

**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 be charged to the SFMTA.