the Work Request ("**Service Fees**"). Except as set forth below, all Service Fees are due within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. Iron Mountain may update Service Fees with a ninety (90) calendar day written notice to the Paying Party during the Term of this Agreement (as defined below). The Paying Party is liable for any taxes (other than Iron Mountain income taxes) related specifically to Services purchased under this Agreement or shall present to Iron Mountain an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice. Any Service Fees not collected by Iron Mountain when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less. Notwithstanding the non-performance of any obligations of Depositor to deliver Deposit Material under the License Agreement or this Agreement, Iron Mountain is entitled to be paid all Service Fees that accrue during the Term of this Agreement.

#### **6. Term and Termination.**

- (a) The term of this Agreement is for a period of one (1) year from the Effective Date ("**Initial Term**") and will automatically renew for additional one (1) year terms ("**Renewal Term**") (collectively the "**Term**"). This Agreement shall continue in full force and effect until one of the following events occur: (i) Depositor and Beneficiary provide Iron Mountain with sixty (60) days' prior written joint notice of their intent to terminate this Agreement; (ii) Beneficiary provides Iron Mountain and Depositor with sixty (60) days' prior written notice of its intent to terminate this Agreement; (iii) the Agreement terminates

under another provision of this Agreement; or (iv) any time after the Initial Term, Iron Mountain provides a sixty (60) days' prior written notice to the Depositor and Beneficiary of Iron Mountain's intent to terminate this Agreement. If the Effective Date is not specified above, then the last date noted on the signature blocks of this Agreement shall be the Effective Date.

- (b) Unless the express terms of this Agreement provide otherwise, upon termination of this Agreement, Iron Mountain shall return the Deposit Material to the Depositor. Unless otherwise directed by Depositor, Iron Mountain will use a commercially recognized overnight common carrier such as Federal Express or United Parcel Service to return the Deposit Material to the Depositor. Iron Mountain will not be responsible for any loss or destruction of, or damage to, such Deposit Material while in the custody of the common carrier. If reasonable attempts to return the Deposit Material to Depositor are unsuccessful, Iron Mountain shall destroy the Deposit Material.
- (c) In the event of the nonpayment of undisputed Service Fees owed to Iron Mountain, Iron Mountain shall provide all Parties to this Agreement with written notice of Iron Mountain's intent to terminate this Agreement. Any Party to this Agreement shall have the right to make the payment to Iron Mountain to cure the default. If the past due payment is not received in full by Iron Mountain within thirty (30) calendar days of the date of such written notice, then Iron Mountain shall have the right to terminate this Agreement at any time thereafter by sending written notice to all Parties. Iron Mountain shall have no obligation to perform the Services under this Agreement (except those obligations that survive termination of this Agreement, which includes the confidentiality obligations in Section 9) so long as any undisputed Service Fees due Iron Mountain under this Agreement remain unpaid.

#### **7. Infringement Indemnification.**

Anything in this Agreement to the contrary notwithstanding, Depositor at its own expense shall defend and hold Beneficiary and Iron Mountain (the "Indemnified Party") fully harmless against any claim or action asserted against the Indemnified Party (specifically including costs and reasonable attorneys' fees associated with any such claim or action) to the extent such claim or action is based on an assertion that Iron Mountain's proper administration of this Agreement or Beneficiary's use of the Deposit Material, within the scope of this Agreement, infringes any patent, copyright, license or other proprietary right of any third party. When the Indemnified Party has notice of a claim or action, it shall promptly notify Depositor in writing. At its option, Depositor may elect to control defense of such claim or action and may elect to enter into a settlement agreement, provided that no such settlement or defense shall include any admission or implication of wrongdoing on the part of the Indemnified Party without such Party's prior written consent, which consent shall not be unreasonably delayed or withheld. Iron Mountain shall have the right to employ separate counsel and participate in the defense of any claim at its own expense.

#### **8. Warranties.**

- (a) IRON MOUNTAIN WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A WORKMANLIKE MANNER CONSISTENT WITH THE MEASURES IRON MOUNTAIN TAKES TO PROTECT ITS OWN INFORMATION OF A SIMILAR NATURE, BUT IN NO CASE LESS THAN A REASONABLE LEVEL OF CARE. EXCEPT AS SPECIFIED IN THIS SECTION, ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. AN AGGRIEVED PARTY MUST NOTIFY IRON MOUNTAIN PROMPTLY UPON LEARNING OF ANY CLAIMED BREACH OF ANY WARRANTY AND, TO THE EXTENT ALLOWED BY APPLICABLE LAW, SUCH PARTY'S REMEDY FOR BREACH OF THIS WARRANTY SHALL BE SUBJECT TO THE LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES WAIVER IN THIS AGREEMENT. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.
- (b) Depositor warrants that all Depositor information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Depositor information during the Term of this Agreement.
- (c) Beneficiary warrants that all Beneficiary information provided hereunder is accurate and reliable and undertakes to promptly correct and update such Beneficiary information during the Term of this Agreement.

#### **9. Confidential Information.**

Iron Mountain shall have the obligation to implement and maintain safeguards designed to protect the confidentiality of the Deposit Material. Except as provided in this Agreement Iron Mountain shall not use or disclose the Deposit Material. Iron Mountain shall not disclose the terms of this Agreement to any third Party. If Iron Mountain receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, Iron Mountain will promptly notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, Iron Mountain may comply in good faith with such order. It shall be the responsibility of Depositor or Beneficiary to challenge any such order; provided, however, that Iron Mountain does not waive its rights to present its position with respect to any such order. Iron Mountain will cooperate with the Depositor or Beneficiary, as applicable, to support efforts to quash or limit any subpoena, at such Party's expense. Any Party requesting additional assistance shall pay Iron Mountain's standard charges or as quoted upon submission of a detailed request.

## 10. Limitation of Liability.

EXCEPT FOR: (I) ANY CLAIMS OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, OR TRADEMARK; (II) LIABILITY FOR DEATH OR BODILY INJURY; (III) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (IV) THE INFRINGEMENT INDEMNIFICATION OBLIGATIONS OF SECTION 7, ALL OTHER LIABILITY RELATED TO THIS AGREEMENT, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT EQUAL TO ONE YEAR OF FEES PAID TO IRON MOUNTAIN UNDER THIS AGREEMENT. IF CLAIM OR LOSS IS MADE IN RELATION TO A SPECIFIC DEPOSIT OR DEPOSITS, SUCH LIABILITY SHALL BE LIMITED TO THE FEES RELATED SPECIFICALLY TO SUCH DEPOSITS.

## 11. Consequential Damages Waiver.

IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE TO ANOTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES (EXCLUDING SUBSTITUTE ESCROW SERVICES), OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

## 12. General.

- (a) Incorporation of Work Requests. All valid Depositor and Beneficiary Work Requests are incorporated into this Agreement.
- (b) Purchase Orders. In the event that the Paying Party issues a purchase order or other instrument used to pay Service Fees to Iron Mountain, any terms and conditions set forth in the purchase order which constitute terms and conditions which are in addition to those set forth in this Agreement or which establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by Iron Mountain.
- (c) Right to Make Copies. Iron Mountain shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. Iron Mountain shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by Iron Mountain. Any copying expenses incurred by Iron Mountain as a result of a Work Request to copy will be borne by the Party requesting the copies. Iron Mountain may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for Iron Mountain to perform this Agreement.
- (d) Choice of Law. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the Commonwealth of Massachusetts, USA, as if performed wholly within the state and without giving effect to the principles of conflicts of laws.
- (e) Authorized Person(s). Depositor and Beneficiary must each authorize and designate one person whose actions will legally bind such Party ("Authorized Person" who shall be identified in the Authorized Person(s) Notices Table of this Agreement or such Party's legal representative) and who may manage the Iron Mountain escrow account through the Iron Mountain website or written instruction. The Authorized Person for each the Depositor and Beneficiary will maintain the accuracy of their name and contact information provided to Iron Mountain during the Term of this Agreement.
- (f) Right to Rely on Instructions. With respect to Release of Deposit Material or the destruction of Deposit Material, Iron Mountain shall rely on instructions from a Party's Authorized Person(s). In all other cases, Iron Mountain may act in reliance upon any instruction, instrument, or signature reasonably believed by Iron Mountain to be genuine and from an Authorized Person(s), officer, or other employee of a Party. Iron Mountain may assume that such representative of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so. Iron Mountain will not be required to inquire into the truth of, or evaluate the merit of, any statement or representation contained in any notice or document reasonably believed to be from such representative.
- (g) Force Majeure. No Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, earthquake, labor disputes, shortages of supplies, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- (h) Notices. All notices regarding Exhibit C (Release of Deposit Material) shall be sent by commercial express mail or other commercially appropriate means that provide prompt delivery and require proof of delivery. All other correspondence, including invoices, payments, and other documents and communications, may be sent electronically or via regular mail. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice to the last known address of the other Parties that is refused, unclaimed, or undeliverable shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities, or through messenger or commercial express delivery service.
- (i) No Waiver. No waiver of any right under this Agreement by any Party shall constitute a subsequent waiver of that or any



other right under this Agreement.

- (j) Assignment. No assignment of this Agreement by Depositor or Beneficiary or any rights or obligations of Depositor or Beneficiary under this Agreement is permitted without the written consent of Iron Mountain, which shall not be unreasonably withheld or delayed. Iron Mountain shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless Iron Mountain receives clear, authoritative and conclusive written evidence of the change of Parties.
- (k) Severability. In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect. If this paragraph becomes applicable and, as a result, the value of this Agreement is materially impaired for any Party, as determined by such Party in its sole discretion, then the affected Party may terminate this Agreement by written notice to the other Parties.
- (l) Independent Contractor Relationship. Depositor and Beneficiary understand, acknowledge, and agree that Iron Mountain's relationship with Depositor and Beneficiary will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.
- (m) Attorneys' Fees. In any suit or proceeding between the Parties relating to this Agreement, the prevailing Party will have the right to recover from the other(s) its costs and reasonable fees and expenses of attorneys, accountants, and other professionals incurred in connection with the suit or proceeding, including costs, fees and expenses upon appeal, separately from and in addition to any other amount included in such judgment. This provision is intended to be severable from the other provisions of this Agreement, and shall survive and not be merged into any such judgment.
- (n) No Agency. No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Parties or bind the other Parties in any respect whatsoever.
- (o) Disputes. Any dispute, difference or question relating to or arising among any of the Parties concerning the construction, meaning, effect or implementation of this Agreement or the rights or obligations of any Party hereof will be submitted to, and settled by arbitration by a single arbitrator chosen by the corresponding Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The Parties shall submit briefs of no more than 10 pages and the arbitration hearing shall be limited to two (2) days maximum. The arbitrator shall apply Massachusetts law. Unless otherwise agreed by the Parties, arbitration will take place in Boston, Massachusetts, U.S.A. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by regular mail or by commercial express mail, to the attorney for the Party or, if unrepresented, to the Party at the last known business address. If however, Depositor or Beneficiary refuse to submit to arbitration, the matter shall not be submitted to arbitration and Iron Mountain may submit the matter to any court of competent jurisdiction for an interpleader or similar action. Unless adjudged otherwise, any costs incurred by Iron Mountain, including reasonable attorney's fees and costs, shall be divided equally and paid by Depositor and Beneficiary.
- (p) Regulations. All Parties are responsible for and warrant, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations, including but not limited to: customs laws; import; export and re-export laws; and government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement.
- (q) No Third Party Rights. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all the Parties hereto.
- (r) Entire Agreement. The Parties agree that this Agreement, which includes all the Exhibits attached hereto and all valid Work Requests and SOWs submitted by the Parties, is the complete agreement between the Parties hereto concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified herein. Each of the Parties herein represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its business organization as named in this Agreement. This Agreement may only be modified by mutual written agreement of all the Parties.
- (s) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (t) Survival. Sections 6 (Term and Termination), 7 (Infringement Indemnification), 8 (Warranties), 9 (Confidential Information), 10 (Limitation of Liability), 11(Consequential Damages Waiver), and 12 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached hereto.

(balance of this page left intentionally blank – signature page follows)

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date by their authorized representatives:

**DEPOSITOR**

<b>COMPANY NAME:</b>	DriveCam, Inc.
<b>SIGNATURE:</b>	
<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>DATE:</b>	
<b>EMAIL ADDRESS:</b>	

**BENEFICIARY**

<b>Company Name:</b>	San Francisco Municipal Transportation Agency, City and County of San Francisco
<b>Signature:</b>	
<b>PRINT NAME:</b>	Nathaniel P. Ford Sr.
<b>TITLE:</b>	Executive Director/CEO
<b>DATE:</b>	
<b>EMAIL ADDRESS:</b>	

**IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.**

<b>Signature:</b>	
<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>DATE:</b>	
<b>EMAIL ADDRESS:</b>	<a href="mailto:ipmclientservices@ironmountain.com">ipmclientservices@ironmountain.com</a>

**NOTE: AUTHORIZED PERSON(S)/NOTICES TABLE, BILLING CONTACT INFORMATION TABLE AND EXHIBITS FOLLOW**

**DEPOSITOR -- AUTHORIZED PERSON(S)/NOTICES TABLE**

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

PRINT NAME:	
TITLE:	
EMAIL ADDRESS	
ADDRESS 1	
ADDRESS 2	
CITY/STATE/PROVINCE	
POSTAL/ZIP CODE	
PHONE NUMBER	
FAX NUMBER	

**BENEFICIARY -- AUTHORIZED PERSON(S)/NOTICES TABLE**

Provide the name(s) and contact information of the Authorized Person(s) under this Agreement. All notices will be sent to the person(s) at the address(es) set forth below. This is required information.

PRINT NAME:	<b>Hao Elson</b>
TITLE:	<b>Principal Engineer</b>
EMAIL ADDRESS	<b>Elson.hao@sfmta.com</b>
ADDRESS 1	<b>700 Pennsylvania Avenue</b>
ADDRESS 2	
CITY/STATE/PROVINCE	<b>San Francisco, CA</b>
POSTAL/ZIP CODE	<b>94107</b>
PHONE NUMBER	<b>415-401-3196</b>
FAX NUMBER	

**IRON MOUNTAIN INTELLECTUAL PROPERTY MANAGEMENT, INC.**

All notices should be sent to [ipmclientservices@ironmountain.com](mailto:ipmclientservices@ironmountain.com) OR

Iron Mountain Intellectual Property Management, Inc., Attn: Client Services  
 2100 Norcross Parkway, Suite 150  
 Norcross, Georgia, 30071, USA.  
 Telephone: 800-875-5669  
 Facsimile: 770-239-9201

**BILLING CONTACT INFORMATION TABLE**

Please provide the name and contact information of the Billing Contact under this Agreement. All Invoices will be sent to this individual at the address set forth below.

**DEPOSITOR**

<b>PRINT NAME:</b>	
<b>TITLE:</b>	
<b>EMAIL ADDRESS</b>	
<b>STREET ADDRESS</b>	
<b>PROVINCE/CITY/STATE</b>	
<b>POSTAL/ZIP CODE</b>	
<b>PHONE NUMBER</b>	
<b>FAX NUMBER</b>	
<b>PURCHASE ORDER #</b>	

**BENEFICIARY**

<b>PRINT NAME:</b>	<b>Elson Hao</b>
<b>TITLE:</b>	<b>Principal Engineer</b>
<b>EMAIL ADDRESS</b>	<b>Elson.hao@sfmta.com</b>
<b>STREET ADDRESS</b>	<b>700 Pennsylvania Avenue</b>
<b>PROVINCE/CITY/STATE</b>	
<b>POSTAL/ZIP CODE</b>	<b>94107</b>
<b>PHONE NUMBER</b>	<b>415-401-3196</b>
<b>FAX NUMBER</b>	
<b>PURCHASE ORDER #</b>	

**MUST BE COMPLETED EXHIBIT A - Escrow Service Work Request - Deposit Account Number:** \_\_\_\_\_

SERVICE Check box(es) to order service	SERVICE DESCRIPTION – THREE PARTY ESCROW AGREEMENT All services are listed below. Services in shaded tables are required for every new escrow account set up. Some services may not be available under the Agreement.	ONE-TIME FEES	ANNUAL FEES	PAYING PARTY <b>Check box to identify the Paying Party for each service below.</b>
checked Setup Fee	<b>Iron Mountain will setup a new escrow deposit account using a standard escrow agreement. Custom contracts are subject to the Custom Contract Fee noted below.</b>	\$1250	\$1,000	Unchecked Depositor - OR - checked Beneficiary
checked <b>Deposit Account Fee-including Escrow Management Center Access</b>	<b>Iron Mountain will set up one deposit account to manage and administrate access to Deposit Material that will be securely stored in controlled media vaults. Furthermore, Iron Mountain will provide account services that include unlimited deposits, electronic vaulting, access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests. An oversize fee of \$200 USD per 1.2 cubic foot will be charged for deposits that exceed 2.4 cubic feet.</b>			Unchecked Depositor - OR - checked Beneficiary
checked <b>Beneficiary Fee including Escrow Management Center Access</b>	Iron Mountain will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage access rights associated with the account. Beneficiary will have access to Iron Mountain Connect™ Escrow Management Center for secure online account management, submission of electronic Work Requests, and communication of status. A Client Manager will be assigned to each deposit account and provide training upon request to facilitate secure Internet access to the account and ensure fulfillment of Work Requests.		\$700	Unchecked Depositor - OR - checked Beneficiary
checked File List Test	Iron Mountain will fulfill a Work Request to perform a File List Test, which includes analyzing deposit media readability, file listing, creation of file classification table, virus scan, and assurance of completed deposit questionnaire. A final report will be sent to the Paying Party regarding the Deposit Material to ensure consistency between Depositor's representations (i.e., Exhibit B and Supplementary Questionnaire) and stored Deposit Material. Deposit must be provided on CD, DVD-R, or deposited FTP.	\$2,500	N/A	Unchecked Depositor - OR - checked Beneficiary
Unchecked Add Level 1 - Inventory and Analysis Test Unchecked box	Iron Mountain will perform an Inventory Test on the initial deposit, which includes Analyzing deposit media readability, virus scanning, developing file classification tables, identifying the presence/absence of build instructions, and identifying materials required to recreate the Depositor's software development environment. Output includes a report which will include build instructions, file classification tables and listings. In addition, the report will list required software development materials, including, without limitation, required source code languages and compilers, third-party software, libraries, operating systems, and hardware, as well as Iron Mountain's analysis of the deposit.	\$5,000 or based on SOW if custom work required	N/A	Unchecked Depositor - OR - Unchecked Beneficiary
Unchecked Add Level 2 - Compile Test Unchecked box	Iron Mountain will fulfill a Work Request to perform a Deposit Compile Test, which includes the Inventory Test as described above plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and recreating executable code, pass/fail determination, creation of comprehensive build instructions with a final report sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.	Based on SOW	N/A	Unchecked Depositor - OR - Unchecked Beneficiary
Unchecked Add Level 3 - Binary Comparison Unchecked box	<b>Iron Mountain will fulfill a Work Request to perform one Deposit Compile Test Binary Comparison which includes a comparison of the files built from the Deposit Compile Test to the actual licensed technology on the Beneficiary's site to ensure a full match in file size, with a final report sent to the Requesting Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.</b>	Based on SOW	N/A	Unchecked Depositor - OR - Unchecked Beneficiary
Unchecked Add Level 4 - Full Usability Unchecked box	<b>Iron Mountain will fulfill a Work Request to perform one Deposit Compile Test Full Usability which includes a confirmation that the built applications work properly when installed. A final report will be sent to the Paying Party regarding the Deposit Material. The Paying Party and Iron Mountain will agree on a custom Statement of Work ("SOW") prior to the start of fulfillment.</b>	Based on SOW	N/A	Unchecked Depositor - OR - Unchecked Beneficiary
Unchecked Add Deposit Tracking Notification Unchecked box	<b>At least semi-annually, Iron Mountain will send an update reminder to Depositor. Thereafter, Beneficiary will be notified of last deposit.</b>	N/A	\$375	Unchecked Depositor - OR - Unchecked box Beneficiary
Unchecked Add Dual/Remote Vaulting Unchecked box	<b>Iron Mountain will fulfill a Work Request to store deposit materials in one additional location as defined within the Service Agreement. Duplicate storage request may be in the form of either physical media or electronic storage.</b>	N/A	\$500	Unchecked box Depositor - OR - Unchecked box Beneficiary
Unchecked Release Deposit Material	<b>Iron Mountain will process a Work Request to release Deposit Material by following the specific procedures defined in Exhibit C "Release of Deposit Material" the Escrow Service Agreement.</b>	\$500	N/A	Unchecked box Depositor - OR - Unchecked box Beneficiary

Unchecked box Add Custom Services	<b>Iron Mountain will provide its Escrow Expert consulting based on a custom SOW mutually agreed to by all Parties.</b>	\$175/hour	N/A	Unchecked box Depositor - OR - Unchecked box Beneficiary
Unchecked box Custom Contract Fee	<b>Custom contracts are subject to the Custom Contract Fee, which covers the review and processing of custom or modified contracts.</b>	\$500	N/A	Unchecked box Depositor - OR - Unchecked box Beneficiary

Note: Parties may submit Work Requests via written instruction or electronically through the online portal.

## EXHIBIT B DEPOSIT MATERIAL DESCRIPTION

COMPANY NAME: \_\_\_\_\_ DEPOSIT ACCOUNT NUMBER: \_\_\_\_\_

DEPOSIT NAME \_\_\_\_\_ AND DEPOSIT VERSION \_\_\_\_\_  
(Deposit Name will appear in account history reports)

DEPOSIT MEDIA (PLEASE LABEL ALL MEDIA WITH THE DEPOSIT NAME PROVIDED ABOVE)

MEDIA TYPE	QUANTITY	MEDIA TYPE	QUANTITY
Unchecked <b>CD-ROM / DVD</b>		Unchecked <b>3.5" Floppy Disk</b>	
Unchecked <b>DLT Tape</b>		Unchecked <b>Documentation</b>	
Unchecked <b>DAT Tape</b>		Unchecked <b>Hard Drive / CPU</b>	
		Unchecked <b>Circuit Board</b>	

	TOTAL SIZE OF TRANSMISSION (SPECIFY IN BYTES)	# OF FILES	# OF FOLDERS
Unchecked <b>Electronic Deposit</b>			
Unchecked <b>Other (please describe below):</b>			

DEPOSIT ENCRYPTION (Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted? Unchecked Yes or Unchecked No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit.

Encryption tool name \_\_\_\_\_ Version \_\_\_\_\_

Hardware required \_\_\_\_\_

Software required \_\_\_\_\_

Other required information \_\_\_\_\_

DEPOSIT CERTIFICATION (Please check the box below to Certify and Provide your Contact Information)

Unchecked I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to Iron Mountain at the address below.	Unchecked Iron Mountain has inspected and accepted the above described Deposit Material either electronically or physically. Iron Mountain will notify Depositor of any discrepancies.
NAME:	NAME:
PRINT NAME:	PRINT NAME:
DATE:	DATE:
EMAIL ADDRESS:	
TELEPHONE NUMBER:	
FAX NUMBER:	

**Note: If Depositor is physically sending Deposit Material to Iron Mountain, please label all media and mail all Deposit Material with the appropriate Exhibit B via commercial express carrier to the following address:**

Iron Mountain Intellectual Property Management, Inc.  
Attn: Vault Administration  
2100 Norcross Parkway, Suite 150  
Norcross, GA 30071

Telephone: 800-875-5669  
Facsimile: 770- 239-9201

**FOR IRON MOUNTAIN USE ONLY: (NOTED DISCREPANCIES ON VISUAL INSPECTION)**

## EXHIBIT C

### Release Of Deposit material

**Deposit Account Number:** \_\_\_\_\_

Iron Mountain will use the following procedures to process any Beneficiary Work Request to release Deposit Material. All notices under this Exhibit C shall be sent pursuant to the terms of Section 12(h) Notices.

1. **Release Conditions.** The Depositor and Beneficiary agree that a Work Request for the release of the Deposit Material shall be based solely on one or more of the following conditions (defined as “**Release Conditions**”):
  - (i) Depositor and Beneficiary agree in writing that the Deposit Material shall be released; or
  - (ii) Failure of the Depositor to function as a going concern and no successor or assignee has agreed to assume Depositor’s obligations under this Agreement; or
  - (iii) Depositor is subject to voluntary or involuntary bankruptcy and such petition is not dismissed within sixty (60) calendar days after it has been filed and Depositor also fails to provide Managed Services to Beneficiary as required under the GSA Contract.
2. **Release Work Request.** A Beneficiary may submit a Work Request to Iron Mountain to release the Deposit Material covered under this Agreement. Iron Mountain will send a written notice of this Beneficiary Work Request within five (5) business days to the Depositor’s Authorized Person(s).
3. **Contrary Instructions.** From the date Iron Mountain mails written notice of the Beneficiary Work Request to release Deposit Material covered under this Agreement, Depositor Authorized Person(s) shall have ten (10) business days to deliver to Iron Mountain contrary instructions. Contrary instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured (“**Contrary Instructions**”). Contrary Instructions shall be on company letterhead and signed by a Depositor Authorized Person. Upon receipt of Contrary Instructions, Iron Mountain shall promptly send a copy to Beneficiary’s Authorized Person(s). Additionally, Iron Mountain shall notify both Depositor and Beneficiary Authorized Person(s) that there is a dispute to be resolved pursuant to the Disputes provisions of this Agreement. Iron Mountain will continue to store Deposit Material without release pending (i) joint instructions from Depositor and Beneficiary with instructions to release the Deposit Material; or (ii) dispute resolution pursuant to the Disputes provisions of this Agreement; or (iii) receipt of an order from a court of competent jurisdiction.
4. **Release of Deposit Material.** If Iron Mountain does not receive timely Contrary Instructions from a Depositor Authorized Person, Iron Mountain is authorized to release Deposit Material to the Beneficiary. Iron Mountain is entitled to receive any undisputed, unpaid Service Fees due Iron Mountain from the Parties before fulfilling the Work Request to release Deposit Material covered under this Agreement. Any Party may cure a default of payment of Service Fees.
5. **Termination of Agreement Upon Release.** This Agreement will terminate upon the release of Deposit Material held by Iron Mountain.
6. **Right to Use Following Release.** Beneficiary has the right under this Agreement to use the Deposit Material solely as expressly set forth in Attachment 1 to Exhibit C, attached to this Agreement for reference only. Depositor and Beneficiary acknowledge that Iron Mountain has no knowledge of the terms and conditions contained in Attachment 1, and that Iron Mountain shall not be obligated by any of the terms contained therein. Notwithstanding, the Beneficiary shall not have access to the Deposit Material unless there is a release of the Deposit Material in accordance with this Agreement. Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Material.



## EXHIBIT Q

### Escrow Deposit Questionnaire

#### **Introduction**

From time to time, technology escrow beneficiaries may exercise their right to perform verification services. This is a service that Iron Mountain provides for the purpose of validating relevance, completeness, currency, accuracy and functionality of deposit materials.

#### **Purpose of Questionnaire**

In order for Iron Mountain to determine the deposit material requirements and to quote fees associated with verification services, a completed deposit questionnaire is requested. It is the responsibility of the escrow depositor to complete the questionnaire.

#### **Instructions**

Please complete the questionnaire in its entirety by answering every question with accurate data. Upon completion, please return the completed questionnaire to the beneficiary asking for its completion, or e-mail it to Iron Mountain to the attention of

[verification@ironmountain.com](mailto:verification@ironmountain.com)

#### **Escrow Deposit Questionnaire**

##### **General Description**

1. What is the general function of the software to be placed into escrow?  
Video Capture and Event Clip Review
2. On what media will the source code be delivered?  
Tape DLT
3. What is the size of the deposit in megabytes?  
Less than 1 GB

##### **Requirements for the Execution of the Software Protected by the Deposit**

1. What are the system hardware requirements to successfully execute the software? (memory, disk space, etc.)  
Any x86 based system  
Windows Server 2003  
32 Gig Memory  
MSFT DOT NET  
SQL Server Database  
Firmware Runs on Event Recorder
2. How many machines are required to completely set up the software?  
1 Machine
3. What are the software and system software requirements, to execute the software and verify correct operation?  
MSFT DOT NET platform is required  
Firmware Runs on Event Recorder

##### **Requirements for the Assembly of the Deposit**

1. Describe the nature of the source code in the deposit. (Does the deposit include interpreted code, compiled source, or a mixture? How do the different parts of the deposit relate to each other?)  
.NET Compiled Code (Software)  
Linux Based C-Code (Firmware)
2. How many build processes are there?  
6 Build Processes
  - HindSight Business Server
  - File Converters / Load Balancer and Event Movers
  - MS Client
  - HindSight Communication Service
  - DriveCam Online
  - Firmware
3. How many unique build environments are required to assemble the material in the escrow deposit into the deliverables?  
3 Environments
  - DriveCam Online
  - All Other Software Components
  - Firmware

4. What hardware is required for each build environment to compile the software? (including memory, disk space, etc.)  
 Software
  - Any x86 System with Proc > 2.6 GHz and 16 GB Memory
  - 20 Gig Hard Drive
 Firmware
  - Linux Based OS with Proc > 2.6 GHz and 16 GB Memory
  - 10 Gig Hard Drive
5. What operating systems (including versions) are used during compilation? Is the software executed on any other operating systems/version?  
 MS Windows 2003 Server  
 SQL Server Database 2005 Enterprise Edition  
 Current Linux OS
6. How many separate deliverable components (executables, share libraries, etc.) are built?  
 (HBS, EM, FC, LB, MS Client, HCS, DriveCam Online, Operational Tools, Firmware)
7. What compilers/linkers/other tools (brand and version) are necessary to build the application?  
 Microsoft Team Foundation Server  
 Accurev
8. What, if any, third-party libraries are used to build the software?  
 Alachisoft's NCACHE
9. How long does a complete build of the software take? How much of that time requires some form of human interaction and how much is automated?  
 No Human Interaction.
  - HBS: ~ 15 Minutes
  - Other Software Components: ~15 Minutes
  - Firmware: ~ 10 Minutes
10. Do you have a formal build document describing the necessary steps for system configuration and compilation?  
 No, but the mechanism to do the build is itself included in the source code.
11. Do you have an internal QA process? If so, please give a brief description of the testing process.  
 Yes, the testing process includes reviewing the requirements, writing test cases, testing the code in builds delivered by the development team in short intervals (using manual and automated tests), opening bugs in tracker systems, validating fixed bugs and validating the successful deployment of the components.
12. Please list the appropriate technical person(s) Iron Mountain may contact regarding this set of escrow deposit materials.

*Please provide your technical verification contact information below:*

<b>COMPANY:</b>	
<b>SIGNATURE:</b>	
<b>PRINT NAME:</b>	
<b>ADDRESS 1:</b>	
<b>ADDRESS 2:</b>	
<b>CITY, STATE, ZIP</b>	
<b>TELEPHONE:</b>	
<b>EMAIL ADDRESS:</b>	

For additional information about Iron Mountain Technical Verification Services, please contact Manager of Verification Services at **800-875-5669** or by e-mail at <mailto:verification@ironmountain.com>

## ATTACHMENT 1 TO EXHIBIT C

Terms used below that are not defined in this Agreement shall have the meaning given them in the GSA Contract and Software License Agreement.

### 1 OWNERSHIP

BENEFICIARY AND THE DEPOSITOR ACKNOWLEDGE AND AGREE THAT ALL RIGHT, TITLE AND INTEREST IN AND TO THE DEPOSIT MATERIAL SHALL REMAIN THE PROPERTY OF THE DEPOSITOR. THE PARTIES ACKNOWLEDGE AND AGREE THAT BENEFICIARY RECEIVES NO TITLE OR OWNERSHIP RIGHTS TO THE DEPOSIT MATERIAL, AND ALL SUCH TITLE AND OWNERSHIP SHALL REMAIN WITH THE DEPOSITOR OR ITS SUPPLIERS.

### 2 GRANT OF LICENSE UPON RELEASE OF ESCROW DEPOSIT MATERIAL

2.1 Subject to the terms and conditions of this Agreement and hereinafter set forth, the Depositor hereby grants to Beneficiary and Beneficiary hereby accepts a perpetual, restricted, non-exclusive, non-transferable license to use the Deposit Material for the sole purpose of continuing the benefits afforded to Beneficiary by the GSA Contract and Software License Agreement, including the provision of Managed Services to the City (the "Purpose"). The Beneficiary agrees that the Deposit Material will only be used under controlled conditions and solely for the Purpose. Notwithstanding the foregoing, Beneficiary shall not have access to the Deposit Material unless there is a release of such materials in accordance with this Agreement.

For the purposes of this Agreement:

"Deposit Material" means both the Object Code and the Source Code for the following DriveCam software and firmware: HindSight 20/20 Business Server, File Converters / Load Balancer and Event Movers, Managed Service Client, HindSight 20/20 Communication Service, DriveCam Online and Firmware. Such materials shall be updated from time to time to reflect the software and firmware necessary for the Purpose.

"Object Code" means machine readable compiled form of software provided by Depositor; and

"Source Code" means human readable compiled form of software provided by Depositor.

2.2 Beneficiary agrees that the rights granted to Beneficiary under Subsection 2.1 shall be subject to the following restrictions:

- (a) Beneficiary shall not copy the Deposit Material or parts thereof, except for safekeeping (archives) or backup purposes;
- (b) Beneficiary agrees to prohibit access to the Deposit Material to anyone of its personnel not having a legitimate need for such access in order to facilitate the Purpose. Beneficiary shall not remove any copyright or proprietary legends or other markings from any permitted copies of the Deposit Material made hereunder;
- (c) Beneficiary shall not translate, reverse engineer, adapt, arrange or error-correct or make any other alterations to the Deposit Material except as necessary to the Purpose. Any adaptation,

arrangement, error-correction or any other alterations of the Deposit Material by Beneficiary that is not specifically approved in writing by the Depositor shall be an unauthorized use for which Beneficiary shall be solely at risk and solely liable, and for which Beneficiary shall hold Depositor harmless and provide indemnity and defense, as provided in Section 3(c) of this Agreement;

- (d) Beneficiary shall not use the Deposit Material in whole or in part (i) for any commercial purpose other than the Purpose or (ii) for the manufacture or production of software or equipment that is the same as or similar to the Deposit Material and/or the software and equipment supplied as part of DriveCam's Managed Services; and
  - (e) Beneficiary shall not release or disclose the Deposit Material to any third party for any other purpose than as permitted hereunder without the prior written permission of the Depositor.
- 2.3 The obligations of Beneficiary under this Section shall survive the termination or expiration of this Agreement.

## ATTACHMENT B

**City and County of San Francisco  
San Francisco Municipal Transportation Agency  
One South Van Ness Avenue, 7<sup>th</sup> Floor  
San Francisco, California 94103**

### **SOFTWARE LICENSE AND MAINTENANCE SERVICES AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND DRIVECAM, INC.**

This Software License Agreement is made (and dated for convenience) this \_\_\_\_ day of \_\_\_\_\_, 2009, in the City and County of San Francisco, State of California, by and between DriveCam, Inc., a Delaware corporation (“Contractor”) and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through the San Francisco Municipal Transportation Agency (“City”, “SFMTA”, or MUNI).

#### **Recitals**

WHEREAS, the City wishes to license certain software from Contractor; and,

WHEREAS, Contractor represents and warrants that it is qualified to provide such software and services required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

#### **1. Definitions**

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

**ACCEPTANCE** Notice from the City to Contractor that the Licensed Software meets the specifications contained in the Documentation. City’s Acceptance of the Licensed Software shall be governed by the procedures set forth in Section 7.

**AGREEMENT** This document and any attached appendices and exhibits, including any future written and executed amendments.

**AUTHORIZATION; or  
AUTHORIZATION**

**DOCUMENT** This Software License Agreement, properly executed by San Francisco Municipal Transportation Agency, and certified by the Controller for the specific funding of this Agreement or any modification thereof.

**DOCUMENTATION** The technical publications relating to the use of the Licensed Software, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.

**HARDWARE** Contractor’s video event recorders and associated hardware provided to City hereunder.

LICENSED SOFTWARE	The Object Code for version 5.4 of Contractor's HindSight 20/20 software, and all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form. The Authorization Document may identify more than one software product or more than one copy of any product.
MANAGED SERVICES	The analysis and reporting of driving events captured by Contractor's video event recorders installed in the City's vehicles and certain other services to be provided by Contractor hereunder relating to City's access and use of the Licensed Software.
OBJECT CODE	Machine readable compiled form of Licensed Software provided by Contractor.
SPECIFICATIONS	The functional and operational characteristics of the Licensed Software as described in Contractor's current published product descriptions and technical manuals.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the City. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the reasonable judgment of the City, unless otherwise indicated by the context.

**2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration of this Agreement.

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

### **3. Term of the Software License**

Subject to the terms of this Agreement, the license to the Licensed Software granted under this Agreement shall coincide with the subscription term for the Managed Services provided to the City under the GSA Federal Supply Schedule Contract GS-35F-0623S (the "GSA Contract") unless sooner terminated in accordance with the provisions of this Agreement. Licenses are purchased and apply on a per video event recorder (VER) basis for the applicable subscription term.

### **4. Effective Date of the Agreement**

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

### **5. License**

**A. Grant of License.** Subject to the terms and conditions of this Agreement, Contractor grants City a nonexclusive, nontransferable license to access and use the Licensed Software and Managed Services for City's internal fleet management purposes only to achieve the results described in the Statement of Work between the SFMTA and Contractor and the GSA Federal Supply Schedule Contract GS-35F-0623S, without the right to sublicense such rights, provided City unconditionally agrees to access and use the Licensed Software and Managed Services strictly in accordance with the Documentation and this Agreement ("License"). Under the License, City may print out, or otherwise make, printed copies ("Copies") of the reports, numeric results and other information and materials generated from City's access and use of the Licensed Software and Managed Services for internal fleet management purposes only. Any updates, modifications, enhancements or new versions of the Licensed Software or Managed Services provided or made available to City by Contractor, in accordance with this Agreement, shall be considered Licensed Software and Managed Services subject to this Agreement. Contractor shall be entitled at any time and without liability to improve, modify, suspend, test, maintain or repair the systems used by Contractor to provide the Managed Services in whole or in part and/or any other services rendered under this Agreement even if this requires temporarily suspending the operation of the Managed Services, provided that Contractor shall use reasonable efforts to minimize all forms of disruption resulting therefrom. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Software License grants City no title or right of ownership in the Licensed Software.

**B. Restrictions on Use.** City is authorized to use the Licensed Software only for City's internal purposes. City agrees that it will, through its best efforts, not use or permit the Licensed Software to be used in any manner, whether directly or indirectly, that would enable any other unauthorized person or entity to use the Licensed Software. Except as otherwise expressly provided in this Agreement, City agrees to: (a) only use the Licensed Software and Managed Services in the manner, and for the purposes, expressly specified in this Agreement; (b) not decompile, disassemble analyze or otherwise examine the Licensed Software and/or Managed Services for the purpose of reverse engineering, or facilitate or permit a third party to do so (except to the extent this restriction is expressly prohibited by applicable law); (c) not delete or in any manner alter any notice, disclaimers or other legends contained in the Licensed Software and Managed Services or appearing on any screens, documents, reports, numeric results or other materials obtained by City through use of the Licensed Software and Managed Services ("Notices"); (d) reproduce and display all Notices on Copies City makes, in accordance with this Agreement; (e) not attempt to access any systems, programs or data of Contractor that are not licensed under this Agreement;

(f) not copy, reproduce, republish, upload, post, transmit or distribute the Licensed Software or Managed Services, or any portion thereof, or facilitate or permit a third party to do so; and (g) not use any device or software to interfere or attempt to interfere with the proper operation of the Licensed Software and Managed Services. Contractor may immediately terminate this Agreement in the event that City breaches the provisions of this Section 5.B.

## **6. Delivery**

**A. Delivery.** The Licensed Software is embedded in the video event recorders to be delivered hereunder.

**B. Risk of Loss.** If any of the Licensed Software products are lost or damaged during shipment, Contractor shall promptly replace such products, at no additional charge to the City.

## **7. Ownership of Data**

As between Contractor and City, the City shall own the information, data and content captured by the video event recorders in City's possession as well as the related scoring information and analysis of such video events provided to City by Contractor ("Data"). However, the Contractor and its subcontractors shall have the right to use such Data in connection with performance hereunder and to improve and expand Contractor's products and services. Contractor shall have the right (which shall survive termination and expiration of this Agreement) to use and disclose the non-video and non-audio Meta-Data components of the Data for any purposes; provided that, Contractor does not indicate to any third party that such components were provided by, obtained from, or associated with, the City or City employees. Such usage rights shall continue and survive destruction of any video clips to which such Meta-Data components relate. For purposes of this Agreement, "Meta Data" means aggregated non-video and non-audio data that does not contain personally identifiable markings (for example, data relating to the forces triggering a risky driving event not the employee causing the event).



## **8. Maintenance and Support**

### **A. Maintenance and Support Services**

- (1) Maintenance and Support includes support for the Licensed Software and Hardware, in accordance with the terms and conditions set forth below. For purposes of this section, "Hardware" and "Licensed Software" refer only to hardware and software manufactured by Contractor.
- (2) Contractor shall use commercially reasonable efforts to provide the following support during Contractor's normal business hours (8 a.m. to 5 p.m. Pacific Standard Time): answering of telephone calls at a toll-free customer support telephone number (866) 419-5861 and e-mail support at support@drivecam.com.
- (3) City shall provide Contractor in writing with the name(s) and contact information of City's technical personnel who will liaison with Contractor regarding all technology-related matters. City may change such liaison(s) upon written notice to Contractor from time to time at reasonable intervals. Contractor shall not be obligated to provide support to any person other than the designated liaison(s).
- (4) Upon identification of a programming error in the Licensed Software, a malfunction in the Hardware, a problem in remotely accessing the Managed Services reports or data caused by Contractor, or other problems with respect to Contractor's provision of Services or Hardware hereunder, City shall promptly notify Contractor of such problems and provide Contractor with all information necessary for Contractor to locate and duplicate the problem. City agrees to provide Contractor with reasonable access (including, without limitation, remote access) to all necessary City personnel, facilities and equipment (including the Products) for the purpose of providing the support services hereunder.
- (5) For any problem for which City has given Contractor notice under Section 8.A, Contractor (or its service representative) shall, during Contractor's normal business hours, use commercially reasonable efforts to correct the problem, including providing a temporary workaround if one is available and repairing or replacing the malfunctioning Hardware or part.
- (6) Contractor shall not be obligated to provide such support services if the Hardware malfunction is not reproducible or is caused by (a) City's negligence or misuse, accident, fire, variation or interruption of electricity; (b) to the extent performed by City or its representatives, failure to properly install, maintain or use the Hardware; (c) alterations made by anyone other than Contractor or its representatives to the Hardware or the hardware or software that interfaces with the Hardware after installation; (d) any attempt to service the Hardware other than by Contractor or its service representatives (including the addition or removal of any third party hardware, peripherals or software); or (e) any software, equipment, or materials not approved or supplied by Contractor.
- (7) Contractor shall not be obligated to provide such support if the programming error in the Licensed Software is not reproducible or is caused by (a) City's failure to implement all updates to the Licensed Software provided to City by Contractor or use of a superseded version of the Licensed Software; (b) City's negligence or misuse or accident; (c) to the extent performed by City or its representatives, failure to properly, install, maintain or use the Licensed Software; (d) alterations made by anyone other than Contractor or its representatives to the Licensed Software or the Hardware or software that interfaces with the Licensed Software after installation; (e) any attempt to service the Licensed Software other than by Contractor or its service representatives (including the addition or removal of any third party hardware, peripherals or software); (f) combination of the Licensed Software with any accessory, equipment, software or part not approved by or not supplied by Contractor; or (g) third party software, equipment or materials not approved in writing or supplied by Contractor.

**B. Future Maintenance Service Charges.** Contractor shall provide software maintenance and support services as described in the GSA Contract.

**9. Warranties: Right to Grant License**

Contractor hereby warrants that it has title to and/or the authority to grant a license of the Licensed Software to the City.

**10. Warranties: Conformity to Specifications**

For a period of two (2) years, Contractor warrants that when the Licensed Software and all updates and improvements to the Licensed Software are delivered to City, they will substantially conform to the Documentation.

**11. Infringement Indemnification**

- (a) Contractor shall indemnify and hold City and its officers, directors, agents and employees harmless from all damages, liabilities, costs and expenses (including, without limitation, reasonable attorneys' fees) actually awarded to a third party and resulting from infringement by the Licensed Software of any U.S. patent or copyright issued as of the date of this Agreement; provided that, Contractor is promptly notified of all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over their defense and settlement. Contractor shall not be responsible for any settlement it does not approve in writing.
- (b) If the Licensed Software becomes, or in Contractor's sole opinion is likely to become, the subject of an infringement claim or action, Contractor may in its discretion: (a) procure for City the right to continue using the Licensed Software; (b) replace or modify the Licensed Software so as to be free from infringement; or (c) accept return of the Licensed Software and refund the payments paid by City for such Licensed Software less a reasonable amount for use and damage.
- (c) Notwithstanding the provisions of Section 11(a) above, Contractor has no liability to City for (a) the combination of the Licensed Software with software, hardware or other materials not supplied or approved in writing by Contractor for use with the Licensed Software; (b) the activities of City, after Contractor has notified City that such activities may result in such infringement; (c) use or operation of the Licensed Software other than in strict accordance with the applicable Documentation; or (d) the modification of the Licensed Software, or any part thereof, unless such modification was made by Contractor, where such infringement would not have occurred but for such modifications.
- (d) THE FOREGOING PROVISIONS OF THIS SECTION 11 STATE CONTRACTOR'S ENTIRE LIABILITY, AND CITY'S EXCLUSIVE REMEDY, WITH RESPECT TO ANY ALLEGED OR ACTUAL INTELLECTUAL PROPERTY INFRINGEMENT BY THE LICENSED SOFTWARE OR ANY PART THEREOF.

## **12. Payment**

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until Licensed Software and services required under this Agreement are received from Contractor and approved by the City as being in accordance with this Agreement.

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

## **13. Guaranteed Maximum Costs**

**A.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

**B.** Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request Contractor to perform services or to provide materials, equipment and supplies that would result in Contractor performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse Contractor for services, materials, equipment or supplies that are provided by Contractor which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the agreement having been lawfully executed by the City.

**C.** The City and its employees and officers are not authorized to offer or promise to Contractor additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for Contractor's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

**D.** The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

## **14. Invoice Format**

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include the Contract Progress Payment Authorization number. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

## **15. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code Section 21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages

which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) Knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval. (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City. (c) Conspires to defraud the City by getting a false claim allowed or paid by the City. (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City. (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.

#### **16. Taxes**

City shall pay Contractor for all applicable taxes associated with the products and services provided by Contractor hereunder other than U.S. taxes based on Contractor's net income. Payment to the applicable taxing authority of any such taxes, including possessory interest taxes, and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of Contractor.

#### **17. Payment Does Not Imply Acceptance of Work**

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, the Licensed Software, although the unsatisfactory character of such work, or Licensed Software may not have been apparent or detected at the time such payment was made. Software, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

#### **18. Qualified Personnel**

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor.

#### **19. Responsibility for Equipment**

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

#### **20. Independent Contractor; Payment of Taxes and Other Expenses**

**A. Independent Contractor.** Contractor or any agent or employee of Contractor shall be

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

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

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

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

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

## **21. Indemnification and General Liability**

Subject to the limitations in Section 22 below, Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to Contractor's property, resulting directly from Contractor's negligence or willful misconduct in performance of this Agreement, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement and except to the extent such loss, damage, injury, liability or claim is the result of negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts. Notwithstanding the foregoing, (i) the City acknowledges and agrees that Contractor makes no guarantee that driving will be risk-free as a result

of the use of Contractor's products and services, (ii) in no event shall Contractor be required to indemnify City for damages caused by City employees, and (iii) Contractor shall not have any obligation to indemnify City against wrongful discharge or similar employment claims by City's employees except to the extent a wrongful discharge is due to Contractor tampering with video events or otherwise providing City with a video event containing a material inaccuracy due to Contractor's actions.

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.

## **22. Incidental and Consequential Damages; Limitation of Liability**

Subject to the limitations herein, Contractor shall be responsible for incidental and consequential damages resulting from its indemnification obligations in Section 21 above. Nothing in this Agreement shall constitute a waiver of limitation of any rights that City may have under applicable law. IN NO EVENT SHALL CONTRACTOR OR ITS LICENSORS, SUPPLIERS, OR DISTRIBUTORS (COMBINED) BE LIABLE UNDER THIS AGREEMENT, THE BLANKET PURCHASE AGREEMENT, THE GSA CONTRACT OR ANY OTHER AGREEMENT INCORPORATED INTO SUCH AGREEMENTS BE REFERENCE, FOR ANY AMOUNTS EXCEEDING THE LESSER OF (i) THOSE ACTUALLY PAID BY CITY TO CONTRACTOR UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE DATE THE CAUSE OF ACTION ACCRUES OR (ii) ONE MILLION DOLLARS (\$1,000,000).

## **23. Liability of City**

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 14 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.

## **24. Nondisclosure**

**A.** City agrees that it shall treat the Licensed Software with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the Licensed Software is Accepted by the City.

**B.** The obligations of the City set forth above, however, shall not apply to the Licensed Software, or any portion thereof, which:

1. is now or hereafter becomes publicly known;
2. is disclosed to the City by a third party which the City has no reason to believe is not legally entitled to disclose such information;
3. is known to the City prior to its receipt of the Licensed Software;
4. is subsequently developed by the City independently of any disclosures made

- hereunder by Contractor;
5. is disclosed with Contractor's prior written consent;
  6. is disclosed by Contractor to a third party without similar restrictions.

**25. Proprietary or Confidential Information of City**

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

**26. Termination**

**A. Basis for Termination by Contractor.** Contractor shall have the right to terminate service and maintenance services under this Agreement if Contractor has fully performed all acts required of it under this Agreement to the City's satisfaction and the City fails to perform said services, and said failure to pay continues for a period of ninety (90) days after Contractor has completed the tasks or services. After City has paid the License Fee, Contractor does not have the right to terminate the License provisions of this Agreement, as the License is perpetual.

**B. Basis for Termination by City.** City shall have the right, without further obligation or liability to Contractor to immediately terminate this Agreement if Contractor commits any breach of the Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach, in which event, Contractor shall reimburse City in the same manner as for the removal of the Licensed Software due to infringement under Section 11.

**27. Notice to the Parties** Except as otherwise set forth herein, all notices under this Agreement shall be in writing, and shall be deemed given when personally delivered, when sent by confirmed fax, when sent by courier with confirmed receipt, or three days after being sent by prepaid certified or registered U.S. mail to the address of the party to be noticed as set forth herein or such other address as such party last provided to the other by written notice.

**28. Subcontracting and Assignment**

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

**29. Bankruptcy**

In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

**30. Assignment**

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. The City shall not unreasonably withhold such approval.

**31. Compliance with Americans with Disabilities Act**

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

**32. Sunshine Ordinance**

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

**33. Notification of Limitations on Contributions**

This paragraph applies if this contract is in excess of \$50,000 over a 12-month period or less and is for: (1) personal services; or (2) the selling or furnishing of any material, supplies or equipment; or (3) any combination of personal services and the selling or furnishing of any material, supplies or equipment. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 3.700 *et. seq.*,



and San Francisco Ethics Commission Regulations 3.710(a)-1 – 3.730-1, prohibit the public officials who approved this contract from receiving: (1) gifts, honoraria, emoluments or pecuniary benefits of a value in excess of \$50; (2) any employment for compensation; or (3) any campaign contributions for any elective office for a period of up to six years from individuals and entities who are “public benefit recipients” of the contract. Public benefit recipients of the contract are: (1) the individual, corporation, firm, partnership, association, or other person or entity that is a party to the contract; (2) an individual or entity that has a direct 10% equity, or direct 10% participation, or direct 10% revenue interest in that party at the time the public benefit is awarded; or (3) an individual who is a trustee, director, partner or officer of the contracting party at the time the public benefit is awarded.

Contractor understands that any public official who approved this contract may not accept campaign contributions, gifts, or future employment from Contractor except as provided under the Conduct Code. Contractor agrees to notify any other individuals or entities that may be deemed “public benefit recipients” under the Conduct Code because of this contract. Upon request, Contractor agrees to furnish, before this contract is entered into, such information as any public official approving this contract may require in order to ensure such official’s compliance with the Conduct Code. Upon request, the City agrees to provide, before this contract is entered into, Contractor with a list of public officials who, under the Conduct Code, approved this contract. Failure of any public official who approved this contract to abide by the Conduct Code shall not constitute a breach by either the City or Contractor of this contract. Notwithstanding anything to the contrary in this contract, neither party shall have the right to terminate the contract due to any failure by the other party to provide the information described in this paragraph.

#### **34. 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.

#### **35. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

#### **36. Administrative Remedy for Agreement Interpretation**

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

#### **37. 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.

#### **38. Construction**

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

**39. Entire Agreement**

This Software License Agreement is incorporated by reference into the Agreement between the parties, which together constitute an integrated contract binding the parties. Should any provision or part of the Software License Agreement conflict with any other part or provision of the aforementioned Agreement to such an extent that the provisions or parts cannot be harmonized, then the provisions of this Software License Agreement shall govern.

**40. Severability**

If any provision of the Agreement is held to be unenforceable by a court of competent jurisdiction, the Agreement shall be construed without such provision.

**41. Compliance with Laws**

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

**42. Signatories Have Read and Understand This Agreement**

In signing this Agreement, the signatories affirm: (1) that they act as authorized employees and agents of the parties and have the authority to bind their respective employers; (2) that they have read, understand and will comply with the terms and conditions of this Agreement.

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

CITY

CONTRACTOR

Recommended by:

Approved by:

\_\_\_\_\_  
Elson Hao  
Project Manager

\_\_\_\_\_  
William J. Ruff  
Vice President - Finance  
DriveCam, Inc.  
8911 Balboa Ave, Suite 200  
San Diego, CA 92123  
Federal Employer ID No.

Approved by:

\_\_\_\_\_  
Nathaniel P. Ford, Sr.  
Executive Director/CEO  
Municipal Transportation Agency

Approved as to form:  
Dennis J. Herrera  
City Attorney

by: \_\_\_\_\_  
John I. Kennedy  
Deputy City Attorney

San Francisco Municipal Transportation Agency  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
Secretary, SFMTA Board of Directors

**THIS PRINT COVERS CALENDAR ITEM NO. : 14**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Operations

**BRIEF DESCRIPTION:**

Requesting authorization to award and execute Contract No. SFMTA 2008/09-23, Advanced Train Control System Maintenance Support Services Agreement, with Thales Transport & Security, Inc. (“Contractor” or “Thales”) in an amount not to exceed \$5,000,000 and an initial term of five years with an option for the San Francisco Municipal Transportation Agency (“SFMTA”) to extend the term for an additional five years.

**SUMMARY:**

- The SFMTA’s Advanced Train Control System (“ATCS”) is a proprietary system that was supplied to the SFMTA by Contractor under San Francisco Municipal Railway Contract No. MR-1034R, dated August 10, 1992 (the “1992 Contract”).
- The SFMTA seeks to secure the reliability of the ATCS for its design life by obtaining from Contractor maintenance support services, including remote support, notification and provision of Software Updates and Software Upgrades, bi-annual support visits, emergency on-site support, ATCS asset evaluations and training as provided in this Agreement.
- The ATCS is a specialized system critical to the functioning and control of the City's public transit system and will require software maintenance support to realize its performance for its design life. Due to the proprietary nature of the ATCS, no vendor other than Contractor can supply the necessary maintenance services to the SFMTA, and this Agreement is necessarily therefore a sole source contract.
- Contractor desires to supply the SFMTA, and the SFMTA desires to purchase, maintenance services for the ATCS including remote support, emergency on-site support, bi-annual support visits, ATCS asset evaluations, training, and notification and provision of Software Updates and Upgrades for the ATCS, on the terms and conditions set forth in Contract No. SFMTA 2008/09-23.
- Pricing for both Included Support Services and Additional Support Services will be as stated in Appendix A to the Contract, the “Calculation of Charges for Included and Additional Maintenance Services” for the five-year Term of the Agreement and subject to an annual 3% increase, exclusive of Taxes.
- Staff seeks approval from the SFMTA Board of Contract No. SFMTA 2008/09-23 with Thales Transport & Security, Inc.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract No. SFMTA 2008/09-23

**APPROVALS:**

**DATE**

DIRECTOR OF DIVISION  
PREPARING ITEM

\_\_\_\_\_

\_\_\_\_\_

FINANCE \_\_\_\_\_

EXECUTIVE DIRECTOR/CEO \_\_\_\_\_

SECRETARY \_\_\_\_\_

ADOPTED RESOLUTION

BE RETURNED TO: Trinh Nguyen

**ASSIGNED SFMTAB CALENDAR DATE:** \_\_\_\_\_

## **PAGE 2**

### **PURPOSE**

The SFMTA seeks to secure the reliability of the ATCS for its design life by obtaining from Contractor maintenance support services, including remote support, notification and provision of Software Updates and Software Upgrades, bi-annual support visits, emergency on-site support, ATCS asset evaluations and training as provided in Contract No. SFMTA 2008/09-23.

### **GOAL**

The ATCS contributes to the following Strategic Goals:

Goal 1: Customer Service - To provide safe, accessible, clean, environmentally sustainable service and to encourage the use of auto-alternative modes through the Transit First Policy

Objective 1.1 - Improve safety and security across all modes of transportation

Goal 2: System Performance - To get customers where they want to go, when they want to be there

Objective 2.1 - Improve transit reliability to meet 85% on-time performance standard

Objective 2.4 - Reduce congestion through major corridors

Goal 6: Information Technology - To improve service and efficiency, the SFMTA must leverage technology

Objective 6.1 – Information and Technology Leadership: Identify, develop and deliver the enhanced systems and technologies required to support SFMTA’s 2012 goals

### **DESCRIPTION**

In August 1992, the City, through its Public Utilities Commission, awarded Contract No. MR-1034R with Alcatel to provide an Advanced Train Control System (ATCS) to the Municipal Railway. Work under this 1992 contract is complete. The ATCS has been in revenue service since 1998.

The ATCS controls light rail vehicles operating within the Metro subway. The ATCS enhances light rail system performance and safety by controlling train speed, braking, routing and headways (the time between trains), more efficiently and accurately than can be accomplished by manual operator control. The ATCS controls trains at a rate of up to 60 vehicles-per-hour in each direction through the subway, an increase of 130 percent over the 26 vehicles-per-hour pre-ATCS limitation. The ATCS transmits train arrival information to platform level information systems, both visual and audio, through the SFMTA’s legacy Platform Display Signs (PDS) and Public Address (PA) Systems. The ATCS also provides real-time train location data to the NextMuni

## **PAGE 3**

arrival prediction system (supplied by NextBus) for those trains that are in the subway and outside the range of Global Positioning Satellite (“GPS”) vehicle tracking devices.

### **MTA's Need for Purchasing ATCS Maintenance Support Services through Thales Transport & Security**

The ATCS is a state-of-the-art, specialized system critical to the functioning and control of the City's public transit system. It will require software maintenance support to realize its performance for its design life. Most ATCS hardware and all ATCS software are proprietary technology of Thales Transport & Security, Inc. Most ATCS replacement parts and all software upgrades can only be purchased from Thales, as there is no other supplier. Due to the proprietary nature of the ATCS, no vendor other than Contractor can supply the necessary maintenance services to the SFMTA. The SFMTA desires to purchase maintenance services for the ATCS including remote support, emergency on-site support, bi-annual support visits, ATCS asset evaluations, training, and notification and provision of Software Updates and Upgrades for the ATCS. Due to the proprietary nature of this system, this Contract is necessarily a sole source contract.

Services provided by Thales will be paid either through the annual Maintenance Service Fee for Included Support Services or through fees identified for Additional Support Services (see Appendix A to the Contract, the “Calculation of Charges for Included and Additional Maintenance Services.”). The pricing will be applicable for the five-year Term of the Agreement subject to an annual percentage increase of three per cent, exclusive of taxes. In exchange and as consideration for SFMTA's payment of the lump sum Annual Maintenance Services Fee, Contractor will provide to the SFMTA the following Included Support Services:

- **Remote Support.** To assist the SFMTA in the identification and resolution of problems affecting the continued operation of the ATCS, Contractor will provide the SFMTA remote technical support via telephone and/or email 24 hours per day, seven days per week, through the Contractor’s Call Center located in Toronto and/or Burnaby, Canada.
- **Notification of Software Updates and Software Upgrades.** Contractor will provide the SFMTA with notification of Software Updates and Software Upgrades for the ATCS Software.
- **Bi-Annual Support Visits.** Contractor’s Technical Support Specialist (TSS) will attend bi-annual (2 per year) three-day support visits on-site for the purpose of reviewing ATCS maintenance by the SFMTA personnel.
- **Training Sessions.** The Contractor will provide four five-day standard training sessions to SFMTA personnel on specific ATCS maintenance and/or operations topics, to be delivered by a Contractor Training Specialist.
- **ATCS Asset Evaluation and Operational Assessment.** The Contractor will provide the SFMTA one ATCS Asset Evaluation and Operational Assessment within the Term of the Agreement to cover:

- (1) On-site survey of the Contractor supplied ATCS components, installations and special test equipment to verify condition, labeling, configuration management, and match to drawings.
  - (2) Detailed review of spare parts usage, failure diagnosis and repair processes.
  - (3) Update to the assessment of ATCS components based on the cumulative hours in service and observed failures.
  - (4) Determination of residual life of ATCS components.
  - (5) Identification of obsolete items or items within five years of obsolescence.
  - (6) Observation of SFMTA's operating practices of the ATCS.
  - (7) A full report including general and specific recommendations of Contractor observations and findings as to needed recommended or available upgrades of ATCS Software and/or Equipment, required spare parts, Equipment and work practices modifications, Documentation updates, recommended training, and other matters that are important or necessary for the proper maintenance and operation of the ATCS.
- **Additional Support Services.** Where the Annual Maintenance Service Fee has been or will be exceeded or where the type of services requested are outside the scope of the Included Support Services listed above, Contractor may also provide the Additional Support Services including additional training, additional remote support, emergency on-site support and third party systems integration.

## **FUNDING IMPACT**

Operating funds for this contract are budgeted in the operating budget.

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

Contract No. SFMTA 2008/09-23 is contingent upon approval by the Civil Service Commission.

The City Attorney's Office and SFMTA's Contract Compliance Office have reviewed this item.

## **RECOMMENDATION**

Staff recommends approval of Contract No. SFMTA 2008/09-23.



SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The existing Advanced Train Control System (“ATCS”) is a proprietary system supplied to the SFMTA by Thales Transport & Security, Inc.; and

WHEREAS, The SFMTA seeks to secure the reliability of the ATCS for its design life by obtaining from Contractor maintenance support services, including remote support, notification and provision of Software Updates and Software Upgrades, bi-annual support visits, emergency on-site support, ATCS asset evaluations and training; and,

WHEREAS, The ATCS is a specialized system critical to the functioning and control of the City's public transit system and will require software maintenance support to realize its performance for its design life; and,

WHEREAS, Due to the proprietary nature of the ATCS, no vendor other than Contractor can supply the necessary maintenance services to the SFMTA, and this Agreement is necessarily therefore a sole source contract; and,

WHEREAS, Contractor desires to supply the SFMTA, and the SFMTA desires to purchase, maintenance services for the ATCS including remote support, emergency on-site support, bi-annual support visits, ATCS asset evaluations, training, and notification and provision of Software Updates and Upgrades for the ATCS; and,

WHEREAS, Pricing for both Included Support Services and Additional Support Services will be as stated in Appendix A to the Contract, the “Calculation of Charges for Included and Additional Maintenance Services” for the five year Term of the Agreement and subject to an annual 3% increase, exclusive of Taxes; and,

WHEREAS, Contract No. SFMTA 2008/09-23 is contingent upon approval by the Civil Service Commission; now, therefore, be it

RESOLVED, That the SFMTA Board of Directors authorizes the Executive Director/CEO to execute Contract No. SFMTA 2008/09-23, Advanced Train Control System Maintenance Support Services Agreement, with Thales Transport & Security, Inc., for an amount not to exceed \$5,000,000 and an initial term of five years with an option to extend the Contract for an additional five years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of \_\_\_\_\_.

\_\_\_\_\_  
Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**Advanced Train Control System Maintenance Support Services Agreement**

**between the**

**San Francisco Municipal Transportation Agency**

**and**

**Thales Transport & Security, Inc.**

**Contract No. SFMTA 2008/09-23**

**April 21, 2009**

TABLE OF CONTENTS

A. RECITALS ..... 1

B. DEFINITIONS..... 2

C. MAINTENANCE SERVICES TO BE PROVIDED BY CONTRACTOR ..... 4

    1. Description of Maintenance Services ..... 4

    2. Included Support Services ..... 4

    3. Additional Support Services ..... 6

    4. Limitation to Maintenance Services Obligations..... 7

    5. Warranty ..... 8

    6. Software Updates and Software Upgrades ..... 8

D. SFMTA RESPONSIBILITIES ..... 9

    1. Appoint Systems Manager and Contact Person..... 9

    2. Preventive Maintenance..... 9

    3. Maintain Current Versions of Software and Equipment ..... 9

    4. Install Software ..... 10

    5. Notice of Problems ..... 10

    6. Access to ATCS..... 10

    7. Contractor Working Space..... 10

    8. Service Activities ..... 10

    9. Logbook ..... 10

    10. Access to Tools, Documentation, Parts ..... 10

    11. Copies of Software and Documentation ..... 10

    12. Maintenance Records..... 10

    13. Internet Connection..... 11

E. GENERAL PROVISIONS ..... 11

    1. Certificate of Funds, etc..... 11

    2. Term of the Agreement..... 12

    3. Effective Date of Agreement ..... 12

    4. Satisfaction of 1992 Contract ..... 12

    5. Compensation ..... 12

    6. Guaranteed Maximum Costs..... 13

    7. Payment: Invoice Format..... 13

    8. Submitting False Claims: Monetary Penalties..... 13

    9. Taxes ..... 14

    10. Payment Not a Waiver of Warranty..... 14

    11. Qualified Personnel..... 14

    12. Responsibility for Equipment ..... 14

    13. Independent Contractor: Payment of Employment Taxes, etc. .... 15

    14. Insurance ..... 16

    15. Indemnity for Infringement of Intellectual Property Rights ..... 17

    16. Limitation of Liability ..... 18

    17. Default: Remedies: Right to Injunctive Relief ..... 19

    18. Commencement of Services and Termination..... 19

    19. Termination..... 20

20.	Rights and Duties upon Termination or Expiration.....	20
21.	Conflict of Interest.....	20
22.	Proprietary or Confidential Information.....	21
23.	Notices to the Parties.....	21
24.	Audit and Inspection of Records.....	22
25.	Subcontracting.....	23
26.	Assignment.....	23
27.	Non-Waiver of Rights.....	23
28.	Earned Income Credit (EIC) Forms.....	23
29.	Nondiscrimination: Penalties.....	24
30.	MacBride Principles – Northern Ireland.....	25
31.	Tropical Hardwood and Virgin Redwood Ban.....	25
32.	Drug-Free Workplace Policy.....	26
33.	Resource Conservation.....	26
34.	Compliance with Americans with Disabilities Act.....	26
35.	Sunshine Ordinance.....	26
36.	Limitations on Contributions.....	26
37.	Requiring Minimum Compensation for Covered Employees.....	26
38.	Requiring Health Benefits for Covered Employees.....	28
39.	Prohibition on Political Activity with City Funds.....	30
40.	Preservative-treated Wood Containing Arsenic.....	30
41.	Modification of Agreement.....	30
42.	Dispute Resolution.....	30
43.	Agreement Made in California; Venue.....	31
44.	Construction.....	31
45.	Entire Agreement.....	31
46.	Compliance with Laws.....	31
47.	English Required.....	31
48.	Severability.....	32
49.	Protection of Private Information.....	32
50.	Food Service Waste Reduction Requirements.....	33
51.	Force Majeure.....	33
F.	SIGNATURE, COUNTERPARTS.....	33
G.	INCLUDED APPENDICES.....	34

**Advanced Train Control System Maintenance Support Services Agreement between the  
San Francisco Municipal Transportation Agency and  
Thales Transport & Security, Inc.**

This Advanced Train Control System Maintenance Support Services Agreement between the San Francisco Municipal Transportation Agency and Thales Transport & Security, Inc. is dated for convenience as April 21, 2009, between the City and County of San Francisco, acting by and through its Municipal Transportation Agency, a municipal corporation organized and existing under the laws of the State of California, whose principal place of business is at 1 South Van Ness Avenue, San Francisco, California 94102, U.S.A. (hereinafter referred to as "SFMTA" or "City"); and Thales Transport & Security, Inc., a corporation organized and existing under the laws of the State of Delaware, whose principal place of business is at 5700 Corporate Drive, Suite 750, Pittsburgh, PA 15237, U.S.A., (hereinafter referred to as "Contractor" or "Thales");

When appropriate herein, SFMTA and Contractor are individually hereinafter referred to as "Party" and collectively referred to as "Parties".

**A. RECITALS**

1. The SFMTA's Advanced Train Control System ("ATCS") is a proprietary system that was supplied to the SFMTA by Contractor (formerly Alcatel Transport Automation (U.S.) Inc.) under San Francisco Municipal Railway contract MR 1034R, dated August 10, 1992 (the "1992 Contract").
2. The SFMTA seeks to secure the reliability of the ATCS for its design life by obtaining from Contractor maintenance support services, including remote support, notification and provision of Software Updates and Software Upgrades, bi-annual support visits, emergency on-Site support, ATCS asset evaluations and training as provided in this Agreement.
3. The ATCS is a specialized system critical to the functioning and control of the City's public transit system and will require software maintenance support to realize its performance for its design life. Due to the proprietary nature of the ATCS, no vendor other than Contractor can supply the necessary maintenance services to the SFMTA, and this Agreement is necessarily therefore a sole source contract.
4. Contractor desires to supply the SFMTA and the SFMTA desires to purchase maintenance services for the ATCS including remote support, emergency on-Site support, bi-annual support visits, ATCS asset evaluations, training, and notification and provision of Software Updates and Upgrades for the ATCS, on the terms and conditions set forth under this Agreement.

Now, therefore, In consideration of the facts recited above, the premises and the mutual undertakings of the Parties herein contained, the Parties agree as follows:

## **B. DEFINITIONS**

For the purposes of this Agreement, the following words and expressions shall have the meanings set forth herein below:

**Agreement** shall mean this Maintenance Support Services Agreement and its Included Appendices.

**ATCS** shall mean the Advanced Train Control System provided by the Contractor under the 1992 Contract as it is configured and operates as of the Effective Date of this Agreement and as it will be configured and operated under this Agreement and subsequent agreements between the Parties.

**Confidential Information** shall mean any and all information, whether disclosed orally, visually, in machine-readable or written form, that the disclosing Party identifies is proprietary or confidential in writing at the time of disclosure or is subsequently specified and confirmed in writing by the disclosing Party at the latest within thirty (30) Days following oral and/or visual disclosure. The Documentation, Software and Software Updates and Software Upgrades are Confidential Information

**Days** shall mean consecutive calendar days, including weekends and holidays, unless otherwise specified.

**Director** shall mean the Director of Transportation: The Executive Director/Chief Executive Officer of the Municipal Transportation Agency of the City and County of San Francisco.

**Documentation** shall mean the instruction manuals, consisting of the user documentation, maintenance documentation and Equipment and Software documentation.

**Effective Date** shall mean the date when i) authorized officers of both Parties have executed this Agreement; and ii) the SFMTA has certified to the availability of funds for the services requested under this Agreement and Contractor has been so notified in writing.

**Equipment** shall mean the ATCS hardware, computers, servers, and other ATCS components, diagnostic and simulation tools, spare parts and other parts and electronic, mechanical or electrical components Contractor has provided or is contracted to provide to the SFMTA as part of the ATCS.

**Force Majeure** shall mean any act of God or any other cause beyond a Party's control (including, but not limited to, any restriction, strike, lock-out, plant shutdown, material shortage, delay in transportation or delay in performance by its suppliers or subcontractors for any similar cause).

**Included Appendices** are those documents attached to the Agreement, listed above the signature page, and that are incorporated into this Agreement by reference.

**Maintenance Services** shall mean collectively the Included Maintenance Services and Additional Maintenance Services, as fully described in Section C to this Agreement.

**Preventive Maintenance** shall mean planned maintenance activities undertaken by SFMTA personnel in accordance with the Contractor's provided operation and maintenance documentation at regularly specified intervals for the purpose of maintaining the ATCS Equipment, Software and subsystems and Documentation in good working order in order to meet performance requirements and which may include the installation of Software Updates.

**Problem** shall mean any disturbance or malfunction of Equipment and/or Software of SFMTA's ATCS or unsafe operation of a rail transit vehicle caused by the ATCS.

**Site(s)** shall mean the premises at the location(s) at the SFMTA where the Equipment and or Software are installed.

**Software** shall mean the ATCS software licensed under the 1992 Contract or which Contractor has since licensed or is contracted to license to the SFMTA as part of the ATCS, whether as a stand-alone product or pre-installed on Equipment.

**Software Update** shall mean a Software correction without change of features or functions of the Software.

**Software Upgrade** shall mean an enhancement by new features or functions of the Software.

**Systems Manager** shall mean the individual designated by City to be the primary liaison to Contractor for the purposes of this Agreement.

**Thales Affiliate** shall mean a company which controls, is controlled by, or is under the common control with the Contractor, but only for as long as such control exists; for the purposes of this clause, control is deemed to exist when the company in question has the authority, directly or indirectly through one or more intermediaries, to direct or utilize the voting rights of more than 50% of the stock entitled to vote for directors, general managers or persons performing a similar function, whereby such authority may exist by ownership of such stock or by contract.

**Working Days** shall mean Monday through Friday, 08:00 till 17:00 o'clock, except official and bank holidays applicable at the place of Contractor's or respective Thales Affiliate's service center. For Maintenance Services provided on-Site, the foregoing business hours shall be construed as Pacific Time; for Maintenance Services provided remotely, the foregoing business hours shall be construed as Eastern Standard Time.

## **C. MAINTENANCE SERVICES TO BE PROVIDED BY CONTRACTOR**

### **1. Description of Maintenance Services**

In exchange and as consideration for SFMTA's payment of the lump sum Annual Maintenance Services Fee set forth in Appendix A, Contractor shall provide the SFMTA the Included Support Services particularly described herein.

In exchange and as consideration for SFMTA's payment of the corresponding fees set forth in Appendix A, Contractor shall, when requested by SFMTA which request shall include confirmation of its intention to provide payment therefore, also provide the Additional Support Services particularly described herein where the Annual Maintenance Services Fee has been or will be exceeded or where the type of services requested are outside the scope of the Included Support Services.

### **2. Included Support Services (Annual Maintenance Services Fee).**

**a. Remote Support.** To assist the SFMTA in the identification and resolution of Problems affecting the continued operation of the ATCS, Contractor shall provide the SFMTA remote technical support via telephone and/or email twenty-four (24) hours per day, seven (7) days per week, through the Contractor's Call Center located in Toronto and/or Burnaby, Canada. Each SFMTA request for Remote Support Services shall be accounted and deducted from a seventy-two (72)-hour prepaid total (on which the Annual Maintenance Services Fee is based) in one hour increments. Contractor shall respond to SFMTA requests for remote assistance by telephone or email within fifteen (15) minutes of receipt of each request.

**b. Notification of Software Updates and Software Upgrades.** Contractor shall provide the SFMTA with notification of Software Updates and Software Upgrades for the ATCS Software as Contractor develops such Software Updates or Upgrades and which are made available to its customers at the Contractor's sole discretion. Contractor shall provide Software Updates at no charge only if and to the extent required to maintain the safe operation of the ATCS as determined by Contractor, otherwise the Software Update shall be subject to the provisions for Additional Support Services. Software Upgrades shall always be subject to the provisions for Additional Support Services. For the avoidance of doubt, a Software Update or Software Upgrade applicable to another of Contractor's train control systems in operation globally may not be applicable or beneficial to the City's ATCS. Accordingly, Software Updates and Software Upgrades will be notified at the Contractor's discretion based on being compatible and appropriate for the City's ATCS.

**c. Bi-Annual Support Visits.** Contractor's Technical Support Specialist (TSS) shall attend bi-annual (2 per year) three-day support visits on-Site for the purpose of reviewing ATCS maintenance by the SFMTA personnel. The TSS would provide SFMTA personnel on-the-job supervision with scheduled preventive maintenance on all installed Central and Wayside ATC equipment as well as on-the-job technical assistance with any ATCS technical issues. The



purpose of these visits is to provide regular re-enforcement of both periodic and corrective maintenance procedures with SFMTA staff and also ensures that Contractor maintains familiarity with the ATCS.

**d. Training Sessions.** The Contractor shall provide four (4) 5-day standard training session to SFMTA personnel on specific ATCS maintenance and/or operations topics, to be delivered by a Contractor Training Specialist. The SFMTA will inform Contractor of the specific topics to be covered in the training sessions at least six (6) weeks prior to a scheduled training session. Contractor will provide a training plan to be reviewed by the SFMTA at least four (4) weeks prior to each scheduled training session. The quoted price for the subject Training Session is based on a standard 5-Day refresher session.

Training shall be provided on a collective basis and the Contractor shall be deemed to have fulfilled its obligations hereunder even though some or all of the SFMTA's trainees have not attended all courses.

The Contractor shall not incur any liability as to the SFMTA's personnel's performance of their tasks after they have been trained.

**e. ATCS Asset Evaluation and Operational Assessment.** The Contractor shall provide the SFMTA one (1) ATCS Asset Evaluation and Operational Assessments within the Term, to be performed by a Contractor Technical Support Specialist (TSS) on or before September 30, 2011. The Asset Evaluation shall include the following:

- (1) On-Site survey of the Contractor supplied ATCS components, installations and special test equipment to verify condition, labeling, configuration management, and match to drawings.
- (2) Detailed review of spare parts usage, failure diagnosis and repair processes.
- (3) Update to the assessment of ATCS components based on the cumulative hours in service and observed failures.
- (4) Determination of residual life of ATCS components.
- (5) Identification of obsolete items or items within five (5)-years of obsolescence.
- (6) Observation of SFMTA's operating practices of the ATCS.
- (7) Full report including general and specific recommendations of Contractor observations and findings as to needed recommended or available upgrades of ATCS Software and/or Equipment, required spare parts, Equipment and work practices modifications, Documentation updates, recommended training, and other matters that are important or necessary for the proper maintenance and operation of the ATCS.

### **3. Additional Support Services (Fees for Additional Support Services).**

**a. Software Updates and Upgrades.** Contractor shall notify the SFMTA of Software Updates and Upgrades for the ATCS Software as the Contractor develops same and which are made available to its customers at the Contractor's sole discretion. The Contractor will provide the City with a quotation based on engineering hours required for implementation of any applicable Software Update or Software Upgrade. The applicable price shall be based on the hourly rate set forth in Appendix A, which price may be compensated within the remaining price allowance specified in the Agreement for the Additional Support Services; or may be procured by the City by separate agreement between the Parties.

**b. Additional Training Sessions.** The Contractor shall provide additional standard training sessions to SFMTA personnel on specific ATCS maintenance and operations topics in accordance with the charges set forth in Appendix A, to be delivered by a Contractor Training Specialist. The provisions of Article 2 d. above shall apply equally to such additional Training Sessions. Additional Training Sessions are available at "full" and "reduced" rates as set forth in Appendix A, part I.B. The "reduced" rate is applicable only to any Additional Training Sessions provided within 48 hours of an Included Training Session and delivered by the same trainer on the same course matter and using the same materials.

**c. Additional Remote Support Services.** Contractor shall provide the SFMTA additional Remote Support Services when requested by the SFMTA. SFMTA will contact the Contractor's Call Center and shall notify the support engineer/technician who responds via telephone and/or email that the request is for Additional Remote Support Services. Notwithstanding the foregoing, in the event that the Annual Maintenance Services Fee has or will be exceeded at any time during the Term, any Remote Support Service requested by the City shall be deemed to be Additional Remote Support Services and subject to the applicable fees set forth in Appendix A.

**d. Emergency On-Site Support.** In the event that a Problem cannot be resolved by Remote Support Services or at any time in response to a specific request by the City, the Contractor shall provide the SFMTA with Emergency on-Site Support to directly assist City personnel with Problem identification and resolution in accordance with the charges set forth in Appendix A. The Contractor shall respond to a SFMTA request for Emergency on-Site Support within twenty-four (24) hours of SFMTA's request, subject to the availability of air transportation at the time of request.

**e. Source Code Review Access and System Interface Support.** When requested in writing by the SFMTA, Contractor shall allow the SFMTA to review the source code of the SFMTA application specific software identified in Appendix B. The Contractor shall provide access to such source code, and provide engineering services as Additional Support Services in respect of interfacing the ATCS, should the City desire to enhance, add or otherwise modify such SFMTA applications. The Contractor shall not be obligated to support any such interfacing to the extent that same would adversely affect the safety or performance of the ATCS, as

determined in the Contractor's sole discretion. The Contractor will provide the SFMTA with a quotation based on engineering hours required for any review and/or support requested. The applicable price shall be based on the corresponding hourly rate set forth in Appendix A, which price may be compensated within the remaining price allowance specified in the Agreement for the Additional Support Services; or may be procured by the SFMTA by separate agreement between the Parties.

The SFMTA hereby acknowledges and agrees that the provisions of this Article 3 e. are agreed between the Parties to be in full and final satisfaction of all obligations under the 1992 Contract in respect of City-specific application software.

The SFMTA entitlement to review source code shall be limited to the SFMTA application specific software identified in Appendix B. However, in the event that the SFMTA desires to interface any new/other application software not listed in Appendix B, the Contractor will still, in response to a written request from the ATCS detailing the scope of work requested, provide the SFMTA with a separate proposal for the support and interfacing work that would be required. The Contractor's obligation shall not apply to the extent that such interfacing would adversely affect the safety or performance of the ATCS, as determined in the Contractor's sole discretion.

#### **4. Limitations To Maintenance Services Obligations**

Contractor's obligation to provide the Maintenance Services shall be limited by the following conditions, unless specific exceptions or modifications to these conditions are approved in writing by Contractor, who may impose an additional charge for the exception or modification:

**a. Designated System.** Contractor shall provide the Maintenance Services only in respect of the Equipment and Software provided to the SFMTA by the Contractor (or by its subcontractors) for the ATCS installed in the City of San Francisco.

**b. Failure To Follow.** For the avoidance of doubt, the Contractor shall not be responsible or liable hereunder if the SFMTA has failed to follow the instructions and procedures for installing, using or maintaining the Equipment or Software set forth in the Documentation or updates of the Documentation.

**c. Modification By Third Parties.** Contractor shall not responsible or liable hereunder if the SFMTA or any third party has modified or attempted to modify the Equipment or Software without the prior written authorization of Contractor or if the SFMTA has used the Equipment or Software with hardware or software, including, without limitation, operating system software, other than hardware and software specifically approved in writing by Contractor for use with the ATCS.

**d. Support Only.** The scope of the Maintenance Services is limited to support of Preventative Maintenance by the SFMTA as set forth herein. The repair or replacement by Contractor of Equipment that is out of warranty is outside the scope of the Maintenance

Services. Notwithstanding the foregoing, the Contractor shall provide the SFMTA with a quotation, in accordance with its standard procedures for all customers, for the repair or replacement of Equipment that is out of warranty at the SFMTA's written request to the Contractor's Customer Care representative.

## **5. Warranty**

a. Contractor shall perform the Maintenance Services with due care and diligence, in accordance with the terms and conditions of the Agreement.

b. Notwithstanding anything to the contrary in the Agreement, the Contractor's warranty obligations shall not extend to the Preventative Maintenance or other corrective action performed by the SFMTA's personnel.

c. Contractor shall render the Maintenance Services on a best effort basis due to current technical standards.

d. Contractor's warranty obligations shall be limited to the provisions of this Article C 5. Except as expressly mentioned in this Agreement, all and any warranties, terms, conditions or representations, express or implied, oral or written, statutory or otherwise arising by operation of law are hereby expressly excluded.

## **6. Software Updates and Software Upgrades**

a. The City is hereby granted a non-exclusive, non-transferable, perpetual, restricted license to use the Software Update or Software Upgrade from the date of full payment for same but only for its own operation and maintenance of the ATCS Equipment supplied by the Contractor. The City has no right to grant sublicenses. Contractor warrants that it has the title to and/or authority to grant said license(s) and sublicenses(s) to the City. Contractor further warrants that to the best of Contractor's knowledge at the time, the Software Update or Software Upgrade will not infringe on any copyright, patent or trademark.

b. Notwithstanding anything to the contrary contained in this Agreement, it is understood that the City receives no title or ownership rights to the Software Updates or Software Upgrades, and all such rights shall remain with the Contractor or its suppliers.

c. The City agrees that the Software Updates and Software Upgrades provided to it by the Contractor under this Agreement or any renewals, extensions or expansions hereof shall, as between the Parties, be treated as proprietary and a trade secret of the Contractor or its suppliers and be subject to the provisions of [Section 22 (Proprietary or Confidential Information)].

d. The City shall not:

(1) make any copies of Software Updates or Software Upgrades or parts thereof,

- except for archival back up purposes and when making copies as permitted herein, shall transfer to the copy/copies any copyright or proprietary legends or other marking on the Software Updates or Software Upgrades; or
- (2) use the Software Updates or Software Upgrades for any other purpose than permitted in this Section; or
  - (3) translate, reverse engineer, adapt, arrange or error-correct or make any other alterations to the Software Updates or Software Upgrades.

e. The obligations of the City under this Section shall survive the termination or expiration of this Agreement.

f. The license to use the Software Updates and Software Upgrades may contain freely available software obtained by Contractor from a third party source. No license fee has been paid by Contractor for the inclusion of any such freely available software, and no license fee is charged to City for its use. City acknowledges and agrees that the third party source provides no warranties and shall have no liability whatsoever in respect of City's possession and/or use of the freely available software.

#### **D. SFMTA RESPONSIBILITIES**

To facilitate Contractor's provision of Maintenance Services, the SFMTA shall do the following:

1. **Appoint Systems Manager and Contact Persons.** SFMTA shall appoint a System Manager to oversee and coordinate its use of the Equipment and Software and an alternate, both trained on the use of the ATCS, who shall act as SFMTA's primary contact person for all communications with Contractor. All information and materials provided to SFMTA by Contractor pursuant to this Agreement shall be sent to the attention of the Systems Manager. SFMTA shall also designate, in writing, up to three other employees to serve as the contact representatives. SFMTA may, by notice in writing to Contractor, substitute the System Manager with other employees as its designated representatives, or designate particular SFMTA employees as contact persons for certain issues, project or problems. Each of the aforementioned personnel identified by the SFMTA are authorized to initiate and procure on the SFMTA's behalf any Maintenance Services to be provided hereunder. The Systems Manager and contact persons must speak English with sufficient competence to assist the Contractor in performing Maintenance Services.

2. **Preventive Maintenance.** Preventive Maintenance is the responsibility of SFMTA, in accordance with Contractor's Documentation and operational procedures, maintenance instructions and routines made known to SFMTA. The SFMTA shall state the exact scope of the maintenance action performed, the spare parts used and the results of such maintenance in a logbook that shall be available to both Parties at all times. SFMTA shall also manage in an adequate manner its stock of consumable items and/or spare parts to ensure the continued availability of such consumable items and/or spare parts.

3. **Maintain Current Versions Of Software and Equipment.** The SFMTA shall maintain the Software and Equipment in accordance with Contractor's operational procedures, maintenance instructions and routines provided to the SFMTA by Contractor. The Software (including Updates and Upgrades) or Equipment shall not be modified in any manner except as authorized by Contractor.

4. **Install Software.** In the provision of Maintenance Services hereunder, the Contractor will assume the ATCS is running the most recent release of the Software. Accordingly, unless otherwise agreed between the Parties in writing, SFMTA shall promptly install all accepted Software Upgrades and Updates delivered, if necessary under the direction of Contractor's personnel.

5. **Notice Of Problems.** As a precondition for Contractor's obligations to perform the Maintenance Services, the SFMTA shall notify the Contractor as soon as possible after a Problem has occurred. Delays attributable to the SFMTA may delay Contractor's performance of the Maintenance Services.

6. **Access To ATCS.** SFMTA shall provide Contractor with access to and use of all information and system facilities Contractor determines are necessary for it to provide timely Maintenance Services pursuant to this Agreement.

7. **Contractor Working Space.** The SFMTA shall provide at its own expense, for use by the Contractor's personnel, adequate working space within a reasonable distance of the ATCS main control room or as otherwise agreed between the Parties. Such space shall provide suitable working arrangements for testing purposes. The SFMTA shall also provide adequate facilities for storage keeping of any and all items belonging to the Contractor within a reasonable distance of the Equipment to be serviced. Contractor shall use said storage space at its own risk; SFMTA shall not be responsible for the safekeeping or loss of Contractor's property.

8. **Service Activities.** Any maintenance activity performed by the SFMTA shall be in accordance with the relevant procedures prescribed by the Contractor in the Documentation.

9. **Logbook.** The SFMTA shall keep a logbook in which all events relevant to the Maintenance Services shall be kept. This logbook shall be available to both Parties at all times.

10. **Access to Tools, Documentation, Parts.** The Contractor shall have the right to make use of all tools, documentation and, if applicable, spare parts which may be relevant to the Maintenance Services and which shall be available on the Site(s) at all times.

11. **Copies of Software and Documentation.** SFMTA shall make available to the Contractor as needed a copy of all the Software installed and a copy of certificates of the Software licenses provided by third-parties.

12. **Maintenance Records.** The SFMTA shall maintain in written or electronic form records of maintenance performed by the SFMTA and the Maintenance Services performed by Contractor and the parts used. The SFMTA shall also manage in an adequate manner its stock of consumable items and/or spare parts to ensure the continued availability of such consumable items and/or spare parts.

13. **Internet Connection.** For the purposes of facilitating communication and data exchange in respect of the Maintenance Services, each Party will provide its personnel with secure, high-speed Internet access including FTP capability. There is no requirement hereunder for a direct, remote connection to the ATCS.

## **E. GENERAL PROVISIONS**

### **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. This Agreement shall not come into force and effect and Contractor shall have no obligation to perform hereunder until such time as City has provided prior written authorization certified by the Controller confirming the full amount of City's obligation for payment of the Maintenance Services contemplated hereunder. The full amount of the City's payment obligations and the Contractor's performance obligations under this Agreement 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 appropriation 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.

Subject always to Article 5 c. hereunder, Contractor and the City understand and intend that the obligations of the City to pay the Annual Maintenance Fee and other charges for Maintenance Services rendered to maintain and operate the ATCS under this Agreement shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of the City.

The City shall pay charges under this Agreement, exclusively from legally available funds, to Contractor or, in the event of an authorized assignment by Contractor to its assignee, according to the terms of this Agreement. The City shall not request services unless funding for those services has been certified.

THIS SECTION E.1. CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**2. Term of the Agreement**

Subject to Section E.1, the Term of this Agreement shall commence from the Effective Date pursuant to Section E.3 below, and unless terminated earlier in accordance with its terms, will continue in force and effect for a period of five (5) years thereafter (the “Term”). The SFMTA at its option may extend this Agreement for an additional five (5) year period contingent upon the Parties' agreement as to the terms and conditions of such extended period including but not limited to the scope of services to be rendered and the annual charges and pricing applicable thereto.

**3. Effective Date of Agreement**

This Agreement shall become effective when i) authorized officers of both Parties have executed this Agreement; and ii) the SFMTA has certified to the availability of funds stated in Section E.5 of this Agreement and Contractor has been so notified in writing.

**4. Satisfaction of 1992 Contract.**

The SFMTA hereby acknowledges and agrees that this Agreement is entered into in full and final satisfaction of Section 3.4.8 of the 1992 Contract.

**5. Compensation**

The pricing associated with this Agreement appears in Appendix A, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein. In no event shall the amount of this Agreement exceed Five Million United States Dollars (\$5,000,000).

**a. Compensation for Included Maintenance Services**

For Included Support Services, the City shall pay Contractor the corresponding lump sum fee specified in Appendix A on an annual basis commencing within thirty (30) Days of the Effective Date of this Agreement for the first year, and subsequently in advance on or prior to each anniversary of the Effective Date of this Agreement for the remaining Term of this Agreement.

**b. Compensation for Additional Maintenance Services**

For Additional Support Services provided by Contractor A, the City shall pay Contractor in accordance with the applicable fees specified in Appendix A, within thirty (30) Days of receipt of the Contractor’s invoice for the Additional Support Services rendered.



The City will make a good faith effort to pay all undisputed invoices within thirty (30) days of receipt, but in no event shall City be liable for interest or late charges for any late payments.

The Contractor may suspend its performance hereunder together with written notification to the SFMTA, and without penalty or liability, if any compensation owing pursuant to this Agreement is overdue in excess of fifteen (15) Days. The Contractor shall resume performance upon the City's remedy of overdue amounts and receipt of City's written notification confirming payment of all compensation due. Contractor shall provide the SFMTA written notice by email or facsimile of its suspension of performance no less than two (2) business days before such suspension.

## **6. Guaranteed Maximum Costs**

a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification provided that nothing herein shall require the Contractor to perform any Maintenance Services for which certified amounts are not available.

b. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for Maintenance Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment to this Agreement and approved as required by law. The Parties accept and agree that any change or variation to this Agreement shall be null and void unless the Parties have mutually agreed to the terms and conditions of such change or variation and it has been authorized by amendment and approved as required by law.

c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

d. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

## **7. Payment; Invoice Format**

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. City shall make payment to Contractor at the address specified in the invoices submitted by the Contractor.

## **8. Submitting False Claims; Monetary Penalties**

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

## **9. Taxes**

Payment of any taxes, customs duties, fees, levies or charges of any kind, including possessory interest taxes and California sales and use taxes (hereinafter collectively referred to as "Taxes"), levied upon or as a result of this Agreement, or the Maintenance Services delivered pursuant hereto, shall be the obligation of the City and paid by the City directly to the relevant taxing authority. Should Contractor and/or their respective employees be obliged to pay directly any such Taxes, the City shall reimburse them within sixty (60) Days after presentation of documentary evidence. Contractor agrees to provide such information as may be reasonably requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **10. Payment Not a Waiver of Warranty**

The granting of any payment by City, or the receipt thereof by Contractor, shall not be deemed to be a waiver of the provisions for warranty as set forth in Section C 5.

## **11. Qualified Personnel**

Maintenance Services under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor or its subcontractors. Contractor will comply with City's reasonable requests regarding assignment of personnel, but Contractor must supervise all personnel, including those assigned at City's request. Contractor shall commit adequate resources to perform the Maintenance Services described in this Agreement.

## **12. Responsibility for Equipment**

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

### **13. Independent Contractor; Payment of Employment Taxes and Other Expenses**

#### **a. Independent Contractor**

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the Maintenance Services requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing Maintenance Services, 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 Maintenance Services 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 Maintenance Services under this Agreement.

#### **b. Payment of Employment Taxes and Other Expenses**

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

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

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

been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

#### **14. Insurance**

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

(i) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident/illness and \$2,000,000 in the general aggregate; and

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

(iii) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 in the general aggregate Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

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

(i) Include as Additional Insured on Contractor's blanket additional insured endorsements, the City and County of San Francisco, its Officers, Agents, and Employees strictly with respect to liability arising out of the Contractor's Maintenance Services.

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

c. Contractor shall provide thirty (30) days' advance written notice to City of cancellation of any required insurance policy hereof, which Contractor shall mail to the following address:

Municipal Transportation Agency  
1 South Van Ness Avenue, 3rd floor  
San Francisco, CA 94102  
Attention: System Manager, ATCS Project

with copies to:

Municipal Transportation Agency  
1 South Van Ness Avenue, 7th floor

San Francisco, CA 94102  
Fax No. 415-701-4300  
Attention: Chief Operating Officer

and

City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685  
Attention: Risk Manager

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

e. 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.

f. 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.

g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

i. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall include the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

## **15. Indemnity for Infringement of Intellectual Property Rights**

a. Contractor shall indemnify, defend, 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 in the United States or Canada, and all other intellectual property claims of any person or persons in consequence of the Maintenance Services to be supplied in the performance of this Agreement. Contractor shall at its sole expense and election, provided any such election does not result in any cost to the City arising from the claim, either: (1) indemnify the City; or (2) obtain the right to use the infringing item; or (3) modify the infringing item so that it becomes non-infringing; or (4) replace the infringing item with a non-infringing item.

b. Contractor shall have no obligations hereunder with respect to intellectual property infringements caused by: (1) Contractor's compliance with the City's designs; (2) City's use or combination of the Software or Equipment with products or data of the type for which the Equipment and Software was neither designed nor intended; or (3) the modification of the Software or Equipment without the Contractor's prior written consent.

c. The provisions of this Article 15 shall be the City's sole remedy for infringement claims and is conditional upon City: (1) giving prompt notice in writing to Contractor of any claim or proceeding being made or threatened; (2) allowing the Contractor to defend and settle under its responsibility any proceedings or claims through counsel chosen by Contractor at the Contractor's own expense and (3) affording all reasonable assistance in connection therewith.

d. Contractor shall be entitled to modify or replace any infringing item so that it becomes non-infringing or in the event that such modification or replacement is not possible using reasonable technical efforts, to repurchase the item concerned for an amount equivalent to the original purchase price of the item.

## **16. Limitation of Liability.**

### **a. No Liability for Special Damages.**

Notwithstanding anything to the contrary contained in this Agreement, regardless of the number of claims or the form or cause of action, whether in contract or tort or otherwise, (a) neither Party shall have any liability to the other for any special, indirect, incidental or consequential damages of any kind, and neither Party shall be liable for losses of use, data, profit, revenue, income, business, anticipated savings, reputation, and more generally, any losses of an economic or financial nature, whether these may be deemed as consequential or arising directly and naturally from the incident giving rise to the claim, and (b) each Party's respective liability to the other Party arising out of or in connection with this Agreement, other than in respect of claims for infringement of intellectual property rights in accordance with Article 15, shall in no event exceed, actual, direct provable damages, up to the greater of fifty per cent (50%) of the total amounts for Maintenance Services invoiced and paid under this Agreement or Five Hundred Thousand United States Dollars (USD\$500,000), whether or not such damages are foreseeable and whether or not the non-damaged Party has been advised of the possibility of such damages. The limitations of liability as to each Party to the other set forth in this section shall not limit the Parties' rights to seek indemnity or contribution for claims brought by third parties.

## **17. Default; Remedies; Right to Injunctive Relief**

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

(1) Either Party, where applicable, fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement and such failure or refusal materially affects the performance of the Agreement: C (Software), E.5 (Compensation), E.8 (False Claims), E.9 (Taxes), E.14 (Insurance), E.22 (Proprietary or Confidential Information), E.25 (Subcontracting), E.32 (Drug-Free Workplace Policy), E.46 (Compliance with Laws).

(2) Either Party, where applicable, fails or refuses to perform or observe any other material term, covenant or condition contained in this Agreement, and such default continues for a period of thirty (30) Days after written notice thereof from the other Party.

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

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

b. 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 be construed to restrict or prevent a Party from applying or obtaining injunctive relief before any competent court under any competent jurisdiction, in case of effective or threatened breach or infringement in respect of Confidential Information or intellectual property rights.

## **18. Commencement of Services and Termination**

a. Commencement. The Contractor's obligation to provide the Maintenance Services hereunder shall begin on the Effective Date of this Agreement subject to Article 5 c. above.



b. Termination for Cause. A Party may terminate this Agreement for cause with written notification to the other Party upon occurrence of the following events:

(i) if the other Party shall commit any material breach of its obligations under this Agreement and fails to take action to remedy such breach within thirty (30) Days from the date of receipt of the notifying Party's written notice to the Party in default, such notice specifying the nature of the breach.

(ii) in case of any action or proceeding against the other Party relating to insolvency, bankruptcy, receivership or relief towards creditors, dissolution or winding-up, which are not discharged within thirty (30) Days therefrom.

c. Payment Following Termination for Cause. In case the Agreement is terminated by either Party, City shall promptly pay all amounts still due hereunder which find their origin prior to the date of termination. In the event that this Agreement has been terminated for cause for reasons attributable to the Contractor, the Contractor shall promptly reimburse the City the pro-rata balance of the Annual Maintenance Services Fee paid in advance by the City, which pro-rata amount shall be calculated on the basis of the period remaining for the year the applicable Annual Maintenance Services Fee has been paid

## **19. Termination**

Subject to the provisions for Force Majeure, this Agreement is not subject to cancellation, in whole or in part, for either Party's convenience except as may be otherwise agreed with both Party's mutual written consent.

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

a. This Section E.20 and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 (Submitting False Claims; Monetary Penalties), E.15 (Indemnity for Infringement), E.16 (Limitation of Liability), E.22 (Proprietary or Confidential Information), E.24 (Audit and Inspection of Records), E.43 (Agreement Made in California, Venue), E.49 (Protection of Private Information) and C.6 (License of Software Updates/Upgrades).

b. Subject to the immediately preceding subsection (a) and the provisions of Article 18 c. above, upon termination of this Agreement prior to expiration of the Term specified in Section E.2, this Agreement shall terminate and be of no further force or effect

## **21. Conflict of Interest**

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts

which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term of this Agreement.

## **22. Proprietary or Confidential Information**

a. Each Party understands and agrees that, in the performance of the Maintenance Services under this Agreement or in contemplation thereof, a Party may have access to private or Confidential Information which may be owned or controlled by the other Party and that such Confidential Information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Party that owns that Confidential Information. Each Party agrees that all information disclosed by a Party to the other Party shall be held by the receiving Party in confidence and used only in performance of this Agreement. Each Party shall exercise the same standard of care to protect such information as a reasonably prudent software developer would use to protect its own proprietary data.

b. The Parties agree to keep confidential all Confidential Information received prior and after the signature of this Agreement from the other Party, to instruct and obligate all of its personnel to adhere to this obligation of confidentiality and not to use the Confidential Information for other purposes than for the undertakings of this Agreement.

c. The Confidential Information shall always remain the property of the disclosing Party, and shall not be copied or otherwise reproduced without the prior written permission of the disclosing Party.

d. No obligation of confidence under this Agreement shall extend to information which is: (a) publicly available through no breach of contract; (b) independently developed by the receiving Party; (c) already in the possession of the receiving Party; (d) lawfully received from a third party not under an obligation of confidence; or (e) required to be disclosed by government or court order or other legal process, provided that the receiving party will take all reasonable steps to permit the disclosing party to prevent or limit such disclosure.

e. Notwithstanding the foregoing, Contractor shall be entitled to disclose Confidential Information to a Thales Affiliate on a need to know basis for the undertakings of this Agreement, provided that Contractor ensures that the Thales Affiliate abides by the confidentiality terms of this Agreement.

f. The confidentiality obligations shall survive termination of this Agreement for a period of five (5) years.

## **23. Notices to the Parties**

Unless otherwise indicated elsewhere in this Agreement, all formal written notices sent by the Parties shall be signed by an authorized representative of the sending Party, or by facsimile immediately confirmed in writing. All notices under this section of the Agreement

shall be considered as validly served if mailed in the form of pre-paid registered letter, return receipt requested,, and shall be addressed as follows:

To City:                   Municipal Transportation Agency  
1 South Van Ness Avenue, 3rd floor  
San Francisco, CA 94102  
Fax No. 415-701-4300  
Attention: Thomas Kennedy, Deputy Director, Maintenance of Way  
E-mail: Thomas.Kennedy@SFMTA.org

with a copy to:Municipal Transportation Agency  
1 South Van Ness Avenue, 3rd floor  
San Francisco, CA 94102  
Fax No. 415-701-4300  
Attention: Kenneth McDonald, Chief Operating Officer  
E-mail: Kenneth.McDonald@sfmta.com

To Contractor: Kim Wagar  
SFMTA Account Manager  
Thales Transport & Security, Inc.  
250 – 4190 Still Creek Drive Burnaby  
British Columbia V5C 6C6 Canada  
Direct phone: 604-453-3137  
Telefax: 604-434-7699  
E-mail: Kim.Wagar@thalesgroup.com

with a copy to:Thales Transport & Security, Inc.  
1235 Ormont Drive  
Toronto, Ontario M9L 2W6  
Fax (416) 742 49 93  
Attention: Martine Funston, Legal Counsel

This section shall only apply to formal legal notices between the Parties, not to communications between the Parties as to Maintenance Services, such as SFMTA's requests for Maintenance Services and Contractor's responses to same.

## **24.    Audit and Inspection of Records**

Contractor agrees to maintain and make available to the City, during regular business hours and subject to City's prior written request, accurate books and accounting records relating to its Maintenance Services under this Agreement. Contractor will permit City to reasonably audit, examine and make excerpts and transcripts from such books and records, and to make reasonable audits of all invoices, materials, payrolls, records and other data directly related to matters covered by this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years after final payment

under this Agreement. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

## **25. Subcontracting**

Contractor is prohibited from subcontracting this Agreement or any part of it unless City first approves such subcontracting in writing. Neither Party shall, on the basis of this Agreement, contract on behalf of or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any Party and shall be null and void. Notwithstanding all of the foregoing, Contractor is hereby granted authority to subcontract all or any portions of the Maintenance Services to Thales Affiliates. In addition, the Contractor shall be entitled to subcontract any portion of the Maintenance Services under this Agreement to a third party, with the written approval of the SFMTA, which shall not unreasonably be withheld, provided that the Contractor will continue to be liable for the obligations of the subcontractor under this Agreement.

## **26. Assignment**

The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument lawfully executed and approved. Notwithstanding the foregoing, the Contractor shall be entitled to assign any or all of its rights and obligations under this Agreement to a Thales Affiliate without the prior consent of the SFMTA. The Contractor shall be entitled to assign in connection with the sale of the relevant business any or all of its rights and obligations under this Agreement to a third party, with the prior approval of the SFMTA, which shall not unreasonably be withheld. The SFMTA may not assign any or all of its rights and obligations under this Agreement unless prior authorization is granted in writing by the Contractor.

## **27. 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.

## **28. Earned Income Credit (EIC) Forms**

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) Days following the date on which this Agreement

becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the Term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty (30) Days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) Days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any subcontract entered into by Contractor with a United States registered subcontractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

## **29. Nondiscrimination; Penalties**

### **a. Contractor Shall Not Discriminate**

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

### **b. Subcontracts**

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

### **c. Nondiscrimination in Benefits**

Contractor does not as of the date of this Agreement and will not during the Term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

**d. Condition to Contract**

As a condition to this Agreement, Contractor shall execute the “Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits” form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**e. Incorporation of Administrative Code Provisions by Reference**

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

**30. MacBride Principles - Northern Ireland**

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

**31. Tropical Hardwood and Virgin Redwood Ban**

Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**32. Drug-Free Workplace Policy**

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

**33. Resource Conservation**

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

**34. Compliance with Americans with Disabilities Act**

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

**35. Sunshine Ordinance**

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

**36. Limitations on Contributions**

Contractor acknowledges that it has been provided a copy of section 1.126 of the City’s Campaign and Governmental Conduct Code and shall adhere to all applicable provisions thereof.

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

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

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

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

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

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

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



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

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

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

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

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

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

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

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this Agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such

period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

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

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

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

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

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

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

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

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

n. As allowed under San Francisco Administrative Code section 12.Q.2.9 (defining a covered employee), the provisions of this Section 38 shall apply only to Contractor's employees residing in the United States performing work under this Agreement. In lieu of providing the benefits required under this Section 38, Contractor may pay such employees the cash value of the benefit.

### **39. Prohibition on Political Activity with City Funds**

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

### **40. Preservative-Treated Wood Containing Arsenic**

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

### **41. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by as provided for herein by written instrument lawfully executed and approved. Any modification of this Agreement must be signed by the Executive Director/CEO of the SFMTA and the President or Corporate Counsel of the Contractor.

### **42. Dispute Resolution**

For any dispute involving a question of fact, the aggrieved Party shall furnish the other

Party with a notice of dispute within fifteen (15) Days of the determination of the dispute. The Party receiving a notice of dispute shall submit a written reply with fourteen (14) Days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the Party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the Party's position. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the Parties shall be decided by a competent court of jurisdiction in California. If agreed to by both Parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

#### **43. Agreement Made in California; Venue**

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

#### **44. Construction**

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

b. This Agreement and each of its terms is the product of mutual negotiation and drafting by the Parties. The Parties acknowledge and agree that the rule of interpretation or construction of contracts that a document or ambiguities in a document shall be construed against the drafter of the document shall not apply to this Agreement. The Parties further agree that neither Party shall introduce or seek to introduce as parol or extrinsic evidence any of the Parties' communications regarding this Agreement in any legal proceeding in which the meaning or validity of this Agreement is at issue.

#### **45. Entire Agreement**

This Agreement and any documents incorporated by reference herein constitute the entire agreement between the Parties. It sets forth all intended rights and obligations and supersedes any and all previous agreements correspondence and understandings between them with respect to the subject matter hereof. In the event of any inconsistency between the provisions of any Appendix and the provisions of this document, the provisions of this document shall prevail. This Agreement may be modified only as provided in Section 41.

#### **46. Compliance with Laws**

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

#### **47. English Required.**

All data, documents, descriptions, diagrams, instructions and correspondence shall be in the English language.

#### **48. Severability**

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

#### **49. Protection of Private Information**

Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Protection of Private Information Ordinance"), including the remedies provided. The provisions of the Protection of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Protection of Private Information Ordinance. Consistent with the requirements of the Protection of Private Information Ordinance, Contractor agrees to all of the following:

(a) Neither Contractor nor any of its subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other subcontractor, person, or other entity, unless one of the following is true:

- (1) The disclosure is authorized by this Agreement;
- (2) The Contractor received advance written approval from the Contracting Department to disclose the information; or
- (3) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

#### **50. Food Service Waste Reduction Requirements**

The City encourages Contractor not to use styrofoam or similar products and to comply with the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16. The provisions of Chapter 16 are incorporated herein by reference and made a part of this agreement as though fully set forth. This provision is a material term of this agreement. By entering into this agreement, contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of contractor's failure to comply with this provision.

#### **51. Force Majeure**

a. Neither Party shall by reason of Force Majeure, be entitled to terminate this Agreement nor shall either Party have any claim for damages against the other for any non performance or delay under the Agreement as a result of such Force Majeure. If the performance in whole or part of any obligation under this Agreement is delayed by reason of any such event of Force Majeure for a period exceeding three (3) months, the Parties shall discuss and review in good faith the desirability and conditions of terminating this Agreement.

b. The prevented Party shall, as soon as it becomes aware of an event of Force Majeure, immediately inform the other Party of the nature and the beginning and the end of the Force Majeure circumstances preventing the performance of the Agreement.

#### **F. SIGNATURE, COUNTERPARTS**

This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument and either of the Parties may execute this Agreement by signing any such counterpart. Delivery may be completed by the Party concerned transmitting to the other Party a facsimile copy of the counterpart signed by such Party. Any Party delivering any executed counterpart of this Agreement as provided herein shall confirm execution by delivering by courier an original of such executed counterpart to the other Party.

**G. INCLUDED APPENDICES**

The Appendices listed below are hereby incorporated by reference into the Agreement as if fully set out therein:

- A. Calculation of Charges for Included and Additional Maintenance Services
- B. Specific Software For Access and Review

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

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

<p><b>San Francisco Municipal Transportation Agency</b></p> <p>APPROVED:</p> <p>_____</p> <p>NATHANIEL P. FORD, SR. Executive Director/CEO</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney</p> <p>Approved:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS Resolution No. _____</p> <p>Adopted: _____</p> <p>Attest:</p> <p>_____ Secretary, MTA Board</p>	<p><b>Thales Transport &amp; Security, Inc.</b></p> <p>By signing this Agreement, Contractor certifies that it complies with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>On behalf of Contractor, I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <p>_____ JOHN BROHM President Thales Transport &amp; Security, Inc. 5700 Corporate Drive, Suite 750, Pittsburgh, PA 15237 Fax No. 412-366-8817</p> <p>City vendor number: _____</p>
--	---



**APPENDIX A  
CALCULATION OF CHARGES FOR INCLUDED AND ADDITIONAL  
MAINTENANCE SERVICES**

The pricing set forth below for both Included Support Services and Additional Support Services shall be applicable for the five (5) year Term of the Agreement subject to an annual percentage increase of three per cent (3%). All pricing is exclusive of Taxes in accordance with the Agreement.

**I. Annual Maintenance Fee For Included Support Services**

Contractor shall provide the SFMTA the Included Support Services for the lump sum price set out in the following table.

	<b>Annual Fee (US)</b>	<b>Percentage Increase</b>	<b>Cumulative Total Fee (US)</b>
2008-2009	\$399,400	0%	\$399,400
July1, 2009 to June 30, 2010	\$411,382	3%	\$810,782
July1, 2010 to June 30, 2011	\$423,724	3%	\$1,234,506
July1, 2011 to June 30, 2012	\$436,436	3%	\$1,670,942
July1, 2012 to June 30, 2013	\$449,530	3%	\$2,120,472

The prices listed in the above table are comprehensive and cover profit and all of Contractor's expenses, charges, costs, overhead (including but not limited to wages, salaries, benefits and other labor costs, equipment not supplied to the SFMTA, telephone, facsimile, postage, travel expenses, lodging, meals, vehicle rental and mileage) and incurred or arising directly or indirectly from Contractor's provision of the Included Support Services to the SFMTA.

## II. Fees For Additional Support Services

### A. Software Updates and Software Upgrades

Subject to the terms and conditions of the Contractor's proposal therefore, and the mutual agreement of the Parties regarding the scope of work involved, the price for the implementation of any Software Updates and Upgrades notified by the Contractor to the City will be based on a fixed hourly rate of Two Hundred Twenty Three Dollars (US\$223) per hour. Contractor will charge an overtime rate of Three Hundred Thirty Five Dollars (US\$335) per hour for development services that exceed eight (8) hours in a single Day or for development services that are provided outside of the business hours of a Working Day. The aforementioned hourly rates are in effect from the Effective Date to June 30, 2009. Hourly rates for the remaining years of the Term are set out in the following Fee Schedule:

Year	Regular Hourly Rate (US)	Overtime Hourly Rate (US)	Percentage Increase
2008-2009	\$223	\$335	0%
2009-2010	\$230	\$345	3%
2010-2011	\$237	\$355	3%
2011-2012	\$244	\$366	3%
2012-2013	\$251	\$377	3%

### B. Additional Training.

The total price for each additional 5-Day refresher training sessions is Fifty Seven Thousand Four Hundred Dollars (US\$57,400).

The total price for the each 2-Day practical training session is Forty One Thousand Seven Hundred Dollars (US\$41,700).

The "reduced" rate for additional 5-Day Training Sessions is applicable only to any Additional Training Sessions provided within 48 hours of an Included Training Session and delivered by the same trainer on the same course matter and using the same materials.

The aforementioned rates are in effect from the Effective Date to June 30, 2009. Rates for the remaining years of the Term are set out in the following table:

Year	5-Day Training Session Full Rate (US)	5-Day Training Session Reduced Rate (US)	2-Day Training Session (US)	Percentage Increase
2008-2009	\$57,400	\$45,920.	\$41,700	0%
2009-2010	\$59,122	\$47,298.	\$42,951	3%
2010-2011	\$60,896	\$48,717.	\$44,240	3%
2011-2012	\$62,723	\$50,179.	\$45,567	3%

<b>Year</b>	<b>5-Day Training Session Full Rate (US)</b>	<b>5-Day Training Session Reduced Rate (US)</b>	<b>2-Day Training Session (US)</b>	<b>Percentage Increase</b>
2012-2013	\$64,605	\$51,684.	\$46,934	3%

The Training Fees listed in the above table are comprehensive and cover profit and all of Contractor's expenses, charges, costs, overhead (including but not limited to wages, salaries, benefits and other labor costs, equipment not supplied to the SFMTA, telephone, facsimile, postage, travel expenses, lodging, meals, vehicle rental and mileage) and incurred or arising directly or indirectly from Contractor's provision of the Included Services to the SFMTA.

**C. Additional Remote Support.**

The price for Additional Remote Support Services is based on a fixed hourly rate of Two Hundred Twenty Three Dollars (US\$223) per hour. The Contractor will charge an overtime rate of Three Hundred Thirty Five Dollars (US\$335) per hour for Remote Support Services that exceeds eight (8) hours in a single Day or for Remote Support services that are provided outside of the business hours of a Working Day. The aforementioned hourly rates are in effect from the Effective Date to June 30, 2009. Hourly rates for the remaining years of the Term are set out in the following table:

<b>Year</b>	<b>Regular Hourly Rate (US)</b>	<b>Overtime Hourly Rate (US)</b>	<b>Percentage Increase</b>
2008-2009	\$223	\$335	0%
2009-2010	\$230	\$345	3%
2010-2011	\$237	\$355	3%
2011-2012	\$244	\$366	3%
2012-2013	\$251	\$377	3%

The Additional Remote Support Services fees listed in the above table are comprehensive and cover profit and all of Contractor's expenses, charges, costs, overhead (including but not limited to wages, salaries, benefits and other labor costs, telephone, facsimile, postage) and incurred or arising directly or indirectly from Contractor's provision of the Additional Remote Support Services to the SFMTA.

**D. Emergency On-Site Support.**

The price for Emergency on-Site Support shall be based on a minimum charge of one forty-eight (48) hour (2 days) per emergency on-Site Support call.

The price for Emergency on-Site Support is based on a fixed lump sum of Ten Thousand Dollars (US\$10,000) per Contractor on-Site technician. The aforementioned price is for a service allotment of eight (8) hours, charges to accrue upon arrival of Contractor's technician to the Site. Thales will charge an additional daily rate of Two Thousand Three Hundred Forty Nine Dollars

(US\$2,349) for each additional day of on-Site support on the same trip. The initial Ten Thousand Dollars (US\$10,000) charge and all additional daily rate charges include all profit, travel and living expenses, overhead, and other chargeable costs. The aforementioned rates are in effect from the Effective Date to June 30, 2009. Rates for the remaining years of the Term are set out in the following table:

<b>Year</b>	<b>Emergency On-Site Support Per Technician (8 hours) (US)</b>	<b>Additional Daily Rate – (after 1<sup>st</sup> day) (US)</b>	<b>Percentage Increase</b>
2008-2009	\$10,000	\$2,349	0%
2009-2010	\$10,300	\$2,419	3%
2010-2011	\$10,609	\$2,492	3%
2011-2012	\$10,927	\$2,567	3%
2012-2013	\$11,255	\$2,644	3%

The Emergency On-Site Support Fees listed in the above table are comprehensive and cover profit and all of Contractor's expenses, charges, costs, overhead (including but not limited to wages, salaries, benefits and other labor costs, equipment not supplied to the SFMTA, telephone, facsimile, postage, travel expenses, lodging, meals, vehicle rental and mileage) and incurred or arising directly or indirectly from Contractor's provision of the Included Services to the SFMTA.

**E. Source Code Review Access and System Interface Support.**

The price for facilitating the SFMTA’s review of source code and related interfacing support in accordance with Article 3. e. of Section C will be based on a fixed hourly rate of Two Hundred Twenty Three Dollars (US\$223) per hour. Contractor will charge an overtime rate of Three Hundred Thirty Five Dollars (US\$335) per hour for services that exceed eight (8) hours in a single Day or for services that are provided outside of the business hours of a Working Day. The aforementioned hourly rates are in effect from the Effective Date to June 30, 2009. Hourly rates for the remaining years of the Term are set out in the following Fee Schedule.

<b>Year</b>	<b>Regular Hourly Rate (US)</b>	<b>Overtime Hourly Rate (US)</b>	<b>Percentage Increase</b>
2008-2009	\$223	\$335	0%
2009-2010	\$230	\$345	3%
2010-2011	\$237	\$355	3%
2011-2012	\$244	\$366	3%
2012-2013	\$251	\$377	3%

**F. Additional Consulting Services.**

On an as-needed basis, when requested by SFMTA, Contractor shall provide a quotation for additional consulting services on topics concerning ATCS operations and maintenance. Terms and conditions of such consulting services will be determined on a request-by-request basis.

**APPENDIX B**  
**SPECIFIC SOFTWARE FOR ACCESS AND REVIEW**

1. VCC Guideway database
2. RUCUS Import Software
3. PDS Interface Software
4. PAV (Passenger Audio/Visual)Interface Software
5. SMC LRV destination sign control interface
6. SMC SFMTA-specific route tables
7. On-board:
  - 7a. Digital PA Interface Software
  - 7b. Destination Sign control interface software
8. SLMD, SFMTA-specific scenarios
9. Simulator:
  - 9a. Front End Processor (FEP) tables simulating SFMTA's DT racks
  - 9b. Destination Sign control interface software