

1 [Contract Agreement Amendment - NextBus, Inc. - Automatic Vehicle Location System - Not
2 to Exceed \$12,968,676]

3 **Resolution approving the Third Amendment to San Francisco Municipal Transportation**
4 **Agency ("SFMTA") Contract No. SFMTA 2013-30, with NextBus, Inc., for software and**
5 **equipment maintenance services for the SFMTA's Automatic Vehicle Location System,**
6 **to extend the Agreement for one year for a total term of August 1, 2013, through**
7 **July 31, 2018, with one one-year option to extend, and increasing the contract amount**
8 **by \$3,780,474, for a total not to exceed \$12,968,676.**

9
10 WHEREAS, The SFMTA's Automatic Vehicle Location System (AVLS) provides real-
11 time vehicle location information to SFMTA management and customers of the actual location
12 and expected arrival time of transit vehicles; and

13 WHEREAS, The public has come to rely heavily on AVLS information, which is
14 transmitted via City websites and privately developed web and smartphone applications, and
15 is displayed on electronic signs in subway stations and at transit stops; and

16 WHEREAS, The AVLS is a system vital to SFMTA transit operations and management,
17 as it is integrated or shares data with the SFMTA's Advanced Train Control System and
18 scheduling software systems; and

19 WHEREAS, The AVLS software and some associated equipment are proprietary to
20 Nextbus, Inc., and the SFMTA is therefore unable itself to perform many of the tasks
21 necessary to maintain the AVLS; and

22 WHEREAS, The SFMTA is preparing to solicit proposals for a replacement system that
23 will transmit data via the new radio system. Staff expects that the selection process will be
24 completed in early 2018, and the replacement AVLS will be implemented before July 2019;
25 and

1 WHEREAS, The Third Amendment will extend the current contract in order to maintain
2 the existing AVLS while the SFMTA procures and implements a new AVLS; and

3 WHEREAS, The Local Business Entity subcontracting participation requirement for this
4 Amendment will remain the same as the current contract at 20 percent; and

5 WHEREAS, On April 6, 2017, the SFMTA, under authority delegated by the Planning
6 Department, determined that the NextBus contract extension is not defined as a "project"
7 under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California
8 Code of Regulations, Sections 15060(c) and 15378(b); and

9 WHEREAS, A copy of the CEQA determination is on file with the Clerk of the Board of
10 Supervisors in File No. 170509, which is hereby declared to be a part of this resolution as if
11 set forth fully herein; and

12 WHEREAS, The proposed Amendment is subject to Board of Supervisors approval
13 under Charter, Section 9.118(b): now, therefore, be it

14 RESOLVED, That the Board of Supervisors authorizes the San Francisco Municipal
15 Transportation Agency Director of Transportation to execute the Third Amendment to San
16 Francisco Municipal Transportation Agency Contract No. SFMTA 2013-30, with NextBus, Inc.,
17 for software and equipment maintenance services for the SFMTA's Automatic Vehicle
18 Location System, to extend the term of the Agreement for one year to July 31, 2018, with an
19 option to further extend the Agreement up to one additional year to July 31, 2019, to be
20 exercised at the Director of Transportation's discretion, and increasing the contract amount by
21 \$3,780,474, for a total contract amount not to exceed \$12,968,676.

Item 3 File 17-0509	Department: Municipal Transportation Agency (MTA)
EXECUTIVE SUMMARY	
Legislative Objectives	
<ul style="list-style-type: none"> • The proposed resolution would approve the third amendment to the contract between SFMTA and NextBus for software and equipment maintenance services for the Automatic Vehicle Location System, (a) extending the contract for one year for a total five-year term from August 1, 2013 through July 31, 2018, with one (1) one-year option to extend the contract through July 31, 2019, and (b) increasing the total contract amount by \$3,780,474, from \$9,188,202 to \$12,968,676. 	
Key Points	
<ul style="list-style-type: none"> • In 2002 SFMTA and NextBus entered into a contract for NextBus to provide the City with an Automatic Vehicle Location System, which provides real-time vehicle location information to SFMTA management and customers of the location and expected arrival time of transit vehicles operated by the Municipal Railway. SFMTA entered into a new four-year contract with NextBus for software and equipment maintenance services for the not-to-exceed amount of \$7,890,220 from August 1, 2013 through July 31, 2017. The contract has been amended twice, increasing the contract not-to-exceed amount to \$9,188,202. • The third amendment to the contract, extending the contract term to July 31, 2019, is intended to give the SFMTA sufficient time to design, plan, and select a replacement vehicle location and customer information system through a competitive process. 	
Fiscal Impact	
<ul style="list-style-type: none"> • The contract amount for the additional two-year contract term, including the one-year option, from August 1, 2017 through July 31, 2019 is \$3,780,474 or \$1,890,237 annually. Contract expenditures are for software, maintenance, and wireless fees related to the automatic vehicle location technology on vehicles and signs at bus stops. • Actual and projected contract expenditures from August 1, 2013 through July 31, 2019 are \$12,444,090. Therefore the total not to exceed amount should be reduced by \$524,586 from \$12,968,676 to \$12,444,090. 	
Recommendations	
<ul style="list-style-type: none"> • Amend the proposed resolution to reduce the total not to exceed contract amount by \$524,586 from \$12,968,676 to \$12,444,090. • Approve the proposed resolution as amended. 	

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that (1) has a term of more than ten years, (2) requires expenditures of \$10 million or more, or (3) requires a modification of more than \$500,000 is subject to Board of Supervisors approval.

BACKGROUND

The San Francisco Municipal Transportation Agency's (SFMTA) Automatic Vehicle Location System provides real-time vehicle location information to SFMTA management and customers of the location and expected arrival time of transit vehicles operated by the Municipal Railway. In 2002 SFMTA and NextBus entered into a contract for NextBus to provide the City with an Automatic Vehicle Location System.¹

Following the expiration of the original contract between SFMTA and NextBus, SFMTA entered into a new four-year contract with NextBus for software and equipment maintenance services for the not-to-exceed amount of \$7,890,220 from August 1, 2013 through July 31, 2017. These services include maintaining the wireless network, providing and configuring SIMs² to Automatic Vehicle Location System trackers and signs, and on-going monitoring of the system. SFMTA awarded this contract on a sole source basis to NextBus because NextBus provided the Automatic Vehicle Location System.

SFMTA signed the first amendment to the maintenance contract with NextBus in January 2014 to expand the Automatic Vehicle Location System and perform additional upgrades for an additional \$800,000 increasing the total not-to-exceed amount to \$8,690,220.

SFMTA signed the second amendment to the maintenance contract with NextBus in August 2016 to fund 2G-to-3G³ equipment upgrades to public signs for an additional \$497,982, increasing the total not-to-exceed amount to \$9,188,202.

The existing contract between SFMTA and NextBus and the two contract amendments were not subject to Board of Supervisors approval because the contract did not exceed 10 years or \$10 million.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve the third amendment to the contract between SFMTA and NextBus for software and equipment maintenance services for the Automatic Vehicle Location System, (a) extending the contract for one year for a total five-year term from August 1, 2013 through July 31, 2018, with one (1) one-year option to extend the contract through July

¹ SFMTA was not able to provide information on whether the original contract with NextBus in 2002 was awarded through a competitive Request for Proposals process.

² A subscriber identity module (SIM) is a small circuit board in most modern phones that contains unique information that identifies the phone to a specific mobile network.

³ 2G and 3G stand for the second and third generation of wireless telecommunications technology.

31, 2019, and (b) increasing the total contract amount by \$3,780,474, from \$9,188,202 to \$12,968,676.

According to Mr. Julian Metcalf, SFMTA IT Business Operations Manager, the third amendment to the contract will give the SFMTA sufficient time to design, plan, and select a replacement vehicle location and customer information system through a competitive process. SFMTA released a request for information in April 2017, and initial submissions were due on May 26, 2017. SFMTA plans to release a Request for Proposals (RFP) and select a new contractor to provide Automatic Vehicle Location System services in the fall of 2017. SFMTA staff plan to seek approval from the SFMTA Board of Directors and the Board of Supervisors for the new system in the winter of 2018, with the implementation beginning in the summer of 2018 and completing in the fall of 2019, as seen in Table 1 below.

Table 1: Key Dates for SFMTA’s Implementation of New Automatic Vehicle Location System

<u>Milestone</u>	<u>Tentative Date</u>
Request for Information (RFI)	Spring 2017
Request for Proposals (RFP) release	Summer 2017
RFP responses due	Summer 2017
RFP oral evaluations and selection	Fall 2017
Negotiations	Fall 2017 - Winter 2018
Approvals: SFMTA Board, Board of Supervisors	Winter 2018
Phase 1 Base System Implementation	Summer 2018
Phase II System Implementation	Summer – Fall 2019

According to Mr. Metcalf, although SFMTA expects to have the new contract in place by the winter of 2018, SFMTA is requesting the one-year option to extend the existing contract with NextBus to July 31, 2019 to allow sufficient time to transition from the existing to a new Automatic Vehicle Location System.

FISCAL IMPACT

The contract amount for the additional two-year contract term, including the one-year option, from August 1, 2017 through July 31, 2019 is \$3,780,474, or \$1,890,237 annually as shown in Table 2 below.

Table 2: Third Amendment Budget

Purpose	Year One	Year Two	Total
Signs			
Software	\$394,243	\$394,243	\$788,486
Wireless Fees	225,192	225,192	450,384
Maintenance	164,834	164,834	329,668
Contingency ^a	100,000	100,000	200,000
Subtotal (Signs)	\$884,269	\$884,269	\$1,768,538
Vehicles			
Software	539,136	539,136	1,078,272
Wireless Fees, Maintenance, Contingency ^b	466,832	466,832	933,664
Subtotal (Vehicles)	\$1,005,968	\$1,005,968	\$2,011,936
Total	\$1,890,237	\$1,890,237	\$3,780,474

^a This contingency cost is for additional, new, modified or upgrades signs.

^b This contingency cost includes additional services that the SFMTA may determine are necessary, including wireless services and maintenance for trackers, tracker leases, AVLS software, or other or additional hardware upgrades and additions.

If the proposed resolution is approved, the total contract not-to-exceed amount would be \$12,968,756 from the period of August 1, 2013 through July 31, 2019. However, as shown in Table 3 below, actual and projected contract expenditures from August 1, 2013 through July 31, 2019 are \$12,444,090. Therefore the total not to exceed amount should be reduced by \$524,586 from \$12,968,676 to \$12,444,090, as shown in Table 3 below.

Table 3: Recommended Contract Not-to-Exceed Amount

Current Contract Not-to-Exceed Amount	\$9,188,202
Contract Expenditures (Actual and Projected)	<u>(8,663,616)</u>
Remaining Contract Authority	\$524,586
Proposed Contract Not-to-Exceed Amount	\$12,968,676
Less Remaining Contract Authority	<u>(524,586)</u>
Recommended Contract Not-to-Exceed Amount	\$12,444,090

RECOMMENDATIONS

1. Amend the proposed resolution to reduce the total not to exceed contract amount by \$524,586 from \$12,968,676 to \$12,444,090.
2. Approve the proposed resolution as amended.

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

**Third 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 Third 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, 2017 and effective on that date, is made 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").

This Amendment extends the Term of the Maintenance Agreement and increases the contract amount to compensate for those extended services. As consideration for the extended term and increased compensation, Contractor shall continue to provide the Services described in the Maintenance Agreement without interruption, through the extended term.

The Maintenance Agreement is modified 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, as modified by and including this Amendment and all prior Amendments to the Maintenance Agreement, and appendices to all amendments.

Article 2 Modifications to the Maintenance Agreement.

1. **Term.** Section 2 of the Maintenance Agreement is modified to extend the term of the Agreement one year, with an option to the SFMTA to extend the Maintenance Agreement an additional year.

Section 2 of the Maintenance Agreement is deleted and replaced in its entirety with the following:

2. **Term.** Subject to Section 1, the term of this Maintenance Agreement shall be from August 1, 2013 to July 31, 2018. The provisions of this Amendment shall become effective on August 1, 2017. The SFMTA may at its option extend this Maintenance Agreement to July 31, 2019, said option to be exercised by the Director of Transportation's in his sole discretion.

2. **Services Contractor Agrees to Perform.** From the effective date of this Amendment to the expiration of the term of the Maintenance Agreement, the Contractor shall perform and provide to the SFMTA the services described in Appendix A, "Description of Services," attached to this Amendment.

3. **Compensation.** Section 5 of the Agreement is modified to increase the Contract Amount not to exceed \$3,780,473.96 for a total amended Contract Amount not to exceed \$12,968,675.96. A Synopsis of contract history including this amendment follows:

Document	Contract Value
Base Contract	\$7,890,220.00
Amendment 01	\$800,000.00
Subtotal	\$8,690,220.00
Amendment 02	\$497,982.00
Subtotal	\$9,188,202.00
Amendment 03 - Adds 1 year performance + 1 year option @ \$1,890,236.98 / year.	\$3,780,473.96
Total	\$12,968,675.96

Section 5 of the Maintenance Agreement is 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 **Twelve Million Nine Hundred Sixty-Eight Thousand Six Hundred Seventy-Five dollars and 96 cents (\$12,968,675.96)**. The breakdown of charges associated with this Agreement appears in Appendix B to the Maintenance Agreement and in Appendix B to this Amendment, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and

approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and identifying the subcontractor(s) and amounts paid.

4. **Remainder of Agreement Unchanged.** Except as expressly stated in this Amendment, all other provisions of the Maintenance Agreement, as amended, remain in full force and effect.

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

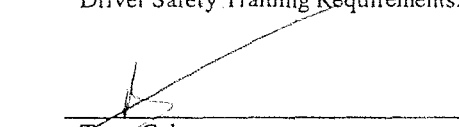
J. Herrera
City Attorney

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.


Tony Gale
General Manager, NextBus, Inc. 5900
Hollis Street, Suite X Emeryville, CA
94608

City vendor number: 74925

Appendix A
Additional Services Scope of Work

1. **Purpose.** The purpose of this Maintenance Agreement is for NextBus to continue to provide software, hardware and related professional services to maintain the AVLS and ensure the continued function of the AVLS in accordance with agreed system specifications.
2. **Description of Services.** NextBus shall perform all Work required to effect the Purpose of this Maintenance Agreement, as described in this Appendix A. The SFMTA shall direct NextBus on a monthly basis as to the Services that NextBus shall provide in the following month to ensure the continued function of the AVLS in accordance with agreed system specifications. Said Services may include, but are not limited to:
 - a. Additional or new passenger information signs at transit stops, or modifications to or upgrades of existing signs.
 - b. Vehicle trackers as necessary to maintain full network coverage of and real-time information reporting on the SFMTA fleet.
 - c. AVLS software upgrades (as agreed necessary by Nextbus).
 - d. AVLS software upgrades and equipment for additional, new, modified or upgraded platform passenger information signs.
 - e. Other equipment and Services as needed.

The SFMTA shall compensate NextBus for the requested Services provided based on the rates stated in Appendix B to this Amendment. Payment of the total amounts stated in Appendix B are not guaranteed to NextBus, but are the rates NextBus shall charge and the SFMTA shall pay for Services actually provided.

3. **Equipment.** NextBus shall provide all sign hardware, equipment, vehicles, and tools necessary to perform these Services and related ancillary Services under this Amendment. The spares list stated in the Maintenance Agreement ("Base Contract") SFMTA Contract 2013-30 (dated August 1, 2013) at Appendix A, Section 1.1.4 is deleted. Nextbus will maintain sufficient spares inventory to ensure the continued function of the AVLS in accordance with agreed system specifications.
4. **Personnel.** NextBus shall perform the Work with its own personnel or subcontracted personnel whom 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.)
5. **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 a 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.

6. **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 Services to confirm that systems are fully functional.

7. **Continued Support.** Following expiration of this Maintenance Agreement, if requested by the SFMTA, under other maintenance agreement(s) of similar scope all support and maintenance services to the SFMTA to ensure the continued operation of the NextBus-provided AVLS through December 31, 2020. NextBus shall make such maintenance services as are currently provided under the Maintenance Agreement available to the SFMTA under maintenance agreements through December 31, 2020.

8. **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. Except as the SFMTA may otherwise require, Contractor may submit written reports electronically by email. To the extent that Contractor submits printed reports, said reports including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

9. **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 B
Calculation of Charges

a. **Compensation**

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

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

Signs

	Per Unit Monthly Charge	Qty	Per Fiscal Year
Existing Public Signs			
ASP Software – LEDs	\$36.00	853	\$368,496.00
ASP Software – Kiosks	\$36.00	9	\$3,888.00
ASP Software – LCDs	\$101.20	18	\$21,859.20
Wireless Fees – LEDs	\$22.00	853	\$225,192.00
Maintenance – LEDs	\$12.40	853	\$126,960.52
Maintenance – Kiosks	\$12.40	9	\$1,339.56
Maintenance – LCDs	\$169.14	18	\$36,533.70
Sub-Total			\$784,268.98

Contingency for additional, new, modified or upgraded signs (best government rates and the monthly service rates stated above shall apply)			\$100,000.00
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Vehicles

	Per Unit Monthly Charge	Qty	Per Fiscal Year
Revenue Vehicle Only			
ASP (AVLS software as a service incl. hosting fees) for vehicles	\$36.00	1248	\$539,136.00

Miscellaneous

Contingency for additional services if the SFMTA determines they are necessary, including wireless services and maintenance for trackers, tracker leases, AVLS software, or other or additional hardware upgrades or additions, including sales tax.			\$466,832.00
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Total not to exceed: \$1,890,236.98

Rates

	Per Unit Monthly Charge
Recurring Costs	
Lease - Atmel 3G tracker	\$55.00
Lease - VMx DCU	\$110.00
ASP - VMx DCU/Atmel tracker	\$36.00
Wireless Fees – VMx DCU/Atmel Trackers	\$22.00
Maintenance – VMx DCU/Atmel Trackers	\$26.61

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/largevehicletrainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer

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

- 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

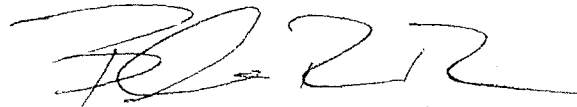
Approved as to Form:

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.

The remainder of this page has been left intentionally blank.

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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First Amendment
to Agreement between the City and County of San Francisco
and NextBus, Inc.
for Software and Equipment Maintenance Services
for the San Francisco Municipal Transportation Agency's
Automatic Vehicle Location System
Contract No. SFMTA 2013-30

This First Amendment to Agreement is made this 9th day of January, 2014, in the City and County of San Francisco, State of California, by and between: NextBus, 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 July 16, 2013, the SFMTA Board of Directors adopted Resolution No. 13-180, which authorized the Executive Director/CEO to execute Contract No. SFMTA 2013-30, Software and Equipment Maintenance Services for the San Francisco Municipal Transportation Agency's Automatic Vehicle Location System ("Maintenance Agreement"), with Contractor for an amount not to exceed \$1,972,555 per year with an initial term of one year and the option for three additional one-year extensions, for a total amount not to exceed \$7,890,220.
- B. The services and equipment that Contractor must provide are described in Appendix A to the Maintenance Agreement. In the Maintenance Agreement, the parties included authorization for Contractor to provide additional services and equipment, including but not limited to additional equipment and services to support upgrades to the Advanced Train Control System and additional installations of and improvements to passenger information signs. Negotiated prices for equipment hourly rates for services are also set out in the Maintenance Agreement. Those services were authorized, described and priced in the Maintenance Agreement, but funding was not available when the agreement was approved.
- C. The SFMTA requires the additional equipment and services described in this Maintenance Agreement, and the Contractor wishes to provide same. The parties have therefore agreed to amend the Maintenance Agreement to provide funds to compensate Contractor for the additional equipment and services.

Now, **THEREFORE**, the parties agree to amend the Maintenance Agreement as follows:

1. Contract Value.

The Contract Amount stated in Section 5 (Compensation) of the Maintenance Agreement is increased Eight Hundred Thousand Dollars (\$800,000), so that the total amended (not-to-exceed) contract amount is Eight Million Six Hundred Ninety Thousand Two-Hundred Twenty Dollars (\$8,690,220). Said increase is apportioned equally over each of the four years of the term of the Maintenance Agreement (Base Year and three one-year optional extensions), so that the SFMTA may procure additional equipment and services from Contractor in an amount not to exceed \$200,000 per year. (Said \$200,000 is not guaranteed to Contractor, but is a not-to-exceed budgeted amount for payment of additional services and equipment actually provided by Contractor to the SFMTA.)

2. Additional Equipment and Services.

Contractor shall provide additional equipment and services to support the following improvements to the AVLS:

- a. Additional passenger information signs at transit stops and vehicle trackers for fleet expansion.
- b. AVLS software upgrades to support improvements the SFMTA is making to the user interface (SMC) for the Advanced Train Control System (ATCS).
- c. AVLS software upgrades and equipment for new platform passenger information signs.
- d. Other services as needed.

The SFMTA will procure and the Contractor shall provide additional equipment and services as provided in the Maintenance Agreement at Appendix A, Article 3. Following successful implementation of the additional equipment and software upgrades described above, Contractor shall provide maintenance services to that equipment and software in the same manner it is provides maintenance services to all other equipment and software covered under the Maintenance Agreement.

3. Compensation/Prices.

The SFMTA will compensate Contractor for the additional equipment and services requested at the unit prices and hourly service rates set out in the Maintenance Agreement. See Maintenance Agreement, Appendix A, section 3.4.2 (equipment unit prices), Appendix B (hourly service rates).

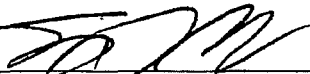

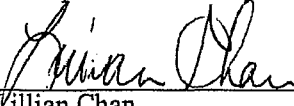
4. **Limited Amendment.**

Other than the provisions specifically referenced above, no other provisions of the Maintenance Agreement or the respective rights and obligations of the parties thereunder are modified by this amendment.

5. **Approval by Counterparts.**

This First Amendment to the Maintenance 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 First Amendment by signing any such counterpart. Delivery of a signed counterpart may be completed by the Party concerned transmitting to the other Party a facsimile or electronic copy. A Party delivering any executed counterpart of this First Amendment herein shall confirm execution by delivering by first class mail or courier an original of such executed counterpart to the other Party.

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

CITY	CONTRACTOR
<p>San Francisco Municipal Transportation Agency</p> <p> Edward D. Reiskin Director of Transportation</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By:  12-13-13 Robert K. Stone Deputy City Attorney</p>	<p>NextBus, Inc.</p> <p>By signing this Agreement, I certify that NextBus, Inc. 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>As a representative of NextBus, Inc., 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> Lillian Chan General Manager 5900 Hollis Street, Suite X Emeryville, CA 94608 City Vendor Number: 74925</p>

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

**Agreement between the City and County of San Francisco and
NextBus, Inc.
for Software and Equipment Maintenance Services for the SFMTA's Automatic Vehicle
Location System (AVLS)**

Contract No. SFMTA-2013-30

This Agreement is made this first day of August, 2013, in the City and County of San Francisco, State of California, by and between: NextBus, Inc., 5900 Hollis Street, Suite X, Emeryville, CA 94608, ("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 procure the services of a vendor to provide the SFMTA with system support, software services, and equipment maintenance services to support operation of the SFMTA's AVLS for revenue and non-revenue fleets. The contract covers maintenance and customer service support for all 1,000+ SFMTA vehicles, all 900+ on-street signs, push-to-talk speakers at bus shelters, subway LCD monitors, NextMuni.com, and servers enabling vehicle tracking and predictions. SFMTA is increasingly reliant on vehicle location information for service management, performance tracking, and customer information. The contract will also include software updates and spare equipment to ensure efficient operation and continuity of service.
- B. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.
- C. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4113-12/13 on May 6, 2013.

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from August 1, 2013 to July 31, 2017.

Agreement between the City and County of San Francisco and NextBus, Inc.

for Software and Equipment Maintenance Services

for the San Francisco Municipal Transportation Agency's

Automatic Vehicle Location System

Contract No. SFMTA 2013-30

3. Effective Date of Agreement. The Effective Date of this agreement shall be the date when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform. The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation. Compensation shall be made in quarterly payments on or before the fifteenth day after the conclusion of the previous quarter of work, as set forth in Section 4 of this Agreement, that the SFMTA's Director of Transportation, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding quarter. In no event shall the amount of this Agreement exceed seven million eight hundred ninety thousand and two hundred twenty dollars (\$7,890,220). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

6. Guaranteed Maximum Costs. 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. 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, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. 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. 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. 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."

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 the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code, is available on the web at <http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templat>

es\$fn=default.htm\$3.0\$vid=amlegal:sanfrancisco_ca\$sync=1. 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. **Disallowance.** If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

10. **Taxes.** 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. 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:

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

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

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest (see, e.g., Revenue & Taxation 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.

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

11. **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, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, 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.

12. **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.

13. **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.

14. **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.

15. 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:

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

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

(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 Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. 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.

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

e. 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.

f. 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.

g. 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.

h. 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.

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

j. 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 name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

16. 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.

17. **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.

18. **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 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.

19. **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services, as provided under Section 4 herein, are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees to the liquidated damages outlined in Appendix A, Section 4 for each specified time period of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, 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 deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

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

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

8. Submitting False Claims; 10. Taxes; 15. Insurance; 24. Proprietary or Confidential Information of City; 30. Assignment; 37. Drug-Free Workplace Policy; 53. Compliance with Laws; and 57. Protection of Private Information.

(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.

(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.

On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, 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. 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.

21. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement; at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination, no less than 90 days prior to the Effective Date. The notice shall specify the date on which termination shall become effective.

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

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

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

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

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

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

c. Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

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

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

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

22. Rights and Duties upon Termination or Expiration. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8. Submitting False Claims; 9. Disallowance; 10. Taxes; 11. Payment Does Not Imply Acceptance of Work; 13. Responsibility for Equipment; 14. Independent Contractor; Payment of Taxes and Other Expenses; 15. Insurance; 16. Indemnification; 17. Incidental and Consequential Damages; 18. Liability of City; 24. Proprietary or Confidential Information of City; 26. Ownership of Results; 27. Works for Hire; 28. Audit and Inspection of Records; 48. Modification of Agreement; 49. Administrative Remedy for Agreement Interpretation; 50. Agreement Made in California; Venue; 51. Construction; 52. Entire Agreement; 56. Severability; and 57. Protection of Private Information.

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this 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.

23. 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.

24. 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.

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

To City: Jeff Flynn
SFMTA | Transit Operations
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103

E-mail: jeffrey.flynn@sfmta.com

To Contractor: Lillian Chan
NextBus, Inc.
5900 Hollis Street, Suite X
Emeryville, CA 94608

E-mail: lchan@nextbus.com

Any notice of default must be sent by registered mail.

26. Ownership of Results. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. 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.

28. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. 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.

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.

31. 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.

32. Reserved.

33. Local Business Enterprise Utilization; Liquidated Damages

a. The LBE Ordinance. Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. Compliance and Enforcement

(1) Enforcement. If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(2) **Subcontracting Goals.** The LBE subcontracting participation goal for this contract is 20%. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(3) **Subcontract Language Requirements.** Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(4) **Payment of Subcontractors.** Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

34. 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 Purchasing) 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.

35. **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.

36. Left blank by agreement of the parties. (Tropical Hardwood and Virgin Redwood Ban)

37. 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.

38. 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.

39. 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.

40. 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.

41. Public Access to Meetings and Records. If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. 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 the board of a state agency 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. Contractor further agrees to provide to City the names of each person, entity or committee described above.

43. 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 Sections 12P.5 and 12P.5.1 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. 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 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.

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

During non-business hours (i.e., before 8:00 AM and after 6:00 PM Pacific Time), all reports of urgent Problems made to 877-639-8287 will be forwarded to an after-hour support technician. The support technician shall be familiar with the Contractor's procedures for receiving, tracking and assigning incoming calls. Systems related calls shall be given priority and will be dispatched immediately to the appropriate support personnel or the standby support engineer for investigation, in accordance with the contracted coverage and level of service. Contractor shall respond to reports of hardware related Problems (reported during off-business hours) within 24 hours or receipt of complaint.

2.8.2. Non-Urgent Problem Reporting. SFMTA will report non-urgent Problems and other non-urgent AVLS malfunctions via email at support@nextbus.com. Contractor shall respond to a non-urgent Problem within 24 hours from SFMTA's initial report. SFMTA shall provide to Contractor as much information as it knows concerning the Problem, and shall provide the name and email address of the SFMTA contact person responsible for addressing the Problem with Contractor.

2.8.3. Problem. A Problem is a malfunction or delayed function of the AVLS or any AVLS function or component, including but not limited to software, trackers, transit stop and platform information display signs, website, XML data feed, arrival prediction and real time location reporting.

2.9. Problem, Complaint and Inquiry Report Tracking.

a. Contractor shall log all Problems reported by the SFMTA, the 311 System Manager, and the 511 System Manager (and other personnel who may be identified by the SFMTA) and assign an individual tracking number to each Problem, complaint or inquiry reported. Contractor shall use the NextBus Service & Support System to log calls and track details, assignments and journal service and support so that call data can be effectively reported as to type, severity and frequency of Problems reported, response times, and time and actions required to the resolve Problems. This log shall be provided to the SFMTA monthly.

b. Contractor shall dispatch a support engineer responsible for resolving that Problem within 24 hours of SFMTA's initial report. During business hours (5:00 AM to 5:00 PM Pacific Time), Contractor's call administrator will answer the phone and log all incoming calls, assign a tracking number, and forward the call to the appropriate support personnel. System related calls are of priority and shall be dealt with immediately. Contractor shall work to fix Equipment related Problems within 24 hours from the time the Problem is reported. If the Problem concerns a Tracker, the 48 hour period shall commence when the SFMTA makes the vehicle on which the Tracker is located available to Contractor.

c. Contractor shall submit a report to SFMTA within five business days of resolving a Problem stating how Contractor resolved the Problem and how Contractor proposes to avoid or prevent its reoccurrence.

2.10. User Training. When requested by the SFMTA, Contractor shall provide annually one two-day refresher course for up to twenty (20) persons in the operation of the AVLS, including but not limited to data reporting and compilation, system administration, and use of AVLS management tools.

2.11. Complaint Escalation Procedures.

2.11.1. Contractor. If Contractor fails to respond to a reported Problem or other complaint within the time required or other time reasonable under the circumstances, the SFMTA may escalate the report of the Problem to the following personnel:

- (a) Call Administrator - 877- NextBus (877-639-8287)
- (b) Dennis Kim, Support Engineer
- (c) Roger Wong, Field Support Manager

- (d) Russell Chun, System Support Manager
- (e) Lillian Chan, General Manager

SFMTA may submit complaints to the Contractor's assigned field support manager after 48 hours have elapsed from the initial report of a Problem, which complaint shall trigger Contractor's internal Problem report escalation procedures.

2.11.2. **SFMTA.** If SFMTA fails to respond to an inquiry or other complaint within reported Problem within a time reasonable under the circumstances, Contractor may escalate the report of the Problem to the following SFMTA personnel:

- (a) Jeff Flynn, System Manager
- (b) Trinh Nguyen, Contract Manager
- (c) Hoppers, IT Manager
- (d) John Haley, Director of Transit

3. ADDITIONAL SERVICES

Contractor shall provide the SFMTA the Additional Services described in this Section III and as may be requested by the SFMTA, which shall be priced either on a negotiated fixed fee or on an time and material basis using the hourly labor rates set out in Appendix B.

3.1. Additional Custom Reports. If the AVLS software must be reconfigured to provide the additional report(s) requested by the SFMTA, Contractor shall provide the Agency a cost analysis of the time and cost required to configure the software to generate the report(s).

3.2. Repair Training. During the term of this Maintenance Agreement, when requested by the SFMTA, Contractor shall provide a one-week repair training courses to train SFMTA maintenance technicians in the testing, removal, installation and repair of AVLS Equipment, including but not limited to Trackers and Sign Displays.

3.3. Additional Training. When requested by the SFMTA, Contractor shall provide additional training sessions to SFMTA personnel in: (1) Equipment diagnosis, maintenance, and repair; (2) data collection and sorting, and report writing and user training.

3.4. AVLS Expansion.

3.4.1. Vehicles. The amount of the annual service charge for Included Services is calculated based on the number of vehicles included in the AVLS as of August 1, 2009. Contractor may increase the annual service charge for Included Services by the prorata cost per vehicle for Included Services for each Tracker of \$58 per month or \$696 per year (as set out in the following table) added to the AVLS that results in a net gain in the number of vehicles included in the AVLS. Contractor may charge not more than its hourly rate for time actually expended in installing a Trackers to an added vehicles or for removing a Tracker from a vehicle to be retired and reinstalling the Tracker on a replacement vehicle.

3.4.2. LED Display Signs. The amount of the annual service charge for Included Services is calculated based on the number of display signs included in the AVLS as of August 1, 2009. Contractor may increase the annual service charge for Included Services by the prorata cost per display sign of \$58 per month or \$696 per year (as set out in the following table) for each display sign added to the AVLS that results in a net gain in the number of display signs included in the AVLS. Contractor may charge not more than its hourly rate (as provided in Appendix B to this Maintenance Agreement) for time actually expended in installing a display sign or for removing a display sign to be retired and installing a new display sign. If custom hardware is required to mount a sign, engineering hourly rates apply for design of the custom brackets. Additional charges will include cost plus 10 percent for building custom brackets.

Equipment	Rate/Price
Trackers/charge guards (per vehicle):	\$2,200.00
Wireless and ASP fees	\$58.00 month/\$696.00 Year

Equipment	Rate/Price
Shelter Display Signs/PTT (each)	\$3,700.00
Platform Display Signs/PTT (each)	\$7,500.00
LCD ASP fees	\$101.20 month/\$1214.40 year
LED, Agent Kiosk sign ASP fees	\$36.00 month/\$432.00 year
LED sign wireless and ASP fees	\$58.00 month/ \$696 year

3.5. Additional Services Request Procedure. The SFMTA will request Additional Services in writing to Contractor. Contractor shall within 10 business days of receipt of request and after business and detailed technical requirements have been approved by SFMTA provide to the SFMTA a proposal that includes a description of services to be provided, identity of staff and number staff hours required to complete the project, start date, completion date, costs and expenses, and a not-to-exceed total cost estimate or lump sum price for the work. SFMTA shall make appropriate staff available on a timely basis to complete business and detailed technical requirements. The SFMTA must approve the proposal in writing by work order signed by the SFMTA's Director of Transportation or his designee.

3.6. Other Additional Services.

Contractor's resolution of problems caused by any of the following occurrences will be treated as Additional Services:

3.6.1. Failure of Customer's operations staff to follow instructions or corrective procedures provided by Contractor,

3.6.2. Hardware and system misuse, negligence, willful misconduct, tampering, accident, abuse, fire, flood, wind, earthquake, act of God or public enemy,

3.6.3. Upgrade of Tracker and Display Sign hardware that are requested by SFMTA,

3.6.4. Repair for hardware failures after Maintenance Contract expires,

3.6.5. Integration of third party hardware or software not integrated to the AVLS as of July 31, 2013.

3.7. Mark-up for Equipment. When requested by the SFMTA, Contractor shall procure AVLS Equipment on behalf of the Agency. Contractor may mark-up procured Equipment not more than five percent (5%) of Contractor's cost. SFMTA will pay actual shipping costs only.

4. SYSTEM AVAILABILITY REQUIREMENTS

The AVLS is a vital system on which SFMTA relies for transit management and SFMTA's riders rely on for transit use and trip planning. Timely maintenance of the AVLS, including replacement of nonoperational Equipment by Contractor, is crucial to maintain system availability for all users. Contractor shall maintain the AVLS to meet the system availability requirements set out below.

4.1. Tracker Availability. Excluding the vehicles that are on hold (out of service by SFMTA maintenance personnel for maintenance repair or unavailable to NextBus), within any 48 hour period, no less than 98 percent of total Trackers must be operable and available and 96 percent per SFMTA division must be operable and available. Contractor shall pay to the SFMTA as liquidated damages Two Hundred Dollars (\$200) per non-operable Tracker per incident for any period exceeding 48 hours where Contractor fails to maintain the Trackers as required herein.

4.2. Signs Availability.

4.2.1. Platform and Shelter Signs. Within any 48 hour period, no less than 98 percent of Platform Signs and Shelter Signs must be fully operable, subject to parts availability. Contractor shall pay to the SFMTA as liquidated damages Five Hundred Dollars (\$500) per non-operable sign per incident for any period exceeding 48 hours where Contractor fails to maintain the Platform Signs as required herein. Contractor shall pay to the SFMTA as liquidated damages \$250 per non-operable sign per incident for any period exceeding 48 hours where Contractor fails to maintain the Shelter Signs as required herein

4.2.2. Subway LCDs. Within any 24 hour period, all Subway LCD and LED Signs must be fully operable, subject to network and parts availability. Contractor shall pay to the SFMTA as liquidated damages One Thousand Dollars (\$1,000) per non-operable sign per incident for any period exceeding 24 hours where Contractor fails to maintain the Subway LCD Signs as required herein.

4.3. Data and Server System Availability. Contractor shall maintain the AVLS servers and software so that the AVLS is functioning within Accepted System Parameters 24 hours per day, seven days per week. Contractor shall perform planned server maintenance only during the hours of 12:00 AM to 5:00 AM Pacific Time.

4.4. Webpage Availability. Contractor shall maintain the NextMuni.com web page so that it is available to the public 24 hours per day, 7 days per week. Contractor shall perform planned webpage updates and upgrades only during the hours of Midnight to 5:00 AM. Contractor shall pay to the SFMTA as liquidated damages \$5,000 for any period exceeding four (4) continuous hours where Contractor fails to maintain the NextMuni.com website as required herein.

4.5. MTC 511 Link. Contractor shall maintain the data link from the AVLS to the MTC 511 system so that AVLS data is available to the MTC 511 system 24 hours per day, 7 days per week. Contractor shall pay to the SFMTA as liquidated damages \$2,500 for any period exceeding four (4) continuous hours where Contractor fails to maintain the MTC 511 Link as required herein.

4.6. Availability Reporting. No later than the tenth day of any month during the term of this Maintenance Agreement, Contractor shall submit a report to the SFMTA stating the availability of the AVLS and its component parts and systems (as described in paragraphs 4.1 through 4.5, above) during the preceding month. The report shall describe Contractor's maintenance of the AVLS (including Equipment replaced, software and webpage updates and upgrades, and server maintenance), any Problems arising during the month reported, any unresolved Problems and Contractor's proposed actions to resolve those Problems. The report will compare AVLS availability for all months reported, so that the SFMTA may track AVLS performance and maintenance.

4.7. Payment of Liquidated Damages. At the SFMTA's discretion, Contractor shall pay the SFMTA liquidated damages in the amounts stated in this agreement, when the AVLS or a component of the AVLS is unavailable, and the unavailability of the AVLS or AVLS component exceeds the unavailability standards set out in this Section 4, and said unavailability is not excused due to actions of the SFMTA or actions of third parties (including ASP, wireless data service, and server hosting providers) beyond the reasonable control of Contractor. The SFMTA may in its discretion either demand payment of liquidated damages or reduce by those amounts the next quarterly payment of annual service fees.

APPENDIX B

CALCULATION OF CHARGES

A. Fees for Included Services

The Fees for Included Services during the term of this Maintenance Agreement shall be as set out in the following table:

Contract Year	Included Services Fee	Quarterly Payment
2013-14	\$1,972,555	\$493,138.75
2014-15	\$1,972,555	\$493,138.75
2015-16	\$1,972,555	\$493,138.75
2016-17	\$1,972,555	\$493,138.75

B. Additional Services

When Contractor provides the SFMTA Additional Services authorized under a time and material purchase order, Contractor shall charge the SFMTA the hourly labor rates set out in the following table.

Labor Rates

Contract Year	Position/PM Hourly Rate	Position/Sr. SW Eng. Hourly Rate	Position/System Administration Hourly Rate	Position/Support Engineer Hourly Rate	Position/HW Engineer Hourly Rate
2013-2014	\$138.00	\$ 162.75	\$ 116.90	\$ 101.00	\$ 101.00
2014-2015	\$142.00	\$ 167.60	\$ 120.40	\$ 104.00	\$ 104.00
2016-2017	\$146.25	\$ 172.60	\$ 124.00	\$ 107.00	\$107.00
2017-2018	\$150.65	\$ 177.75	\$ 127.70	\$110.20	\$110.20

C. Additional Real-Time Signage

See Appendix B, Section 3.4.2

D. Costs Listed Are Inclusive.

1. Fees for Included Services include AVLS Equipment maintenance and repair and all wireless data services and ASP charges, which include services provided by AT&T and NextBus to ensure the communicability of the AVL trackers and display signs by performing the following:

- a. Maintaining the wireless network
- b. Trouble shoot and diagnose problems
- c. Perform provisioning SIMs to NextBus network
- d. Configure of SIMs to AVL trackers and signs

2. ASP charges include the following services provided by NextBus:

- a. System Administration
- b. On-going Monitoring of System
- c. Wireless Communication Monitoring
- d. Minor Product Enhancement Releases
- e. Existing Automatic Route/Stop/Schedule Import
- f. Maintaining Custom Interfaces

3. All prices listed herein as Included Services and Additional Services include applicable State and Local sales and use taxes.

4. Unless specifically provided otherwise in an authorized Purchase Order for Additional Services, the prices listed herein for Included Services and Additional Services 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 mark-up for Equipment and other materials to charged to the SFMTA.



SFMTA
Municipal
Transportation
Agency

Edwin M. Lee, Mayor

Cheryl Brinkman, Chairman

Malcolm Heinicke, Vice Chairman

Gwyneth Borden, Director

Edward D. Reiskin, Director of Transportation

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May 5, 2017

**The Honorable Members of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton Goodlett Place, Room 244
San Francisco, CA 94102**

Subject: Request for Approval – Amendment No. 3 to Contract No. 2013-30 with Next Bus Inc., to extend the maintenance agreement for another year, with the option for an additional year.

Honorable Members of the Board of Supervisors:

The San Francisco Municipal Transportation Agency (SFMTA) requests that the San Francisco Board of Supervisors approve the third amendment to San Francisco Municipal Transportation Agency Contract No. 201-30, with NextBus, Inc., for software and equipment maintenance services for the Automatic Vehicle Location System, to extend the term of the Agreement one year to July 31, 2018, with an option to further extend the Agreement up to one additional year to July 31, 2019 to be exercised at the Director of Transportation’s discretion, and increasing the contract amount by \$3,780,474, for a total contract amount not to exceed \$12,968,676, pending approval by the Board of Supervisors.

Background

The SFMTA’s Automatic Vehicle Location System (AVLS) provides real-time vehicle location information to SFMTA management and customers of the actual location and expected arrival time of transit vehicles. The AVLS utilizes cellular telephone infrastructure to transmit vehicle location data and proprietary software licensed from NextBus to provide arrival predictions. The public has come to rely heavily on AVLS information, which is transmitted via City websites and privately developed web and smartphone applications, and is displayed on electronic signs in subway stations and at transit stops. The AVLS is also a system vital to SFMTA transit operations and management, as it is integrated or shares data with the SFMTA’s Advanced Train Control System and scheduling software systems. The AVLS software and associated equipment are proprietary to Nextbus, and the SFMTA is therefore unable to self-perform many necessary AVLS maintenance tasks.

The existing AVLS relies on technology that is likely to become outdated and requires use of expensive cellular telephone infrastructure. The SFMTA is preparing a RFP to solicit proposals for a replacement system that will transmit data via the new radio system. Staff expects that the selection process will be completed in early 2018, and the replacement AVLS will be implemented before July 2019. The proposed Third Amendment will maintain the existing AVLS while the SFMTA procures and implements a new AVLS.

The SFMTA contracted with NextBus, Inc. to implement the existing AVLS in July 2002, under Contract No. MR-1138, dated July 15, 2002 (SFMTA Board Resolution No. 08-012). Following expiration of that contract, the SFMTA contracted with NextBus for maintenance services and upgrades for the AVLS, most recently under Contact No. 2013-30, dated July 15, 2013 (SFMTA Board Resolution No. 13-

180), which provides maintenance services through July 31, 2017, for a total contract amount not to exceed \$9,188,202. The Director of Transportation authorized

Contract Amendment #1 to Contract 2013-30 on January 9, 2014 for an additional \$800,000 for various system expansion and upgrades. The Director of Transportation authorized Contract Amendment #2 on August 1, 2016 for \$497,982 to fund 2G-to-3G equipment upgrades to public signs made necessary by AT&T's January 1, 2017 nationwide shutdown of its 2G cellular data network.

In addition to extending maintenance services necessary to operate and maintain the AVLS, Amendment #3 will extend the term of the contract from July 31, 2017 to July 31, 2018, with an option to further extend the Agreement up to one additional year to July 31, 2019 to be exercised at the Director of Transportation's discretion. This will provide services necessary to migrate AVLS data transmission from GPS trackers and cellular data transmitters to the SFMTA's new Radio Communications and Computer Aided Dispatch/Automatic Vehicle Location (CAD/AVL).

Local Business Entity Goals

The Local Business Entity (LBE) subcontracting participation requirement for Amendment #3 will remain the same as the current contract at 20 percent, which Nextbus has met throughout the current contract and will continue to meet.

Stakeholder Engagement

No outreach was conducted for this amendment. Over the years, the SFMTA has heard from customers that they rely on the NextBus system. To meet this customer demand, the SFMTA seeks to continue service while a next generation system is planned and implemented.

Alternatives Considered

There is no practical alternative to extending the maintenance agreement that does not risk loss of the AVLS, which would adversely impact SFMTA transit operations and customer access to transit information. The AVLS software and some associated equipment are proprietary to Nextbus, Inc., and the SFMTA is therefore unable itself to perform many of the tasks necessary to maintain the AVLS.

Funding Impact/Budget

The contract amount for the maximum two-year term of this Amendment is \$3,780,474. The cost of the proposed extension will not exceed \$1,890,237 annually, which is a 13 percent reduction from the current annual cost of \$2,172,555. The cost reduction is due to the migration of AVLS data transmission to the new radio system, which replaces existing NextBus GPS trackers and cellular data transmitters and eliminates monthly cellular service fees. The migration of AVLS data transmission to the new radio system will commence under but may not be fully accomplished under the maintenance agreement with NextBus, but when fully complete under a new AVLS will result in costs savings to the SFMTA of \$282,318 per year.

SFMTA Board Action

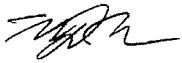
On May 2, 2017, the SFMTA Board of Directors approved Resolution No. 170502-057 authorizing the Director of Transportation to execute this Amendment (see attached).

Recommendation

The SFMTA recommends that the San Francisco Board of Supervisors adopt the resolution approving the Third Amendment to San Francisco Municipal Transportation Agency Contract No. 201-30, with NextBus, Inc., for software and equipment maintenance services for the SFMTA's Automatic Vehicle Location System, to extend the term of the Agreement one year to July 31, 2018, with an option to further extend the Agreement up to one additional year to July 31, 2019 to be exercised at the Director of Transportation's discretion, and increasing the contract amount by \$3,780,474, for a total contract amount not to exceed \$12,968,676, pending approval by the Board of Supervisors.

Thank you for your consideration of this proposed amendment. Should you have any questions or require more information, please do not hesitate to contact me at any time.

Sincerely,



Edward D. Reiskin
Director of Transportation

Attachments: SFMTA Board Resolution No. 170502-057
Amendment No. 3



SFMTA
Municipal
Transportation
Agency

NextBus Inc. Contract Extension

The San Francisco Municipal Transportation Agency (SFMTA) proposes to extend the term of a contract with NextBus Inc. for the SFMTA's Automatic Vehicle Location System (AVLS) for one year to July 31, 2018, with an option to extend up to one additional year to July 31, 2019 to be exercised at the Director of Transportation's discretion. The proposed extension would maintain the Automatic Vehicle Location System (AVLS). No expansion or new equipment is proposed. The SFMTA contracted with NextBus to implement the current AVLS in July, 2002 and has contracted with NextBus for maintenance services and upgrades for the AVLS since July, 2013. The current contract with NextBus for AVLS maintenance services, dated July 15, 2013 provides maintenance services through July 31, 2017.

Not a "project" pursuant to CEQA as defined in CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

A handwritten signature in black ink, appearing to read "D Sheeter", is written above a horizontal line.

4/6/17

Daniel Sheeter

Date

San Francisco Municipal Transportation Agency

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 170502-057

WHEREAS, The SFMTA's Automatic Vehicle Location System (AVLS) provides real-time vehicle location information to SFMTA management and customers of the actual location and expected arrival time of transit vehicles; and

WHEREAS, The public has come to rely heavily on AVLS information, which is transmitted via City websites and privately developed web and smartphone applications, and is displayed on electronic signs in subway stations and at transit stops; and

WHEREAS, The AVLS is a system vital to SFMTA transit operations and management, as it is integrated or shares data with the SFMTA's Advanced Train Control System and scheduling software systems; and

WHEREAS, The AVLS software and some associated equipment are proprietary to Nextbus, Inc., and the SFMTA is therefore unable itself to perform many of the tasks necessary to maintain the AVLS; and

WHEREAS, The SFMTA is preparing to solicit proposals for a replacement system that will transmit data via the new radio system. Staff expects that the selection process will be completed in early 2018, and the replacement AVLS will be implemented before July 2019; and

WHEREAS, The Third Amendment will extend the current contract in order to maintain the existing AVLS while the SFMTA procures and implements a new AVLS; and

WHEREAS, The Local Business Entity subcontracting participation requirement for this Amendment will remain the same as the current contract at 20 percent; and

WHEREAS, On April 6, 2017, the SFMTA, under authority delegated by the Planning Department, determined that the NextBus contract extension is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

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

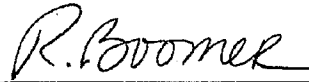
WHEREAS, The proposed Amendment is subject to Board of Supervisors approval under Charter Section 9.118(b); now therefore be it

RESOLVED: That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute the Third Amendment to San Francisco Municipal Transportation Agency Contract No. 201-30, with NextBus, Inc., for software and equipment maintenance services for the SFMTA's Automatic Vehicle Location System, to extend the term of the

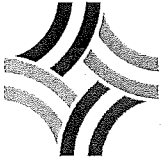
Agreement for one year to July 31, 2018, with an option to further extend the Agreement up to one additional year to July 31, 2019 to be exercised at the Director of Transportation's discretion, and increasing the contract amount by \$3,780,474, for a total contract amount not to exceed \$12,968,676; and be it further

RESOLVED, That the SFMTA Board of Directors urges the Board of Supervisors to approve the contract.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of May 2, 2017.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency



SFMTA
Municipal
Transportation
Agency

Edwin M. Lee, *Mayor*

Cheryl Brinkman, *Chairman*

Lee Hsu, *Director*

Malcolm Heinicke, *Vice-Chairman*

Joél Ramos, *Director*

Gwyneth Borden, *Director*

Cristina Rubke, *Director*

Edward D. Reiskin, *Director of Transportation*

May 5, 2017

Angela Calvillo
Clerk of the Board of Supervisors
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Dear Ms. Calvillo:

Attached are an original and two copies of a resolution for Board of Supervisors approval, which approves Amendment No. 3 to Contract No. 2013-30 with Next Bus Inc., to extend the maintenance agreement for another year, with the option for an additional year.

Pursuant to Charter section 9.118, the Board of Supervisors must approve this Amendment since the anticipated expenditures by the City and County will be in excess of ten million dollars.

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The following is a list of accompanying documents:

- Briefing letter
- Contract - Amendment No. 3 to Contract No. 2013-30 with Next Bus Inc.
- Original Approved Contract No. 2013-30 with Next Bus Inc
- Amendment No. 1 to Contract No. 2013-30 with Next Bus Inc
- Amendment No. 2 to Contract No. 2013-30 with Next Bus Inc
- SFEC Forms for Mayor and BOS
- SFMTA Board Resolution 170502-057 regarding Amendment No. 3

SFMTA's Local Government Affairs Liaison, Janet Martinsen, is available at 415-701-4693 or at janet.martinsen@sfmta.com to answer any questions you may have about the submission.

Sincerely,

Edward D. Reiskin
Director of Transportation

**FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)**

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: NextBus, Inc.	
<i>Please list the names of (1) members of the contractor's board of directors; Walter C. Zable, Bradley H. Feldmann, Bruce G. Blakley, Edwin A. Guiles, Janice M. Hamby, Steven J. Norris, Maureen Breakiron-Evans, John H. Warner, Jr. (2) the contractor's chief executive officer, chief financial officer and chief operating officer; Bradley H. Feldmann (President and CEO), John D. Thomas (Chief Financial Officer), Tony Gale, (Vice President and General Manager) (3) any person who has an ownership of 20 percent or more in the contractor; None (4) any subcontractor listed in the bid or contract; None and (5) any political committee sponsored or controlled by the contractor. Use additional pages as necessary. None</i>	
Contractor address: Corporate Office: NextBus, Inc. 5900 Hollis Street, Suite X Emeryville, CA 94608	
Date that contract was approved:	Amount of contracts: Not to exceed \$12,968,676
Describe the nature of the contract that was approved: SFMTA: Amendment No. 3 to Contract No. 2013-30 with Next Bus Inc., to extend the maintenance agreement for another year, with the option for an additional year.	
Comments:	

This contract was approved by (check applicable):

- the City elective officer(s) identified on this form
- a board on which the City elective officer(s) serves San Francisco Board of Supervisors
Print Name of Board
- the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits
Print Name of Board

Filer Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: 415-554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed