



SFMTA
Municipal
Transportation
Agency

Edwin M. Lee, *Mayor*

Tom Nolan, *Chairman*
Gwyneth Borden, *Director*
Jerry Lee, *Director*
Cristina Rubke, *Director*

Cheryl Brinkman, *Vice-Chairman*
Malcolm Heinicke, *Director*
Joél Ramos, *Director*

Edward D. Reiskin, *Director of Transportation*

**CITY AND COUNTY OF SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
ONE SOUTH VAN NESS AVE, 7TH FLOOR
SAN FRANCISCO, CA 94103**

**MODIFICATION NO. 1 TO
AGREEMENT BETWEEN SIEMENS INDUSTRY, INC.
AND
THE CITY AND COUNTY OF SAN FRANCISCO FOR
PROCUREMENT OF NEW LIGHT RAIL VEHICLES (LRV4)
(SFMTA No. 2013-19)**

This Modification No. 1 to Agreement is made and entered into this 31ST day of March 2015, by and between Siemens Industry Inc. (Contractor), and the City and County of San Francisco, a municipal corporation (City), acting by and through its Municipal Transportation Agency (SFMTA).

RECITALS

- A. On September 30, 2014, the City entered into an agreement with Contractor (Agreement) to provide 175 light rail vehicles (LRVs), together with associated equipment and spare parts, as well as Options for additional LRVs and parts.
- B. The SFMTA now wishes to modify the Agreement to exercise Option 1 in accordance with Section 64.1 of the Agreement, to procure 40 additional LRVs to be delivered after the Phase 1 delivery of 24 vehicles, and to exercise Options for additional Spare Parts and Equipment in accordance with Sections 64.2, 64.3 and 64.4 of the Agreement.

Now, therefore, the parties agree that the Agreement shall be amended as follows:

A handwritten signature in black ink, appearing to be the initials 'M' or 'N'.

1. Section 7.5.4 (**Escalation for Price of Spare Parts**) is amended in its entirety to read as follows:

7.5.4. **Escalation for Price of Spare Parts.** Any price adjustment for spare parts shall be determined according to the methodology described above for escalating the price of Vehicles and in accordance with the table below.

Schedule of Prices Reference	Base Phase 1 Cars 1-24	Base Phase 2 Cars 25-175	Option Vehicles Cars 1-85
Nominal Spare (item 5)	NO ESCALATION	In accordance with Phase 2, Section 7.5.3(c)(ii)	/
Optional Spare (item 8)	NO ESCALATION	In accordance with Phase 2, Section 7.5.3(c)(ii)	
Spares for Option Vehicles (item 9)	/	/	In accordance with Section 7.5.3(c)(iii)

2. Section 10.1 (**Payment of Taxes**) amended in its entirety to read as follows:

10.1 Payment of Taxes. The City will pay the sales taxes levied by the State of California directly to the State provided that Contractor indicates on each invoice it submits the amount of sales taxes due. Contractor shall be solely responsible for any penalties, interest or fees assessed as a result of incorrect sales tax amounts listed on the invoices.

The City warrants that it is a public entity exempt from certain federal excise taxes and in connection therewith that it has obtained a federal excise tax exemption certificate. Contractor will pay all other taxes, including possessory interest taxes, licenses, imposts, duties, and all other governmental charges of any type whatsoever levied upon or as a result of this Agreement or Work performed pursuant hereto.

3. Section 29 (**Subcontracting**) is amended in its entirety to read as follows:

Contractor may subcontract portions of the Work only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the performance of the Work. City's execution of this Agreement constitutes its approval of the major subcontractors/suppliers listed below. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement made in violation of this provision shall be null and void.

	COMMODITY	SUPPLIER
1	Automatic Passenger Counting System	INIT
2	Automatic Train Control System	Thales
3	CCTV System	Kratos
4	Communications - Radio	Harris
5	Doors	Ultimate Transportation N. America
6	Event Recorder	Hasler Rail
7	Friction Brake System	Wabtec
8	HVAC	Thermo King Corp.

5. *Exhibit 1 is deleted in its entirety and replaced with the Exhibit 1 attached to this Modification No. 1.*
6. *Exhibit 3 is deleted in its entirety and replaced with the Exhibit 3 attached to this Modification No. 1.*
7. *Exhibit 6 is modified by adding after Exhibit 6.1 a new Exhibit 6.2 as attached to this Modification No. 1.*
8. **Release.** The compensation (time and cost) set forth in this Modification comprises the total of all compensation due to Contractor, and all Subcontractors and Suppliers (collectively, Contractor), as a result of the events giving rise to the Modification and for the additional Work described in this Modification, including, but not limited to, costs for labor, materials, equipment, delay, escalation, profit, inefficiency, overhead and administration. The execution of this Modification constitutes a release and accord and satisfaction of any claim that Contractor may bring, as of the date of this Modification, for additional compensation or time arising from, or related to, the procurement and delivery of Option Vehicles to the City as described in this Modification. The Option Vehicles will be delivered in accordance with Exhibit 3 (Project Delivery Schedule). Exhibit 3 (Project Delivery Schedule), represents the full amount of time that Contractor has to deliver the Phase 1, Phase 2 and Option Vehicles to the City.
9. **Effective Date.** Each of the amendments set forth above shall be effective on and after all parties have signed the Amendment.
10. **Legal Effect.** Except as expressly modified by this Modification No. 1, all other terms and conditions of the Contract remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Modification No. 1 on the date set forth on page 1 above.

CITY

CONTRACTOR

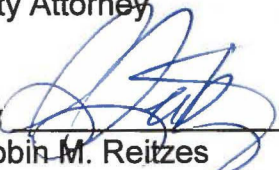
San Francisco Municipal Transportation Agency

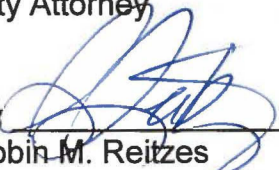


Edward D. Reiskin
Director of Transportation

Approved as to Form:

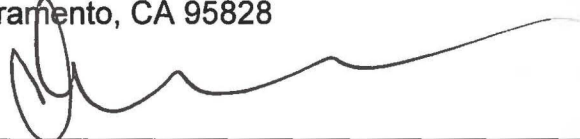
Dennis J. Herrera
City Attorney



By 
Robin M. Reitzes
Deputy City Attorney



Michael Cahill
President
Rolling Stock
Siemens Industry, Inc.
7464 French Road
Sacramento, CA 95828



Christopher Halleus
Vice President, FBA
Rolling Stock
Siemens Industry, Inc.
7464 French Road
Sacramento, CA 95828

City vendor number: 50009
Federal Taxpayer ID No.13-2762488

Attachments

- Exhibit 1 – Schedule of Prices
- Exhibit 3 – Project Delivery Schedule
- Exhibit 6 - Parent Company Guarantee



EXHIBIT 1
A. Schedule of Prices

BASE

ITEM	DESCRIPTION	UNIT PRICE	QUANTITY	EXTENDED PRICE
Item 1	Engineering Design, Project Management and Design Qualification Testing	Lump Sum	x 1	\$37,541,102
Item 1.1	Allowance for regulatory mandated changes, requested passenger enhancements and system modifications resulting from changes to project interfaces	Lump Sum	x 1	\$10,000,000
Item 2.1	Vehicle Price for Base Order Phase 1	\$3,327,250	x 24 cars	\$79,854,000
Item 2.2	Vehicle Price for Base Order Phase 2	\$3,327,250 * ¹	x 151 cars	\$502,414,750
Item 3	Operating, Maintenance and Parts Manuals	Lump Sum	x 1	\$809,478
Item 4.1	Training	Lump Sum	x 1	\$361,557
Item 4.2	Train Simulator (1) (In accordance with Section 22.2.8 of Technical Specifications)	Lump Sum	x 1	\$1,704,650
Item 5.1	Spare Parts (Total of Exhibit 1.B Phase 1)	Lump Sum	x 1	\$14,153,840
Item 5.2	Spare Parts (Total of Exhibit 1.B Phase 2) * ¹			
Item 6	Special Tools, Test and Diagnostic Equipment (Total of Exhibit 1.D)	Lump Sum	x 1	\$1,792,624
Item 7.1	Option 1 for 40 Additional New Light Rail Vehicles	\$ 3,349,270	x 40 cars	\$133,970,800
Item 8.1	Additional Spare Parts (Exhibit 1.C Phase 1)	Lump Sum	x 1	\$11,269,527
Item 8.2	Additional Spare Parts * ¹ (Exhibit 1.C Phase 2)			
Item 9	Spare Parts for Option Cars * ¹	Lump Sum	x 1	\$15,000,000
Item 10	Train Simulator (2) (In accordance with Section 22.2.8 of Technical Specifications) * ¹	Lump Sum	x 1	\$ 1,704,650
Items 1 – 10				\$810,576,978

Note *1: The prices do not include escalation. Escalation will be applied in accordance with Agreement Section 7.5.

Item 7.1: Price includes escalation.

OPTIONS

ITEM	DESCRIPTION	UNIT PRICE	QUANTITY	EXTENDED PRICE
Item 7.2	Option 2 for 1 to 45 Additional New Light Rail Vehicles	\$3,329,011* 1	x 45 cars	\$149,805,495
Total Options:				\$149,805,495

Note *1: The Price does not include escalation. Escalation will be applied in accordance with Agreement Section 7.5.

Exhibit 3: PROJECT DELIVERY SCHEDULE

Item	Calendar Days after Notice to Proceed
Project Plan	60
Delivery of 1st Vehicle to SFMTA	737
Delivery of 2nd Vehicle to SFMTA	810
Training Starts	870
Training Complete	990
Special Tools / Diagnostic Test Equipment	870
Delivery of Publications (Manuals, Parts Book, Drawings) - Prelim	870
Delivery of Publications (Manuals, Parts Book, Drawings) - Final	1080
Delivery of Spare Parts (Phase 1)	990
Testing Complete / Acceptance of Vehicle	990
Delivery Rate of Base Phase 1 Vehicles (3-24)	1 Car every 2 weeks
Delivery of 24th Vehicle (Phase 1) to SFMTA	1298
Delivery of 1st Vehicle (Phase 2) to SFMTA	May15, 2021
Delivery Rate of Phase 2 Vehicles	1 Car every 2 weeks
Delivery of 151st Vehicle (Phase 2) to SFMTA	2114 days after delivery of 1 st Car (Phase 2)
Delivery of Spare Parts (35% of Phase 2 Quantity)	May 15, 2021
Delivery of Spare Parts (35% of Phase 2 Quantity)	With Delivery of 50th Vehicle (Phase 2)
Delivery of Spare Parts (30% of Phase 2 Quantity)	With Delivery of 100th Vehicle (Phase 2)
Delivery of 1st Option 1 Vehicle to SFMTA	1312
Delivery Rate of Option 1 Vehicles	1 Car every 2 weeks
Delivery of the 40th Option 1 Vehicle	1858



Item	Calendar Days after Notice to Proceed
Acceptance of Training Simulator 1	870
Delivery of 1st Option 2 Vehicle to SFMTA	TBD
Delivery Rate of Option 2 Vehicles	TBD
Delivery of the last Option 2 Vehicle	TBD
Delivery of Additional Spare Parts (Exhibit 1 C)	TBD
Deliver of Spare Parts for Option Vehicles	TBD
Delivery of Training Simulator 2	TBD





EXHIBIT 6.2 – PARENT COMPANY GUARANTEE

March 25, 2015

RE: Procurement of New Light Rail Vehicles (LRV4) Contract No. SFMTA-2013-19 between Siemens Industry Inc. (“Obligor”) and the City and County of San Francisco (“City”), through its Municipal Transportation Agency (“Beneficiary”) dated September 29, 2014 (“Contract”).

The Contract requires that Obligor provide a performance bond, labor and materials bond, warranty bond (the “bonds”), letters of credit or other security, as approved by the City’s Risk Manager, to secure Obligor’s performance, warranty and other obligations under the Contract. Siemens Corporation (“Guarantor”), the parent company of Obligor, offers to provide Beneficiary with the following guarantee in lieu of the bonds or letters of credit required under the Contract for the Option 1 Vehicles (Option 1), as defined in Section 64.1 of the Contract.

For value received, Guarantor, a corporation duly organized and validly existing under the laws of the state of Delaware, unconditionally guaranties to Beneficiary the prompt and complete payment when due, whether by acceleration or otherwise, of all amounts owing by Obligor under Option 1 of the Contract (including any liquidated damages). If at any time Obligor fails, neglects or refuses to timely or fully pay any sum due under Option 1 of the Contract, and if within 15 calendar days after the written notice of such failure from the Beneficiary and the expiration of any grace period applicable with respect thereto under the Contract, Obligor has not made such payment in full, then upon receipt of written notice from Beneficiary specifying such default, Guarantor shall promptly make such payment in immediately available funds to the order of the Beneficiary. This guaranty is one of payment and not of collection. If more expeditious and appropriate than a direct payment to SFMTA (and if agreed to by SFMTA and Guarantor), in the event of any default on the part of the Obligor regarding its obligations under Option 1 of the Contract, Guarantor agrees to perform all such obligations under the Contract that are necessary to cure the default and complete performance of all such work under the Contract.

Guarantor waives notice of acceptance of this Guarantee and notice of any liability to which it may apply, and waives presentment, demand for payment, protest, and notice of dishonor or non-payment of any kind.

Beneficiary may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree to any change in the terms of any obligation or liability of the Obligor to Beneficiary under the Contract, (2) grant any waivers to Obligor, (3) take or fail to take any action of any kind in respect of Option 1 of the Contract, or (4) exercise or refrain from exercising any rights against Obligor under the Contract. In addition, Guarantor agrees that its obligations hereunder shall not



be impaired in any manner whatsoever by any bankruptcy, extensions, moratoria or other relief granted to Obligor.

Notwithstanding anything contained in this Guarantee to the contrary, Guarantor's liability under this Guarantee shall not exceed the sum of (1) Eighty Million, Nine Hundred Seventy Two Thousand, Four Hundred Eighty Eight United States Dollars and 50 United States Cents (\$80,972,488.50 US) (the "Stated Amount") plus (2) the Additional Amount, which covers providing additional security for progress payments made by the Beneficiary for such Option 1 (as referenced in Section 7.3 of the Contract) and which on each Date of Change reflected on Table A shall be automatically adjusted to the adjacent Additional Amount as set forth in Table A of this Guarantee. Together, the Stated Amount and the Additional Amount covers all Option 1 obligations. Once 80 percent of the Option 1 Vehicles have been Accepted (as these terms are defined in the Contract), the Additional Amount may be released from the Guarantee for Option 1. Upon Acceptance or Conditional Acceptance of all Option 1 Vehicles, the Stated Amount will be reduced to five percent of the total price for Option 1 in accordance with Section 15.2.2(c) of the Contract.

With respect to any claim, action or proceeding against Guarantor in connection with this Guarantee, Guarantor shall be entitled to assert those defenses which Obligor would be able to assert if such claim, action or proceeding were to be asserted or instituted against Obligor based upon the Contract. By its acceptance hereof, reliance hereon, Beneficiary affirms to Guarantor any and all representations, warranties, and covenants made by the Beneficiary to the Obligor under the Contract.

This Guarantee shall continue in full force and effect until Guarantor gives Beneficiary notice of termination of this Guarantee, except that, notwithstanding any such termination, this Guarantee shall continue in full force and effect with respect to all obligations and/or liabilities incurred prior to such termination. Notwithstanding the foregoing, however, this Guarantee shall terminate and cease of further effect on the earlier of: (a) December 31, 2024 (b) the Acceptance or Conditional Acceptance of the last Vehicle of Option 1, provided that the Contractor has furnished a separate Parent Company Guarantee or other security for the warranty provisions that meets the requirements of section 15.2.4. of the Contract; (c) end of the agreed warranty period of the Option 1 Vehicles; (d) the date of any permitted assignment of Obligor's interest in the Contract; or (e) the date that (i) the Guarantor no longer owns or controls, directly or indirectly, more than 50 percent of the ownership interests of the Obligor, and (ii) the Beneficiary has been provided with a replacement guaranty, letter of credit, or other financial accommodation from a party with a credit rating equal to or better than that of Guarantor as of the date of this Guarantee, which financial accommodation provides Beneficiary with no less protection than that which is contained in this Guarantee (the acceptance of such replacement guarantee being within the sole and reasonable discretion of the Beneficiary). Guarantor shall, as of such date (the "Expiration Date"), have no further obligations or liability under this Guarantee, whether or not the Guarantee is returned to the Guarantor. To the extent feasible, Beneficiary will return the original of this Guarantee to the Guarantor after the Expiration Date.

Nothing contained herein shall be construed as conferring any rights upon persons or entities other than the Beneficiary.

This Guarantee shall be governed and construed in accordance with the laws of the State of California without giving effect to principles of conflicts of law. Guarantor submits, and by its acceptance hereof Beneficiary hereby submits, to the jurisdiction of the courts of the state of California and to federal courts located within the city of San Francisco. Neither Guarantor nor Beneficiary may assign its rights or delegate its duties without the written consent of the other party. Any amendments to this Guarantee must be in writing. This Guarantee may be executed in counterparts, each of which, when taken together, shall be deemed to be one and the same instrument.

This Guarantee has been duly executed by authorized representatives of the Guarantor as follows:

SIEMENS CORPORATION

By:  _____

*Name: Kirk Nesbeitt

Title: Vice President of Siemens Financial Services, Inc.

By:  _____

*Name: Robert Donza

Title: Vice President of Siemens Financial Services, Inc.

*[Under Power of Attorney from Siemens Corporation]

Accepted:

Municipal Transportation Agency

By:  _____

Exhibit 6.2 Table A

Date of Adjustment	Increase Amount in USD at Date of Adjustment	Additional Amount in USD
9/01/15	2,679,416.00	2,679,416.00
9/01/17	669,854.00	3,349,270.00
10/01/17	1,339,708.00	4,688,978.00
11/01/17	1,339,708.00	6,028,686.00
12/01/17	669,854.00	6,698,540.00
1/01/18	2,009,562.00	8,708,102.00
2/01/18	2,009,562.00	10,717,664.00
3/01/18	3,349,270.00	14,066,934.00
4/01/18	2,679,416.00	16,746,350.00
5/01/18	2,679,416.00	19,425,766.00
6/01/18	2,679,416.00	22,105,182.00
7/01/18	2,679,416.00	24,784,598.00
8/01/18	4,019,124.00	28,803,722.00
9/01/18	2,009,562.00	30,813,284.00
10/01/18	3,349,270.00	34,162,554.00
11/01/18	2,009,562.00	36,172,116.00
12/01/18	2,679,416.00	38,851,532.00
1/01/19	3,349,270.00	42,200,802.00
2/01/19	2,679,416.00	44,880,218.00
3/01/19	2,679,416.00	47,559,634.00
4/01/19	2,679,416.00	50,239,050.00
5/01/19	2,009,562.00	52,248,612.00
6/01/19	1,339,708.00	53,588,320.00
7/01/19	1,339,708.00	54,928,028.00
8/01/19	1,339,708.00	56,267,736.00