

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

**First Amendment to Amended and Restated Service Agreement and Property Use License for
Towing, Storage and Disposal of Abandoned and Illegally Parked Vehicles**

THIS AMENDMENT (this "Amendment") is made as of May 1, 2014 in San Francisco, California, by and between TEGSCO, LLC, a California limited liability company doing business as San Francisco AutoReturn ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

RECITALS

- A. City and Contractor have entered into the Agreement (as defined below).
- B. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to reflect the relocation of the Secondary Storage Facility and one of the Designated Facilities from property owned by the Port of San Francisco at Pier 70 in San Francisco to a portion of the premises at 2650 Bayshore Boulevard in Daly City that City leases from Prologis, L.P.

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

- a. **Agreement.** The term "Agreement" shall mean the Amended and Restated Service Agreement and Property Use License for Towing, Storage and Disposal of Abandoned and Illegally Parked Vehicles dated July 31, 2010 between Contractor and City.
- b. **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is hereby modified as follows:

a. **Section 1.29**

Section 1.29 of the Agreement is deleted in its entirety:

b. **Section 1.42**

Section 1.42 of the Agreement is amended in its entirety to read as follows:

1.42 Performance Bond: The Performance Bond which Contractor is required to maintain to guarantee the performance of Contractor's obligations under this Agreement, as further

described in Section 12.1 and 12.2 of this Agreement. The Performance Bond and all replacement Performance Bonds provided by Contractor during the Term of this Agreement shall be attached hereto as Appendix F and incorporated by reference as though fully set forth herein.

c. Section 1.44

Section 1.44 of the Agreement is deleted in its entirety.

d. Section 1.45

Section 1.45 of the Agreement is deleted in its entirety.

e. Section 1.48

Section 1.48 of the Agreement is amended in its entirety to read as follows:

1.48 Property, Properties: Real property owned or leased by the City and licensed to Contractor for the purpose of this Agreement, including a portion of the leased premises at 2650 Bayshore Boulevard in Daly City, and any other properties that may be licensed to Contractor by City for the purpose of this Agreement during its Term.

f. Section 1.57

Section 1.57 of the Agreement is amended in its entirety to read as follows:

1.57 Secondary Storage Facility: The facility primarily used for long term storage of impounded vehicles, located at 2650 Bayshore Boulevard in Daly City, California, as further described in Appendix A, Section 11.1(c).

g. Section 1.62

Section 1.62 of the Agreement is amended in its entirety to read as follows:

1.62 Term: The duration of this Agreement as established in Section 2 herein, and any additional period during which Contractor completes repair, remediation or other work required for the termination of the License agreement for 2650 Bayshore Boulevard in Daly City, as set forth in Appendix H of this Amendment (“the Bayshore License”), and the tasks listed in Section 54 of this Agreement for transition to a successor contractor or successor agreement.

h. Section 2

Section 2 of the Agreement is amended in its entirety to read as follows:

2. Term of the Agreement

The Term of this Agreement shall be five years, from the July 31, 2010 through July 31, 2015.

i. Section 4

Section 4 of the Agreement is amended in its entirety to read as follows:

4. Services Contractor Agrees to Perform

The Contractor shall tow and store any vehicles that SFMTA, DEPTH or the SPED orders removed from any public street or highway or from private property within the City, in accordance with the requirements of the San Francisco Transportation Code and the Vehicle Code, and shall perform such other related services as are described in this Agreement, in accordance with Appendix A, "Scope of Work," and Appendix B "Operations Plan". Appendix A, Appendix B, and the Operations Plan to be adopted and amended as provided in Section 14 of Appendix A are all attached hereto and incorporated by reference as though fully set forth herein. Rates and charges to the public for services under this Agreement shall be as set forth in Appendix F, attached hereto and incorporated by reference as though fully set forth herein.

All vehicle handling and storage required by this Agreement shall be conducted at one of the Designated Facilities. As of the Effective Date of the First Amendment to this Agreement and pursuant to the Bayshore License, City hereby licenses to Contractor the use of one of the real properties on which the Designated Facilities are currently located -- a portion of the premises at 2650 Bayshore Boulevard in Daly City. The Bayshore License is attached to the First Amendment to this Agreement as Appendix H and is incorporated by reference as though fully set forth herein. The parties acknowledge that Contractor's Customer Service Center and Primary Storage Facility operations are conducted at a property owned by Caltrans and leased by Contractor -- 450 7th Street. Should City cease to use Contractor for towing services, the terms for the City's continued use of the 450 7th Street property are attached hereto as Appendix G and are incorporated by reference as though fully set forth herein.

City hereby consents to Contractor's towing and storage of vehicles that are not towed or stored pursuant to a Tow Request with the prior written approval of City and subject to any conditions imposed in such written approval; provided however, that (I) Contractor shall at all times conduct itself in accordance with the Customer service standards of this Agreement so as not create any negative effect on Contractor's public image and reputation as the City's towing contractor, and (ii) Contractor's operations with respect to such vehicles shall not create any adverse impact on its performance of all requirements of this Agreement. City may revoke its consent at any time without cause by written notice to Contractor. The following sections of this Agreement shall apply to any towing or storage of vehicles by Contractor within the City and County of San Francisco that are not towed or stored pursuant to a Tow Request: Amended and Restated Service Agreement Sections 8, 9, 11, 12, 13, 14, 15, 16, 17, 20, 22, 26, 27, 28, 29, 31, 32, 35, 37, 38, 40, 41, 42, 50; Appendix A Sections 1, 3, 4, 5, 6, 7, 9, 11, 12.1(b), 12.3, 12.5, 12.6, 13, 14; Appendix B, Appendices E and F, and the Bayshore License during its term, if such towed or stored vehicle is taken to the Secondary Storage Facility.

j. Section 11

Section 11 of the Agreement is amended in its entirety to read as follows:

11. Required Insurance

Subject to approval by the City's Risk Manager of the insurers and policy forms, Contractor shall place and maintain throughout the Term of this Agreement, and pay the cost thereof, the following insurance policies:

11.1. Comprehensive general liability insurance with limits not less than \$2,000,000 (such

limit may be provided through a primary and excess policy) each Occurrence, combined single limit for bodily injury and property damage, or in such greater amount and limits as SFMTA may reasonably require from time to time, including coverage for contractual liability, personal injury, broad form property damage, products and completed operations, independent contractors (excluding towing and dismantling subcontractors), and mobile equipment.

11.2. Sudden and accidental pollution insurance with limits not less than \$1,000,000 for each occurrence.

11.3. Comprehensive business/commercial automobile liability insurance with limits not less than \$2,000,000 for each Occurrence combined single limit for bodily injury and property damage, including coverage for owned, non-owned and hired automobiles. If Contractor does not own or lease company vehicles that are subject to motor vehicle registration, then only non-owned and hired coverage is required.

11.4. Garage-keeper's legal liability insurance with limits not less than \$5,000,000 (such limit may be provided through a primary and excess policy) for each Occurrence combined single limit for loss and damage to vehicles in Contractor's care, custody or control caused by fire, explosion, theft, riot, civil commotion, malicious mischief, vandalism or collision, with any deductible not to exceed \$25,000 for each Occurrence. Contractor may insure or self-insure loss of non-automobile property in the care, custody, or control of the garage keeper with a limit of \$5000.

11.5. Workers' Compensation Insurance, including Employers' Liability, with limits not less than \$1,000,000 for each accident, covering all Employees employed by Contractor in the performance of this Agreement to provide statutory benefits as required by the laws of the State of California. Said policy shall be endorsed to provide that the insurer waives all rights of subrogation against the City.

11.6. Environmental impairment liability insurance with limits not less than \$1,000,000 each occurrence, covering the sudden and accidental release of hazardous materials and the resulting costs of clean up.

Except as set forth above, any deductibles in the policies listed above shall not exceed \$25,000 each occurrence. The insurance policies shall be endorsed to name as an additional insured the City and County of San Francisco and its respective departments, commissioners, officers, agents and employees.

The agreements between the Contractor and its towing and dismantling subcontractors (as applicable) shall require that reasonable insurance is maintained and that the City will be named as an additional insured on the general liability policy.

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

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

That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.

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.

11.8. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor 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.

11.9. 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.

11.10. Subject to the provisions of Section 18.1, 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.

11.11. 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, including additional insured endorsements and the policy declaration page for any umbrella policies, set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

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

k. Section 12.2

Section 12.2 of the Agreement is amended in its entirety to read as follows:

12.2 Performance Bond

12.2.1 Performance Guarantee. Upon the Effective Date of this Agreement, Contractor shall provide to the City, and shall maintain throughout the Term of this Agreement and for a period of at least ninety (90) days after expiration or termination of this Agreement, or until all of Contractor's obligations have been performed under this Agreement, whichever date is later, a performance guarantee of two million dollars (\$2,000,000), which shall consist of a Performance Surety Bond of two million dollars (\$2,000,000) in favor of the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency, guarantying the faithful performance by Contractor of this Agreement and of the covenants, terms and conditions of this Agreement, including all monetary obligations set forth herein, and including liquidated damages and any dishonesty on the part of Contractor.

The City may draw upon such Performance Surety Bond in circumstances which include, but are not limited to:

- a. To ensure regulatory compliance in the event that Contractor receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over Contractor's operations or the Properties used by Contractor for the performance of this Agreement and Contractor does not achieve compliance with the notice of violation or order to the satisfaction of the issuing agency within the time specified by the agency or by the City if the agency does not specify a timeframe.
- b. To reimburse the City for any fine or other charge assessed against the City related to any notice of violation or other regulatory order issued to Contractor.
- c. To reimburse the City for costs associated with City's environmental assessments or corrective action related to Contractor's violation of any of the requirements of Appendix H, which may be performed at the City's sole discretion.
- d. To satisfy any overdue payment obligations owed by Contractor to City pursuant to the Bayshore.
- e. To satisfy fines assessed by City against Contractor pursuant to the Bayshore License.
- f. To compensate City for losses or damage to property caused by Contractor.

12.2.2 Performance Surety Bond Requirements. The Performance Surety Bond required by this Section 12 shall be issued on a form and issued by a financial institution acceptable to the City in its sole discretion, which financial institution shall (a) be a bank, insurance or trust company doing business and having an office in the State of California, (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. If Contractor defaults with respect to any provision of this Agreement, City may, but shall not be required to, make its demand under said Performance Surety Bond for all or any portion thereof, to compensate City for any loss or damage which City may have incurred by reason of Contractor's default or dishonesty, including (but not limited to) any claim for fines or liquidated damages; provided, however, that City shall present its written demand to said bank, insurance or trust company for payment under said Performance Surety Bond only after City first shall have made its demand for payment directly to Contractor, and five (5) full days have elapsed without Contractor having made payment to City.

12.2.3 Expiration or Termination of Performance Surety Bond. The term of the Performance Surety Bond shall apply for individual one-year periods, and may be extended by the insurance, bank or trust company by Continuation Certificate. The insurance, bank or trust company herein may, if it so elects, terminate its obligation under this bond by serving at least forty five (45) days written notice of its intention to do so upon the SFMTA. In the event the City receives notice from the issuer of the Performance Surety Bond that the Performance Surety Bond 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 ninety (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 Performance Surety Bond (in a form and issued by a financial institution acceptable to the City) within ten (10) days following the City's receipt of such notice, such occurrence shall be

an Event of Default as defined in Section 18 of this Agreement. However, neither nonrenewal by the insurance, bank or trust company, nor the failure or inability of the Contractor to file a replacement bond in the event of nonrenewal, shall itself constitute a loss to the City recoverable under the Performance Surety Bond or any renewal or continuation thereof. Insurance, bank or trust company's liability under the Performance Surety Bond and all continuation certificates issued in connection therewith shall not be cumulative and shall in no event exceed the amount as set forth in the Performance Surety Bond or in any additions, riders, or endorsements properly issued by the insurance, bank or trust company as supplements thereto.

12.2.5 Demands Upon Performance Surety Bond. City may use all or any portion of the Performance Surety Bond to compensate City for any loss or damage that it may have incurred by reason of Contractor's negligence or breach. Such loss or damage may include without limitation any damage to or restoration of the Properties for which Contractor is responsible, and claims for fines and/or liquidated damages. Should the City terminate this Agreement due to a breach by Contractor, the City shall have the right to draw from the Performance Surety Bond those amounts necessary to pay any fees or other financial obligations under the Agreement or the Bayshore License, and perform the towing and storage 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.

12.2.6 Depletion of Performance Surety Bond. If any portion of the Performance Surety Bond is used by City, Contractor shall provide written proof that the Performance Surety Bond has been restored to its initial value, which shall require a replacement Performance Surety Bond in the face amount of the required Performance Surety Bond. Contractor's failure to do so within the time limits specified in Section 18.1.1(f) shall constitute an Event of Default as defined in Section 18 of this Agreement.

12.2.7 Dispute Resolution. In the event that a dispute arises between the City and Contractor concerning this Agreement or the use or maintenance of the Performance Surety Bond, Contractor may appeal to the Director of Transportation within fourteen (14) days of demand on the Performance Surety Bond with evidence supporting Contractor's claim for relief from the demand on the Performance Surety Bond. The Director of Transportation will respond within fourteen (14) days. Any failure of the Director of Transportation to respond within fourteen (14) days shall be deemed a rejection of Contractor's claim for relief from the demand on the Performance Surety Bond. Contractor's claim for relief from demands on the Performance Surety Bond and the Director of Transportation's response to such demand shall constitute the administrative remedy for Agreement interpretation described in Section 46 herein. Each party reserves its remedies in equity and law. No decision by the City concerning the Performance Surety Bond shall prevent Contractor from seeking restoration of the funds by appropriate legal action.

I. Section 12.5

Section 12.5 of the Agreement is amended in its entirety to read as follows:

12.5 Environmental Oversight Deposit. Upon the Effective Date of this Agreement, Contractor shall provide to the City, and shall maintain and replenish throughout the term of the Bayshore License and for a period of at least ninety (90) days after termination or expiration of the Bayshore License, an Environmental Oversight Deposit in the amount of ten thousand dollars (\$10,000), which shall be deposited in an account specified by City. If Contractor receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction

over 2650 Bayshore Boulevard, Daly City, California and or its operations), and such notice is not cured within fourteen (14) days, the City may draw from this deposit to reimburse the City for staff costs incurred by the City while inspecting site conditions and enforcing and administering the Hazardous Materials provisions of the Bayshore License. If Contractor receives a notice of violation or other regulatory order from a governmental or regulatory agency with jurisdiction over the site and or its operations, and such notice is cured within fourteen (14) days, the City may draw from this deposit in an amount not to exceed \$500 to reimburse the City for staff costs incurred by the City. The City will submit an invoice to Contractor for any such costs, and Contractor will pay such invoiced amounts within thirty (30) days to replenish the Environmental Oversight Deposit. Contractor's failure to pay such costs within thirty (30) days, or to replenish the Environmental Oversight Deposit if drawn upon, will constitute an Event of Default.

m. Section 13

Section 13 of the Agreement is amended in its entirety to read as follows:

13. Insurance and Performance Guarantee Requirements

All insurance policies and Performance Surety Bonds obtained pursuant to this Agreement shall be endorsed to provide that thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits shall be given to SFMTA in the manner and at the addresses specified below.

Two copies of any Performance Surety Bond, and two copies of each original policy or policy endorsement of insurance shall be provided to SFMTA upon the Effective Date of this Agreement, and complete copies of any insurance policies obtained pursuant to this Agreement shall be provided to SFMTA if requested at any time.

13.1 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.

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.

n. Section 15.

Section 15 of the Agreement is amended in its entirety to read as follows:

15. 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, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's 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. The foregoing indemnification does not include the limitations on Contractor's liability described in Sections 24.3 and 24.8 of the Bayshore License.

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.

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

o. Section 18.1.6

Section 18.1.6 of the Agreement is amended in its entirety to read as follows:

18.1.6 Failure of Contractor to timely perform its obligations under the Bayshore License.

p. Section 19.3

Section 19.3 of the Agreement is amended in its entirety to read as follows:

19.3 Duties Upon Termination. Upon termination of this Agreement, the City and Contractor shall promptly pay to the other, as soon as is determinable after the effective date of termination, all amounts due each other under the terms of this Agreement, and upon such payment neither shall have any further claim or right against the other, except as expressly provided herein. Upon the effective date of termination, Contractor shall deliver to the SFMTA the originals of all

books, permits, plans, Records, licenses, contracts and other documents pertaining to Contractor's operation under this Agreement, any insurance policies, bills of sale or other documents evidencing title or rights of the City, and any and all other Records or documents pertaining to Contractor's operation under this Agreement, any insurance policies, bills of sale or other documents evidencing title or rights of the City, and any and all other Records or documents pertaining to the Designated Facilities, whether or not enumerated herein, which are requested by the City or necessary or desirable for the ownership, leasing and operation of the Designated Facilities, which are then in possession of Contractor. Contractor further agrees to do all other things reasonably necessary to cause an orderly transition of the management and operation of the services provided by Contractor under this Agreement without detriment to the rights of the City or to the continued operation of such services.

q. Section 54.2

Section 54.2 of the Agreement is amended in its entirety to read as follows:

54.2 Contractor agrees to take all actions as may be necessary or as the City may direct for the protection and preservation of any property related to this Agreement that is in the possession of Contractor and in which City has or may acquire an interest, including any environmental remediation required under Appendix H. Contractor acknowledges that City has a vested interest for payment of fees for vehicles that Contractor has towed and/or is storing, and Contractor shall not impair said interest and shall take all actions reasonably necessary to safeguard City's interest in said towed and stored vehicles.

r. Section 4.5

Section 4.5 of Appendix A to the Agreement is amended in its entirety to read as follows:

4.5 No ID Vehicles

(a) NO ID Designation. All vehicles with no visible VIN shall be impounded under a "NO ID" number and shall be designated as a vehicle subject to Investigative Police Hold and held for inspection by the SFPD Auto Detail regardless of which City agency initiated the Tow Request. NO ID vehicles shall be included in regular reports to the SFPD of Police Hold vehicles as specified in Sections 4.6(d) and 13 of this Appendix A. Contractor shall keep NO ID vehicles within the NO ID area (excluding oversized vehicles), with the exception that Contractor shall move a NO ID vehicle out of the NO ID area within twenty-four (24) hours of receiving a request to do so by the SFPD.

(b) NO ID Procedure. If a VIN is found following inspection by the SPED, Contractor shall follow applicable lien sale provisions of the Vehicle Code for processing that vehicle. Otherwise, Contractor shall designate the vehicle as an "Unable to Identify" or "UNTIDY" vehicle and, after receipt of a written release by the SPED (DMV Form 462, "Public Agency Authorization of Disposal of Vehicle" or successor form), such UTID vehicle shall be disposed of as required by the Vehicle Code and in accordance with instructions on DMV Form 462 or successor form.

(c) **SFPD Access to NO ID Vehicles.** Contractor shall allow SFPD personnel with written authorization from the Chief of Police or an officer designated by the Chief of Police to remove parts from any NO ID vehicle, except as prohibited by Appendix H.

s. **Section 10.2**

Section 10.2 of Appendix A to the Agreement is amended in its entirety to read as follows:

10.2 Network Connections. Within thirty (30) days of the Effective Date of the Agreement, or other date approved in writing by City, the Contractor shall provide data lines to connect the following locations to the Contractor's TVMS:

Contractor Division	Location
Customer Service Center	450 7th Street
Primary Storage Facility	450 7th Street
Secondary Storage Facility	2650 Bayshore Boulevard, Daly City

Note: Alternate sites may be approved by the City.

Contractor shall provide T1 Internet data lines that connect the Customer Service Center and Primary Storage Facility to the Contractor's TVMS. Contractor shall provide data connections to the Primary and Secondary Storage Facilities using a T1 data line. Contractor shall install a firewall at all locations where there is a direct connect to the Internet to ensure the security of the data.

Within thirty (30) days of the Effective Date of this Agreement, or other date approved in writing by City, Contractor shall provide a T1 data line that connects the Customer Service Center with the SFMTA server headquarters at 1 South Van Ness Avenue. This connection will be used to provide a connection to the Contractor's TVMS for City staff and create a pathway for the Contractor's staff and systems to access the City's CMS. At any time during the Term of this Agreement, with the City's prior, written approval, and subject to all the conditions contained in such approval, the parties may agree to eliminate the requirement for the T1 data line that connects the networks of the City and Contractor. Because both the CMS and TVMS systems can now be accessed directly via the Internet, the parties may agree to eliminate the T1 data line to simplify the systems administration for the City and Contractor, and to eliminate the monthly costs of both the data connection and the associated networking equipment (see Section 10.1).

Contractor shall provide the following City locations with real-time access to the Contractor's TVMS within thirty (30) days of the Effective Date of this Agreement:

City Division	Location
SFMTA Enforcement	505 7th Street
SFMTA Citation Division	11 South Van Ness Avenue
SFMTA Hearing Division	11 South Van Ness Avenue
SFMTA Administration	1 South Van Ness Avenue, 8 th Floor
SFPD NOID Office	850 Bryant Street
SFPD STOP Program	850 Bryant Street

For users located at the City locations listed above who cannot connect to the Contractor's system using either a direct connection to the Internet or the data line connecting the Customer Service Center to 1 South Van Ness Avenue, Contractor shall configure a single Virtual Private Network (VPN) utilizing 3DES encryption per location. Remote clients shall be able to connect to Contractor's network through remote VPN client software and DSL Internet connections. Contractor shall bear only the cost of the DSL Internet services and the corresponding DSL modems

and/or routers. City shall identify and provide a computer (Windows XP, or later version) in each location on which the VPN client software will be installed, for which the DSL Internet service will be established, and for which the access to the Contractor's TVMS will be provided. The City shall also be responsible for any telecommunications cabling that is required for the DSL connections to be established in each location.

t. Section 11.1

Section 11.1 of Appendix A to the Agreement is amended in its entirety to read as follows:

11.1 Designated Facilities. Contractor shall use the Designated Facilities for all service requirements of this Agreement, except as otherwise approved in advance in writing by City. The location or relocation of any Designated Facility shall be subject to prior written approval by City. City hereby approves the current location of all Designated Facilities. Contractor may use Designated Facilities for towing and storing vehicles that are not towed or stored at the request of the City with the prior written approval of City and subject to any conditions imposed in such approval. Contractor may allow Employee and vendor parking at Designated Facilities, subject to any limitations set forth in the Bayshore License, so long as it does not interfere with Contractor's performance of towing and impound services to all standards and requirements of this Agreement.

(a) Customer Service Center. The Customer Service Center shall provide a location for Customers recovering vehicles in person to pay for towing and storage charges, Citation fees and penalties, and other applicable fees, and/or to process any documentation required for vehicle release. The Customer Service Center shall be open to the public twenty-four (24) hours per day, 365 days per year. If the Customer Service Center is relocated outside of the Hall of Justice at 850 Bryant Street, Contractor shall provide a security guard in any area open to the public at all times that such facility is open to the public at its sole expense. The Customer Service Center must be located at or near the Primary Storage Facility.

(b) Primary Storage Facility

(i) Authorized Facility. City hereby approves the lot at 450 7th Street as a Primary Storage Facility.

(ii) Vehicle Storage and Retrieval. Contractor must provide a covered area at the Primary Storage Facility where Customers can wait while their vehicle is being retrieved. The Primary Storage Facility shall be open twenty-four (24) hours per day, 365 days per year.

(iii) Tows to Primary Storage. Contractor shall take all towed vehicles to the Primary Storage Facility for short-term storage if they are not subject to a Police Hold or are not taken directly to the Secondary Storage Facility. Contractor shall store all towed vehicles at the Primary Storage Facility for twenty-four (24) hours after being towed, unless vehicles are required by this Agreement to be directly towed to the Secondary Storage Facility. Vehicles stored at the Primary Storage Facility may be moved to the Secondary Storage Facility after the first twenty-four (24) hours. Contractor shall ensure that it transfers vehicles from Primary to Secondary Storage frequently enough to ensure that there is, at all times, sufficient space for newly-towed vehicles to be received at the Primary Storage Facility. Contractor shall not conduct any vehicle maintenance or vehicle parts sales at the Primary Storage Facility, except for maintenance of forklifts or other lot operations equipment.

(c) Secondary Storage Facility

(i) Authorized Facility. City hereby grants Contractor a license to occupy and use the Property at 2650 Bayshore Boulevard, Daly City as a Secondary Storage Facility as of the Effective Date of the Agreement during the Term of and so long as the Contractor complies with the terms and conditions of Appendices C and D.

(ii) Vehicle Storage and Retrieval. Contractor shall use the Secondary Storage Facility to store vehicles, including vehicles towed directly to the Secondary Storage Facility and most vehicles which are not picked up by the public within twenty-four (24) hours. Contractor shall conduct vehicle lien sales at this location. This facility shall be open to the public from 8:00 a.m. to 6:00 p.m. Monday through Friday. Outside of operating hours, Contractor shall secure the Secondary Storage Facility using security personnel. All vehicles must be available for retrieval from the Secondary Storage Facility by Contractor's staff twenty-four (24) hours per day, 365 days per year, with the exception of the following categories of vehicles: (1) type II vehicles (more than 8,500 lbs. but less than 26,500 lbs., trucks, buses, and unattached trailers); (2) type V vehicles (more than 26,500 lbs., trucks, buses, and unattached trailers); (3) stolen recovery vehicles (vehicles stolen and recovered by SFMTA or SFPD); (4) hit and run vehicles (vehicles involved in hit and run accidents); (5) accident vehicles (vehicles involved in accidents and towed by the SFMTA or the SFPD); and (6) abandoned/missing parts vehicles (vehicles abandoned by owner/driver and missing parts).

(iii) Tows to Secondary Storage. Contractor shall tow all Scofflaw, arrest, accident, Abandoned, recovered stolen vehicles, oversized vehicles, SFPD STOP Administrative Police Hold vehicles, disabled vehicles, dilapidated vehicles and other vehicles as directed by the City directly to the Secondary Storage Facility. The specific policies for whether vehicles are towed to the Primary Storage Facility or directly to the Secondary Storage Facility may be changed at any time subject to City's prior written agreement.

(iv) Facility Management. Contractor agrees to assume all responsibilities for use of storage facilities at 2650 Bayshore Boulevard, Daly City in accordance with the Bayshore License attached as Appendix H to the First Amendment to this Agreement and incorporated by reference herein.

Contractor shall manage the Secondary Storage Facilities, in compliance with the Bayshore License, to meet the following guidelines:

- (1) Contractor shall remove vehicles that have been legally cleared for disposal on a weekly basis.
- (2) Contractor shall, at a minimum, hold a vehicle lien sale auction once a week.
- (3) Vehicles shall be placed in such a way that no more than four (4) vehicles shall need to be moved to clear a passage for any vehicle.
- (4) Two (2) feet of clearance space shall be maintained between the sides of all vehicles.
- (5) The Secondary Storage Facility personnel shall comply with all municipal, state, and federal codes and safety regulations at all times.
- (6) The Secondary Storage Facility shall be clean and maintained at all times.

(7) Facilities shall be screened from public view except for necessary gates.

(8) Gates shall be at least eight (8) feet high and maintained in good condition.

(9) The parking and storage surface shall be maintained in accordance with all requirements of Appendices B and the Bayshore License Agreement.

(10) Security systems, including ample lighting and a surveillance system, shall be in place and operational at all times for the entire area occupied by Contractor under the Bayshore.

(11) Contractor shall not permit the public to walk through the lot unescorted by an employee of Contractor.

(d) **Central Dispatch.** Contractor's Central Dispatch facility shall operate twenty-four (24) hours per day, 365 days per year. City hereby approves any location of Central Dispatch at the Primary Storage Facility or at Contractor's Headquarters Office, so long as Central Dispatch is located within the City and County of San Francisco.

(e) **Changes in Facilities**

(i) **Approval.** City may approve relocation of Designated Facilities, including shifting Contractor's operations between existing Designated Facilities, terminating the use of one or more Designated Facilities, or adding new Designated Facilities. Any such relocation or change to Designated Facilities shall require prior written approval of City.

(ii) **Service Standards.** In the event that City approves the relocation of any Designated Facility, the parties acknowledge that certain response times and maximum charges contemplated by this Agreement may require modification to take into account the changed geographic circumstances of Contractor's operations. Any written approval of a change to the Designated Facilities listed in this Agreement shall include a revised schedule of fees and/or response times to which the parties have agreed as part of the relocation, if necessary.

(iii) **Consolidation.** Contractor has relocated the Customer Service Center and Primary Storage Facility to a single location at the 450 7th Street site. Should City cease to use Contractor for towing services prior to February 28, 2015, the terms for City's continued use of the 450 7th Street property are set forth in Appendix G.

u. **Section 11.2**

Section 11.2 of Appendix A to the Agreement is amended in its entirety to read as follows:

11.2 Property Maintenance Requirements. All costs associated with maintenance of Designated Facilities shall be the sole responsibility of the Contractor.

All open areas within the Designated Facilities used for vehicle storage shall be maintained in a clean, secure, neat, and visually presentable manner. Contractor shall not dismantle or crush

vehicles or remove vehicle fluids on the any of the facilities to be used in the performance of this Agreement except in compliance with environmental regulations and the applicable requirements of Appendices B and the Bayshore License Agreement. Any removal of fluids from vehicles shall be conducted in a manner that complies with all requirements of this Agreement, and may only be performed by a licensed contractor, and into portable containers that are immediately removed from the facility.

v. Section 12.1

Section 12.1 of Appendix A to the Agreement is amended in its entirety to read as follows:

12.1 Payments Due to City

(a) Referral Fee

Contractor shall submit to the City a Referral Fee of \$20 per tow, excluding dropped tows as described in Appendix A, Section 4.2. The Referral Fee shall be the same for every type of vehicle, and shall increase each twelve (12) month period on each July 1st by the Consumer Price Index for the San Francisco Region as published by the United States Department of Labor, Bureau of Labor Statistics on January 1. Adjustments will be rounded to the nearest twenty-five cents (\$0.25). No Referral Fee shall be paid for:

- (1) Vehicles owned by the City under the jurisdiction of the SFMTA or the SFPD, or any other Courtesy Tow performed pursuant to Section 2.4 of this Appendix A, and
- (2) Vehicles for which a waiver of towing, storage, transfer and/or lien fees is issued by SFMTA, DPH or SFPD.

(b) Percentage Fee

Contractor shall submit to the City a percentage fee of one percent (1%) on annual Gross Revenues from all money collected during the term of this Agreement. This fee shall be initially paid in the fifteenth (15th) month after the Agreement is signed, in the thirteenth (13th) month thereafter for the previous twelve (12) month term, and yearly thereafter.

(c) SFMTA Administrative Fees

Prior to releasing the vehicle, Contractor shall collect a pass-through SFMTA Administrative Towing Fee for all vehicles recovered by the vehicle owner. The amount of the SFMTA Administrative Towing Fee is subject to change in accordance with the provisions of San Francisco Transportation Code § 305. In addition, prior to releasing the vehicle, Contractor shall collect a pass-through daily SFMTA Administrative Storage Fee for stored vehicles based upon the number of days the vehicle has been stored prior to recovery by the vehicle owner. No Administrative Fee shall be collected for:

- (1) Any vehicle owned by the City under the jurisdiction of the SFMTA or the SFPD, or any other Courtesy Tow performed pursuant to Section 2.4 of this Appendix A.
- (2) Any vehicle for which the Customer produces a written waiver of the SFMTA Administrative Fee issued by SFMTA, DPH or the SFPD.

(d) SFPD Traffic Offender Fee

If applicable, when a vehicle is sold at a lien sale and there are funds to satisfy all other fees as defined in Section 12.3(c) of this Appendix A, then Contractor shall pay to the SFPD or into an account designated by the SFPD an SFPD Traffic Offender Fee in an amount set by the San Francisco Police Commission. City and Contractor may agree in writing to utilize a mechanism other than the process described in Section 12.1(g) for collection of the SFPD Traffic Offender Fee.

(e) Citation Fees

Contractor shall collect payments of Citation fees from Customers with towed vehicles and from members of the public whose vehicles have not been towed, in accordance with all requirements set forth in this Agreement.

(f) Liquidated Damages and Fines

Contractor shall pay to City the amounts of any liquidated damages or fines assessed pursuant to this Appendix A, Section 15 and, Section 6.6 of the Bayshore License Agreement.

(g) Deposit of Fees Due to City

Except as otherwise specified herein, Contractor shall deposit all funds collected under this Section 12 within twenty-four (24) hours of receipt into an account specified by the City, Monday through Friday, not including weekends and holidays. Any funds with a deadline for deposit which falls on a weekend or a holiday shall be deposited no later than the next business day. All funds due to City under this Section shall be paid by Contractor without prior demand by the City and without any deduction, setoff, or counterclaim whatsoever, except as expressly provided herein. The parties may agree upon alternative procedures for Contractor's payment to City, but any such change must be approved in advance, by City, in writing.

(h) Payment Shortages

If Contractor fails to collect all amounts due from a Customer, Contractor shall be responsible to reimburse the City for any amounts not collected as required herein, unless the failure is caused solely by the negligence of City or a failure of the CMS. Contractor shall follow any procedures required by the City to report overages or shortages.

w. Section 14.2

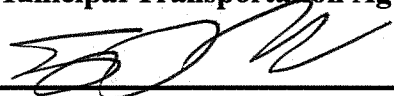

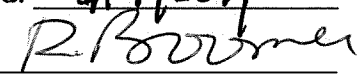
Section 14.2 of Appendix A to the Agreement is amended in its entirety to read as follows:

14.2 Approval Process. All elements of the Operations Plan shall be subject to City review and approval. All Operations Plan elements must be initially submitted no later than the deadlines set forth in Appendix B for each Operations Plan element. The deadline for any Operations Plan element described in the Agreement may be extended by written approval of SFMTA upon the request of and a showing of good cause by Contractor. City shall have sixty (60) days to review each element submitted, and either approve it as submitted or request revisions. Contractor shall respond to a request for revisions within twenty (20) days. City will have fifteen (15) days to either approve the revised Plan element or request further revisions. Contractor and City shall from this point on have five (5) days to either approve the revised Plan element as submitted, submit further requests for revisions or to respond to requests for revisions. Each revision must reflect tracking of document versions, including date and source of revisions, and each exchange of versions between the parties shall be accompanied by an executed document substantially in the form of Appendix B.

- x. **Appendix C to the Agreement is deleted in its entirety.**
- y. **Appendix D to the Agreement is deleted in its entirety and is replaced by Appendix H, which is attached to this Amendment.**

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.
4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <p></p> <hr/> <p>Edward D. Reiskin Director of Transportation</p>	<p>CONTRACTOR</p> <p>TEGSCO, LLC, d.b.a. San Francisco AutoReturn</p> <p></p> <hr/> <p>JOHN WICKER President and CEO 945 Bryant Street, Suite 350 San Francisco, CA 94103</p>
<p>Authorized by:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: <u>14-050</u> Adopted: <u>4/1/2014</u></p> <p>Attest:  Roberta Boomer, Secretary SFMTA Board of Directors</p>	
<p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: </p> <hr/> <p>Mariam M. Morley Deputy City Attorney</p>	