

City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave. 3rd Floor
San Francisco, California 94103

Contract No. SFMTA 2013-30

**Second Amendment to Agreement
between the City and County of San Francisco and NextBus Inc.
for Software and Equipment Maintenance Services
for the SFMTA's Automatic Vehicle Location System**

This Second Amendment (this "Amendment") to the Agreement between the City and County of San Francisco and NextBus Inc. for Software and Equipment Maintenance Services for the SFMTA's Automatic Vehicle Location System (the "Maintenance Agreement"), dated for convenience as August 1, 2016, in San Francisco, California, by and between NextBus Inc. ("NextBus" or "Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

1. NextBus provided to the SFMTA an Automatic Vehicle Location System ("AVLS") under Contract mr-1138, dated July 15, 2002.
2. NextBus contracted with the SFMTA to provide software and maintenance services to the AVLS under the Maintenance Agreement.
3. The existing AVLS utilizes a "2G" based telecommunications system to communicate system data to public information signs.
4. AT&T, the provider of telecommunications services for the public information signs is discontinuing 2G service on or about December 31, 2016. For the public information signs to continue to function the public information signs must be upgraded to receive system data using a "3G" telecommunications system.
5. The AVLS is a system important to the SFMTA's efficient provision of transit services and that it is in the public interest to upgrade the AVLS public information signs to continue AVLS services.
6. The AVLS is a proprietary system developed and licensed to the SFMTA by NextBus, and the upgrade services may only be obtained from NextBus.
7. The Local Business Entity ("LBE") subcontracting participation requirement for this Amendment is 20 percent.
8. Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under the Maintenance Agreement.

9. Approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4113-12/13 on May 6, 2013.

In light of the above Recitals, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Amendment:

1.1 "Agreement" or "Maintenance Agreement" means the "Agreement between the City and County of San Francisco and NextBus Inc. for Software and Equipment Maintenance Services for the SFMTA's Automatic Vehicle Location System," Contract No. 2013-30, including this Amendment and all prior Amendments to the Agreement, and also including all appendices to the Maintenance Agreement and appendices to all amendments.

1.2 "CCO" means the SFMTA Contract Compliance Office.

1.3 "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Task Order" attached as Appendix A to this Amendment.

1.4 "Terms and Conditions" means the general contract requirements stated in the Maintenance Agreement.

1.5 "Upgrade Services" means the Additional Work described in Appendix A to this Amendment, including all equipment, tools, labor, and Contractor costs necessary or incidental to the completion of that Additional Work.

Article 2 Modifications to the Maintenance Agreement.

1. Compensation. Section 5 of the Agreement is modified to increase the authorized Contract Amount an additional \$497,982, for a total amended Contract Amount not to exceed \$9,188,202.

Section 5 of the Maintenance Agreement is hereby deleted and replaced in its entirety with the following:

5. Compensation. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Director of Transportation, or a qualified City representative in his/her absence, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **Four Hundred Ninety-Seven Thousand Nine Hundred Eighty-Two Dollars (\$497,982)**. The breakdown of charges associated with this Agreement appears in Appendix B to the Maintenance Agreement and in Appendix B to the Second Amendment of the

Maintenance Agreement attached hereto and incorporated by reference as though fully set forth herein. In no event shall City be liable for interest or late charges for any late payments.

2. Warranty and Maintenance.

- a. Contractor warrants to City that the Upgrade Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed, so as to ensure that all Upgrade Services performed are correct and appropriate for the purposes contemplated in this Amendment.
- b. NextBus shall under the Maintenance Agreement maintain, repair and replace as necessary all equipment installed under this Amendment and shall warranty all work performed under this Amendment for as long as the Maintenance Agreement is in effect. NextBus shall continue to offer maintenance services for the upgraded signs on the 3G network under the Maintenance Agreement or other agreements of similar work scope through December 31, 2020 or sooner if replacements for the obsolete controller board are no longer available.
- c. If AT&T discontinues 3G service, NextBus is not obligated to upgrade the signs to 4G services or other alternative without compensation.

3. Consideration of Criminal History in Hiring and Employment Decisions

The following new Section 32 (formerly reserved) is added to the Maintenance Agreement:

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

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

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

4. Notices to the Parties

Section 25 of the Maintenance Agreement (Notices to the Parties) is hereby amended to name the following as representatives of the SFMTA to whom Contractor shall provide notice:

Contractor shall direct day-to-day communications concerning the Upgrade Services to:

Julian Metcalf
AVLS Project Manager
1 South Van Ness Avenue, 3rd floor
San Francisco, CA 94102
julian.metcalf@sfmta.com

All other notices concerning the Maintenance Agreement shall be directed to:

Lisa Walton
Chief Technology Officer
SFMTA
1 South Van Ness Avenue, 3rd floor
San Francisco, CA 94102
lisa.walton@sfmta.com

5. Large Vehicle Driver Safety Training Requirements

The following new Section 47 (formerly reserved) is added to the Maintenance Agreement:

47. Large Vehicle Driver Safety Training Requirements.

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

with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

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

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

CITY

Edward D. Reiskin
Director of Transportation
SFMTA

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Robert K. Stone
Deputy City Attorney

CONTRACTOR

By signing this Amendment, Contractor acknowledges that it has read and understands Section 47: Large Vehicle Driver Safety Training Requirements.



Blair Brown
Interim General Manager, NextBus, Inc.
5900 Hollis Street, Suite X Emeryville,
CA 94608
City vendor number: 74925

Appendix A

Upgrade Services Scope of Work

1. Purpose. As set out in the Recitals to this Amendment (which are incorporated here by reference), AT&T, the wireless data communications system provider that provides wireless communication services to NextBus AVLS data services, is phasing out the system on which the AVLS communicates, which is commonly known as "2G" or "Second Generation" GSM, CDMA, and TDMA wireless data transmission networks. The purpose of this Maintenance Agreement is for NextBus to replace all 2G data equipment in Passenger Information Signs with 3G (aka, Third Generation) equipment, so that the Passenger Information Signs will continue to function without interruption using AT&T's 3G system. Time is of the essence in the completion of the Work, as AT&T has indicated that it will completely discontinue 2G service in San Francisco by December 31, 2016.

2. Description of Services. NextBus shall perform all Work required to effect the Purpose this Maintenance Agreement, as described in this Appendix A. NextBus shall perform the following tasks:

- a. NextBus shall replace all existing 2G chipsets and modems in each of the 880 LED Passenger Information Signs (listed in Appendix A-1) with 3G modems, 8051 chipsets (with updated firmware), new electronic digital timers, and new extension cords, restore, test and validate correct sign operation (collectively, the "Upgrade Services").
- b. NextBus shall at the commencement of the Work, identify Passenger Information Signs that have ceased to work and perform the Upgrade Services to Passenger Information Signs first. NextBus shall then proceed to perform the Upgrade Services to the remainder of the Passenger Information Signs, and as the SFMTA may direct.
- c. NextBus shall work with AT&T to identify to the extent reasonably possible the locations and dates that Passenger Information Signs that will cease to function as AT&T discontinues 2G Service. NextBus shall schedule the Work under this Maintenance Agreement to perform the Sign Upgrades no later than December 15, 2016.

3. Schedule. NextBus shall complete Upgrade Services to all Passenger Information Signs on or before December 15, 2016. Within 10 business days of the approval of this Maintenance Agreement by all parties, NextBus shall provide to the SFMTA for its review and approval a schedule demonstrating how NextBus will complete Upgrade Services in those locations identified by AT&T as being removed from 2G services, and how it will complete the Sign Upgrades on all Passenger Information Signs on or before December 15, 2016.

4. Equipment. NextBus shall provide all sign hardware, equipment, vehicles, and tools necessary to perform Sign Upgrades and related ancillary services under this Amendment.

5. Personnel. NextBus shall perform the Work with its own personnel or subcontracted personnel who NextBus has trained and who shall work directly under NextBus' supervision and direction. Not less than 20 percent of the Work shall be performed by Local Business Enterprise subcontractor(s). (See Maintenance Agreement, section 33.)

6. Safety.

- a. Before NextBus field personnel (including subcontractors' personnel) perform any work at transit shelters or other field locations, NextBus shall provide to the SFMTA's Project Manager certification that those persons have obtained from SFMTA Transit Operations appropriate training in working in and around transit vehicles operating in the right-of-way.
- b. All NextBus and subcontractor personnel who may operate large vehicles in the City in the course of performing the Work before commencing the Work shall attend the training described in Section 11.14 of the Maintenance Agreement.

7. Quality Control and Assurance. NextBus shall be responsible for managing quality control and quality assurance for the Work. NextBus shall document the testing of each sign following performance of Sign Upgrade Services to confirm that the sign is fully functional. NextBus shall provide written reports to the SFMTA no less than monthly describing the Sign Upgrades successfully completed and tested, and identifying the signs (by ID number) and the locations where it performed that Work. The submission of that report is a condition of the City's payment for those Sign Upgrade Services.

8. Continued Support. NextBus shall provide to the SFMTA under the Maintenance Agreement or other maintenance agreement of similar scope all support, sign upgrades to operate in an AT&T 3G network, and maintenance services to the SFMTA to ensure the continued operation of the NextBus-provided AVLS through December 30, 2020. NextBus shall make such maintenance services as are currently provided under the Maintenance Agreement available to the SFMTA through December 31, 2020.

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

10. The SFMTA Liaison. In performing the Services provided for in this Maintenance Agreement, Contractor's liaison with the SFMTA will be Julian Metcalf.

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APPENDIX A-1

Locations of Passenger Information Signs:

**Appendix B
Calculation of
Charges**

a. Compensation

The SFMTA will compensate NextBus for completion of the Upgrade Services as stated in this Appendix B, in accordance with the Terms and Conditions of the Maintenance Agreement.

The breakdown of compensation for the Upgrade Services is set out in the following chart:

Quantity	Description	Unit Price	Total
880	Passenger Sign Upgrade Services Equipment (3G modem, 8051 chipset (update firmware) and electronic digital timer and extension cord).	\$326	\$286,880
880	LED Sign - 2G to 3G Upgrade Services Labor Charge	\$200	\$176,000
1	Project Management – 2G to 3G upgrade Muni project		\$10,000
	Sales Tax		\$25,102
			\$497,982

The SFMTA will compensate NextBus lump sum \$565.89 for each Passenger Information Sign on which NextBus completes the Upgrade Services, less ten percent retention (\$56.59 per Passenger Information Sign).

(Payment per sign is calculated as follows: \$497,982 divided by 880 signs = \$565.89 per sign upgrade, less 10% retention of \$56.59 = \$509.30)

The SFMTA shall pay NextBus all amounts held in retention within 30 days of the SFMTA's final acceptance of the Upgrade Services.

b. Invoice and Description of Services Provided

NextBus shall not more often than monthly bill the SFMTA for completed Upgrade Services to individual Passenger Information Signs for which NextBus has not previously been compensated.

Contractor's invoices must describe the Work performed for which payment is requested, including the listing the identification numbers and locations where Contractor completed Upgrade Services.

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