

**AGREEMENT
FOR THE PROCUREMENT OF
PARKING METERS**

Contract # SFMTA-2013-09

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

**AGREEMENT
FOR THE PROCUREMENT OF
PARKING METERS**

Contract # SFMTA-2013-09

This Agreement is made this _____ day of _____, 2013, in the City and County of San Francisco, State of California, by and between IPS Group Inc. ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("Agency" or "SFMTA").

RECITALS

A. Agency issued a Request for Proposals for the procurement of Parking Meters and Parking Paystations, with associated spare parts, training, and manuals.

B. The City selected Contractor's proposal as the highest-rated proposal, and City and Contractor agreed on the terms and conditions set forth below.

NOW, THEREFORE, it is agreed by the parties as follows:

- 1 DEFINITIONS.** Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of the Contract Documents, it shall have the meaning set forth herein or in the Technical Specifications.
 - 1.1 Acceptance:** The formal written acceptance by the City that all work, or a specific portion thereof, under the Contract has been satisfactorily completed, in accordance with the Acceptance criteria set out in Section 6.4.
 - 1.2 Agency or SFMTA:** The Municipal Transportation Agency of the City
 - 1.3 Award:** Notification from the City to Contractor of acceptance of Contractor's Bid, subject to the execution and approval of a satisfactory Contract and bond to secure the performance thereof, and to such other conditions as may be specified or otherwise required by law.
 - 1.4 Batch:** A delivery of a set number of Meter Mechanisms/Parking Meters, including all associated components that would allow a Meter Mechanism to operate in a street environment (e.g., all the necessary software, firmware, hardware, installation kits, domes, decals).
 - 1.5 Board of Supervisors:** Board of Supervisors of City.
 - 1.6 Certification:** Certification by the Controller of City that funds necessary to make payments as required under the contract are available in accordance with Section 6.302 of the City Charter.

- 1.7 **Change Notice:** A written interpretation, revision, or addition to the RFP issued before proposal opening.
- 1.8 **City:** The City and County of San Francisco.
- 1.9 **Conformed Contract Documents:** The contract documents revised to incorporate all changes made during the proposal period by Change Notice and to incorporate information included in the Proposal accepted by the City.
- 1.10 **Contract or Agreement:** The written Contract executed by the City and Contractor, covering the performance of the Work and furnishing of labor, materials, equipment, tools, and services, including Work incidental to the procurement, to include all Conformed Contract Documents, the Technical Specifications, Contractor's bid submissions, the Contract bonds or other security, and all Contract Modifications.
- 1.11 **Contract Modification:** A written order, issued by the City to Contractor, covering changes in the Contract documents within the general scope of the Contract and establishing the basis of payment and time adjustments for the work affected by the changes.
- 1.12 **Contractor:** IPS Group Inc.
- 1.13 **Controller:** Controller of the City.
- 1.14 **Days:** Unless otherwise designated, the word "Days" refers to calendar days of the City.
- 1.15 **Deliverables:** The equipment, components, materials and Services to be furnished under this Agreement.
- 1.16 **Delivery:** Point in time in the procurement process when the meters have been delivered to the mutually agreed upon staging location within three miles from the Meter Shop at 1508 Bancroft Avenue, San Francisco, CA 94124.
- 1.17 **Director:** The Director of Transportation of Agency, or his or her designee.
- 1.18 **Effective Date:** The date that the City's Controller certifies the availability of funds for this Agreement as provided in Section 2.
- 1.19 **Meter:** Equipment to be procured under this Agreement consisting of a Meter Mechanism, as defined in the Statement of Work, and a dome, which allows a customer to pay for use of a single parking space.
- 1.20 **Notice to Proceed:** A written notice to the Contractor of the date on which it shall begin the Work.
- 1.21 **Party; Parties:** The City and Contractor, either collectively or individually.
- 1.22 **Performance Bond:** Security issued by a corporate surety, acceptable to the City and on a form furnished by the City, to guarantee the performance of obligations under the contract.
- 1.23 **Proposal:** The technical and management information and prices submitted in the prescribed format and on the prescribed forms in response to the Request for Proposals.
- 1.24 **Proposer:** Any firm, partnership, corporation, or combination thereof submitting a Proposal for the contemplated procurement.

- 1.25 Request for Proposals (RFP):** The Request for Proposals issued by the City on October 17, 2012.
- 1.26 Services.** The portion of the Work other than the provision of equipment, including, but not limited to, access to the Meter Management System; credit card processing; communications between the meter and the credit card processing gateway, vendor management system, and SFMTA databases; product support; and warranty.
- 1.27 SFMTA Contract Administrator:** The SFMTA designated liaison assigned to the Contract for the Agency, or designated agent.
- 1.28 Subcontractor:** Any individual, partnership, firm, or corporation that undertakes integrally on the Project the partial or total design, manufacture, or performance of one or more items of work under the terms of the contract. As used herein, the terms subcontractor and sub-supplier are synonymous.
- 1.29 Surety:** The corporate body, licensed to issue bonds in the State of California, bound with and for the Contractor for the full and complete performance of the contract and for the payment of all debtors pertaining to the work. When applied to the Proposal Bond (bid bond), it refers to the corporate body acting as guarantor that the Proposer will enter into a contract with the City and County of San Francisco.
- 1.30 Technical Specifications:** The specifications, provisions, and requirements that detail the work and the materials, products (including the methods of manufacture, construction, assembly, and testing), and other requirements relative to the Work.
- 1.31 Work:** The furnishing of all services, products, materials, equipment, tools, supplies and the performance of all requirements called for by the Contract and necessary to the completion of the Contract.

2 TERM OF AGREEMENT.

The base term of this Agreement shall commence on the Effective Date, as evidenced by SFMTA's issuance of the Notice to Proceed, and expire five years thereafter unless the Agreement is earlier terminated as otherwise provided herein. At the sole discretion of the SFMTA, this Agreement may be extended for up to two additional years.

3 SCOPE OF WORK

The Agreement covers the procurement of 25,000 single-space Parking Meters, and associated services and support, as set forth in Appendix A (Technical Specifications), attached to this Agreement and incorporated by reference as though fully set forth. The Agreement also includes an option to purchase approximately 10,000 additional single-space Parking Meters, and associated services and support.

4 FINANCIAL MATTERS

4.1 Compensation

- 4.1.1 Amount.** Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Section 3 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 month. Subject to any

subsequent deductions for Liquidated Damages as listed in Section IV. of Appendix B, the City agrees to pay an amount not to exceed Fifty-Three Million, Six Hundred Eighteen Thousand, Three Hundred Thirty-Two Dollars (\$53,618,332) (the total Contract amount) in accordance with the terms and conditions of this Agreement. The breakdown of costs associated with this Agreement appears in the Price Schedule (Appendix C), 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.

4.1.2 Payment Limited to Satisfactory Deliverables. Contractor is not entitled to any payments from City for the Meters until they have been Accepted by the City. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables even if the unsatisfactory character of such Deliverables may not have been apparent or detected at the time such payment was made. City may reject Deliverables that do not conform to the requirements of this Agreement and Contractor must cure any non-conformity without delay and at no cost to the City

4.1.3 Payment Schedule.

(a) Meters. Subject to Section 4.1.1, the City will make payment for each Meter after it is Accepted by City and properly invoiced.

(b) Monthly Operational Expenses. The City will make monthly progress payments for operational expenses.

(c) Spare Parts. The City will make payment for each order of spare parts after its Delivery to the Meter Shop and receipt of a proper invoice.

4.1.4 Withholding of Payments. If Contractor fails to provide Deliverables in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due to Contractor for such deliverables until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

4.1.5 Invoice Format. Contractor may invoice SFMTA for all items Accepted under this Agreement. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the SFMTA and the Controller, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 19.6 entitled "Notices to the Parties," or in such alternate manner (including electronic payment) as the Parties have mutually agreed upon in writing.

Each invoice shall also include:

- Relevant milestones
- Contract order number;
- Quantity of items;
- Description of items;
- Unit price;

- Amount of sales taxes requested to be paid
- Total invoice amount.

Contractor's invoices shall be supported by evidence (such as original delivery notes, Acceptance paperwork, or MMS billing reports) satisfactory to SFMTA that the Work invoiced has been accomplished and that the materials, listed, if any, are stored and ready for use.

- 4.1.6 Currency.** All payments by the City to Contractor pursuant to this Section 4 shall be in United States Dollars and made by bank-to-bank electronic transfer. Contractor shall provide to SFMTA all routing information required to effect such transfers.
- 4.1.7 Exchange Rate Risk.** The City will not make price adjustments on this Contract to protect the Contractor from fluctuations in the value of the applicable foreign currency in relation to the United States dollar.
- 4.1.8 Inflation Risk.** City will not make price adjustments during the base term of this Contract to protect Contractor from economic inflation. A one-time price adjustment may be considered during extension years.

4.2 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 City's Controller and any amount of the 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 in the event 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 the 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 THE AGREEMENT.

4.3 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. No City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as required in Section 19.24.

4.4 Submitting False Claims. 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 three times the amount of

damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. 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.

4.5 Payment Does Not Imply Acceptance of Work. The granting of any payment or payments by the City, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor to replace unsatisfactory work or material although the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Materials, components, or workmanship that do not conform to the Technical Specifications will be rejected and shall be replaced by the Contractor without delay.

4.6 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 Services. 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 three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts. City will make every effort to accommodate Contractor during an audit to protect any information that Contractor deems to be a trade secret as defined under California law.

5 TECHNICAL SPECIFICATIONS

5.1 Fabrication. The Meters procured under this Contract shall be fabricated and guaranteed in accordance with the Statement of Work and the Contractor's warranty provisions, contained in attached to Attachment 13 to Appendix A of the Conformed Contract Document of this Agreement.

5.2 Omission. Notwithstanding technical specifications, or other data provided by the SFMTA Project Manager / Representative, the Contractor shall have the responsibility of supplying all parts and details required to make the Parking Meters complete and ready for service even though such details may not be specifically mentioned in the specifications. Items

that are installed by SFMTA shall not be the responsibility of the Contractor unless they are included in this contract or should have been installed by the Contractor.

5.3 Priority. In the event of any deviation between the description of the Parking Meters in the Technical Specifications and in any other provision of the Contract or the Contractor's Proposal, the Technical Specifications shall govern.

5.4 Responsibility for Materials/Accessories. The Contractor shall be responsible for all materials and workmanship in the construction of the Parking Meters and all accessories used, whether the same are manufactured by the Contractor or purchased from a subcontractor. This provision excludes equipment leased or supplied by SFMTA, except insofar as such equipment is damaged by the failure of a part or component for which the Contractor is responsible, or except insofar as the damage to such equipment is caused by the Contractor during the manufacture of the Meters.

6 SINGLE-SPACE METER MECHANISMS (PARKING METERS)

6.1 Deliverables. Contractor shall provide Parking Meters and related components and services according to the Specifications set forth in Appendix A.

6.2 Delivery Schedule. The Parking Meters and other Deliverables shall be provided according to the Delivery Schedule attached as Appendix D, to the extent Contractor requires information from SFMTA in order to produce a Deliverable, Contractor shall provide SFMTA with a list of requested information and the dates such information is required in order for Contractor to comply with the Delivery Schedule. Contractor shall provide SFMTA with the list at least six weeks in advance of the date such information is required.

6.3 Assumption of Risk of Loss. Except for losses directly and solely attributable to actions or inactions of SFMTA, or as a result of vandalism, prior to Delivery of Meters to SFMTA, the Contractor shall bear risk of loss of the Meters, including any damage sustained during transportation to the Delivery site. Transfer of title to Meters, and risk of loss, shall pass to City upon Delivery.

6.4 Acceptance

6.4.1 General Acceptance Criteria. The Contractor shall meet the following acceptance criteria for the Meters and related Services. Meters installed and operational fully functional for 30 days shall be deemed to be Accepted and SFMTA will send written verification of which Meters are Accepted and which are not Accepted in each Batch. A delivered Batch will be considered "Not Accepted" if five percent of the Meters fail any of the conditions listed below. If SFMTA determines a Batch to be "Not Accepted," the Contractor shall return the Batch at its expense and provide a compliant Batch. Notwithstanding the above, unless notified otherwise by the SFMTA, a Meter Batch will be deemed Accepted 45 Days from its Delivery.

- (a) The delivered meter technology meets the requirements set forth in subsection A of Sections I, II and III of the Technical Specifications.
- (b) The delivered MMS meets the requirements set forth in subsection A of Sections I, II and III of the Technical Specifications.
- (c) The transaction feed to the SFMTA Data Warehouse from Vendor's MMS meets the requirements of Attachment 1-13 to the Technical Specifications.
- (d) The nightly batch file feed to SFMTA's SFPM meets the requirements of Attachment 1-13 to the Technical Specifications.
- (e) The audit vs. actual coin revenue is accurate to 99% (i.e. the MMS "Coin Revenue Audit Report" matches actual revenue collected from Parking Meter to 99% accuracy).

6.4.2 Commissioning Checklist. SFMTA will use the checklist attached as Appendix E to test the meters and MMS prior to and during installation. SFMTA may test for any functional meter mechanism and MMS requirement at any time.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 Works for Hire; Ownership of Results. If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, training materials, audio tapes, systems designs, software, reports, diagrams, surveys, source code, computerized database information, or any other original works of authorship specifically and exclusively for City, 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 upon full payment by the City to the Contractor for any such works. 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.

7.2 Licenses Granted

7.2.1 Computerized software and systems. To the extent that software, firmware, systems designs, computerized manuals, training modules, or other such deliverables are not designed specifically for City's purposes in connection with the Agreement, Contractor grants City a perpetual, non-transferable, license at all locations owned or controlled by City to use all such deliverables, or portions thereof based on the pricing schedule contained in this Agreement. City shall also be authorized to modify or prepare derivative works of the deliverables and make copies of such deliverables for internal use only. Any such modifications shall become the property of the City unless such modifications are not used exclusively for internal purposes. City agrees not to remove

or destroy any proprietary markings or proprietary legends placed upon or contained within the deliverable(s) or any related materials or documentation. Contractor hereby warrants that it has title to and/or the authority to grant a license of such deliverables to the City.

7.2.2 Escrow Agreement. Contractor agrees, at its expense, to place the applicable source codes for all Software that is proprietary to Contractor, including periodic updates of said source codes, and other proprietary materials, into an escrow. The source codes placed in escrow shall be on digital media and shall be accompanied by detailed software documentation, including a list of applicable software development tools. To effect such arrangement, after issuing the Notice to Proceed, City and Contractor shall negotiate and enter into an escrow agreement to be in place within 60 Days following NTP. The Director shall execute said escrow agreement on behalf of City. The escrow account shall be maintained by a third party escrow agent on behalf of the City.

7.2.3 The Director shall execute said escrow agreement on behalf of City. Except as authorized under this Section, Contractor does not grant City a license to view or access the source codes for the Software.

7.2.4 Other Deliverables. Contractor grants City a perpetual, non-exclusive, non-transferable license to use, retain, and reproduce at all locations controlled by SFMTA, for internal use only, all copies (whether in hard copy or electronic format) of drawings, plans, specifications, schematics, studies, reports, memoranda, computation sheets and all other documents that are (i) prepared by Contractor or its subcontractors or suppliers (but not exclusively for City); and (ii) required to be provided to City in connection with this Agreement. Contractor hereby warrants that it has title to and/or the authority to grant a license of such deliverables to the City.

7.2.5 Proprietary Materials.

(a) The City agrees that it will not knowingly sell any equipment or allow any third party to gain access to equipment, software, or documentation provided by Contractor for the purposes of reverse engineering without the written consent of the Contractor. This prohibition shall not apply (1) to the sale or other transfer of equipment after the end of its useful life, or (2) to consultants hired by the City to assist with the SFMTA's off-street parking program.

(b) To the extent that the Contractor considers any document or deliverable to be a trade secret or otherwise proprietary, Contractor shall so mark them. SFMTA shall require individuals using such proprietary documents to maintain the confidentiality of the documents, and if necessary, sign a confidentiality agreement regarding use of highly sensitive documents. Alternatively, at SFMTA's request, documents shall be placed in escrow, along with source codes, as described in subsection 2.a above. Contractor shall hold the

City harmless from and defend the City against all claims, suits or other proceedings instituted against the City for copyright infringement, misuse or misappropriation of a trade secret, or for access to the documents or deliverables under the City's Sunshine Ordinance or the California Public Records Act as it pertains specifically to this contract with regards to products or services provided by the Contractor. Contractor shall be notified in writing prior to disclosure under the City's Sunshine Ordinance or the California Public Records Act in order to file an injunction to protect any such Contractor information believed to be confidential or proprietary. Contractor will pay the costs and damages awarded in any such action or proceeding, or the cost of settling such action or proceeding, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the equipment or other deliverables constitutes infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. The Contractor shall not be held liable nor be required to provide indemnification to the City in the case of negligence on the part of the City or for any action unrelated to the products and services provided by Contractor or related to this Agreement.

7.2.6 Standard of Care. Notwithstanding Subsection 7.2.4 and Subsection 19.15, the Parties understand and agree that the California Uniform Trade Secrets Act, Cal. Civ. Code § 3426 et seq., prohibits disclosure of any trade secrets of either in the possession of the other. Furthermore, the Party receiving confidential information from the other Party agrees not to disclose or produce such information for any purpose, including in response to a subpoena or other court or governmental order or law, without giving the disclosing Party ten days' written notice and an opportunity to object to the disclosure or production of any information of a possible trade secret, or of proprietary or confidential nature.

8 NONDISCLOSURE OF PRIVATE, PROPRIETARY OR CONFIDENTIAL INFORMATION

- 8.1** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor shall use such information only in accordance with the restrictions stated in this Agreement and as necessary in performing the Work. The provisions of Chapter 12M, including but not limited to the penalties for noncompliance provided in such Chapter, are incorporated by this reference and made part of this Agreement as though fully set forth herein.
- 8.2** In the performance of this Agreement, Contractor may have access to City's proprietary or confidential information, the disclosure of which to

third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing 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 or confidential information.

9 LIABILITY OF THE PARTIES

- 9.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS CONTRACT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 4.1.1 OF THIS AGREEMENT, AS AMENDED BY CONTRACT MODIFICATIONS. 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.
- 9.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.
- 9.3 Liability for 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.

10 LIQUIDATED DAMAGES; CREDIT ASSESSMENTS; DELAY

- 10.1 LD Schedule.** The Schedule of Liquidated Damages (LDs) can be found in Appendix B. LDs will not be assessed in situations where actual damages are known and for which Credit Assessments may be imposed (see Section 10.2 below); moreover, City may seek damages for matters for which liquidated damages are not provided for and any other damages that may be recoverable by the City and specified elsewhere in the Contract documents. With respect to any breaches or items for which the City has a right to obtain liquidated damages, the City will not seek actual damages or any damages in excess of the liquidated damages to which it may be entitled.
- 10.2 Credit Assessments.** The Schedule of Credit Assessments can be found in Appendix B.
- 10.3 Unavoidable Delay.** An Unavoidable Delay is an interruption of the Work beyond the control of the Contractor, which the Contractor could not have avoided by the exercise of care, prudence, foresight, and diligence. Such delays include and are limited to acts of God; floods; windstorms; tornadoes; earthquakes or other natural disasters; acts of terrorism; wars; riots; insurrections; epidemics; quarantine restrictions; strikes and lockouts; freight embargoes; acts of a governmental agency; priorities or privileges established for the manufacture, assembly, or allotment of materials by order, decree, or otherwise of the United States or by any department, bureau, commission, committee, agent, or administrator of any legally constituted public authority; vandalism, theft and accidental

damage not caused in any way by the Contractor after Delivery of Meters; changes in the Work ordered by the City insofar as they necessarily require additional time in which to complete the entire Work; the prevention by the City of the Contractor's commencing or prosecuting the Work, or interruption or failure of electrical power, the internet or cellular telecommunications caused by any of the events or causes described herein. The duration of said Unavoidable Delays shall be limited to the extent that the commencement, prosecution, and completion of the Work are delayed thereby, as determined by the City acting reasonably.

10.4 Notification of Delay. The Contractor shall notify SFMTA as soon as the Contractor has, or should have, knowledge that an event has occurred that will result in an Unavoidable Delay of deliveries. Within five calendar days, the Contractor shall confirm such notice in writing, furnishing as much detail as is available.

10.5 Request for Extension of Time. The Contractor agrees to supply, as soon as such data are available, any reasonable proof that is required by SFMTA to make a decision on any request for an extension of time. SFMTA shall examine the request and any documents supplied by the Contractor and shall determine if the Contractor is entitled to an extension of time and the duration of such extension. SFMTA shall notify the Contractor of its decision in writing. The granting of an extension of time because of Unavoidable Delays shall in no way operate as a waiver on the part of the City of the right to collect liquidated damages for other delays or of any other rights to which the City is entitled.

11 PAYMENT OF TAXES AND OTHER GOVERNMENTAL CHARGES

The City will reimburse the Contractor for any levied sales tax on articles purchased by the City under this Agreement. However, if the Contractor cannot be authorized to collect and pay the sales taxes to the State of California, then the City will pay the sales tax directly to the State. Contractor shall be solely responsible for any penalties, interest or fees assessed as a result of late or erroneous payment of such taxes on the part of the Contractor. The City warrants that it is a public entity exempt from certain federal excise taxes and in connection therewith that it has obtained a federal excise tax exemption certificate. Contractor will pay all other taxes, licenses, imposts, duties, and all other governmental charges of any type whatsoever.

12 BONDS

12.1 The Contractor shall maintain at its own expense, and furnish to City, within 20 days following the receipt of the Notice to Proceed of the Contract, corporate surety bonds, as follows:

12.1.1 A Performance Bond in the amount of \$1,000,000 to guarantee Contractor's faithful performance of all obligations regarding the supply, Delivery and Acceptance of Meters to be furnished under the Contract,

12.1.2 A Performance Bond in the amount of \$3,000,000 to guarantee Contractor's faithful performance of all obligations regarding the Services to be furnished under the Contract, including warranty obligations.

12.2 The corporate surety on these bonds must be legally authorized to engage in the business of furnishing surety bonds in the State of California. All

sureties, bond coverage forms, and requests for changes to the bonding requirements must be approved by the City's Risk Manager. During the period covered by the Contract, if the surety on these bonds shall, in the opinion of the City's Risk Manager, become insolvent or unable to pay promptly the amount of such bonds to the extent to which surety might be liable, the Contractor, within 30 days after notice given by the City to the Contractor, shall by supplemental bonds or otherwise substitute another and sufficient surety approved by the Risk Manager in place of the surety becoming insolvent or unable to pay. If the Contractor fails within such 30-day period to substitute another and sufficient surety, the Contractor shall, if the City so elects, be deemed to be in default in the performance of its obligations hereunder, and the City, in addition to any and all other remedies, may terminate the Contract or bring any proper suit or proceeding against the Contractor and the surety, or may deduct from any monies then due or which thereafter may become due to Contractor under the Contract the amount for which the surety, insolvent or unable to pay as aforesaid, is obligated on the bonds, and the monies so deducted shall be held by the City as collateral security for the performance of the conditions of the bonds.

13 LETTER OF CREDIT

- 13.1** As an alternative to furnishing the performance bond(s) under Section 12, Contractor may submit within 15 Days following the receipt of a Notice of Award, one or more letters of credit in the amounts described in subsections 12.1.1 and 12.1.2 that comply with the requirements set forth below.
- 13.2** Any and all letters of credit issued pursuant to this Agreement shall be obtained from a national or California bank with at least a Moody's A rating and having at least one branch office within the City and County of San Francisco. The letter of credit shall be a confirmed, clean irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation. The letter of credit shall have an original term of one year, with automatic extensions of the principal amount throughout the term of the contract, or until released by the City. The letter of credit shall provide that payment of the entire face amount of the letter of credit, or any portion thereof, shall be made to the City and County of San Francisco, upon presentation of a written demand to the bank signed by the General Manager on behalf of the City and County of San Francisco. The letter of credit shall constitute a security deposit guaranteeing all progress payments for which the letter of credit is issued.
- 13.3** If Contractor defaults with respect to any provision of this Agreement, City may, but shall not be required to, make its demand under the letter of credit for all or any portion thereof to compensate City for any loss that City may have incurred by reason of Contractor's default. City shall present its written demand to the bank for payment under the letter of credit only after City shall have made its demand for payment directly to Contractor, and five full business days have elapsed without Contractor having made payment to City or otherwise cured the default. City need not terminate this Agreement in order to receive compensation for its damages. If any portion of a letter of credit is so used or applied, Contractor, within 10 business days after written demand therefore, shall reinstate the letter of credit to its original amount; Contractor's failure to do so shall be a material breach of this Agreement.

- 13.4** Any letter of credit issued hereunder shall provide for 60 days notice by the bank to City in the event of non-extension of the letter of credit; in that event, Contractor shall replace the letter of credit at least 10 business days prior to its expiration. If Contractor fails to do so, City shall be entitled to present its written demand for payment of the entire face amount of the letter of credit. Any amounts so received by City shall be returned to Contractor upon replacement of the letter of credit.
- 13.5** If City receives any payments from the aforementioned bank under the letter of credit by reason of having made a wrongful or excessive demand for payment, City shall return to Contractor the amount by which City's total receipts from Contractor and from the bank under the letter of credit exceeds the amount to which City rightfully is entitled, together with interest thereon at the legal rate of interest, but City shall not otherwise be liable to Contractor for any damages or penalties.

14 INSURANCE

- 14.1 Insurance.** 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:
- 14.1.1** Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 14.1.2** Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- 14.1.3** Commercial Automobile Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- 14.1.4** Technology Errors and Omissions Liability Insurance with limits of not less than \$1,000,000 each claim in connection with the services to be provided under this Agreement.
- 14.1.5** A blanket fidelity bond or Crime Policy covering theft, dishonesty, forgery or alteration and computer fraud in an amount of not less than \$1,000,000, including the City as additional obligee or loss payee as its interest may appear
- 14.2** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to:
- 14.2.1** Name as an Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
- 14.2.2** Provide 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.
- 14.3** All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction

in coverages. Notices shall be sent to the City address set forth in Section 19.6 entitled "Notices to the Parties."

- 14.4 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.
- 14.5 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.
- 14.6 Before commencing any Services, 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. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.
- 14.7 The Workers' Compensation policy(ies) 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.
- 14.8 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

15 INDEMNIFICATION.

- 15.1 **General.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation. or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises 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, 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.

15.2 Duty to Defend. 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.

15.3 Intellectual Property. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

16 TERMINATION AND DEFAULT

16.1 Termination for Convenience

16.1.1 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 a written 30-Day notice of termination. The notice shall specify the date on which termination shall become effective. Notwithstanding the above, the Parties agree that if Meter fabrication is in progress when the SFMTA issues a notice of termination, the Agreement will not terminate until Acceptance of such Meters.

16.1.2 Upon receipt of the notice of termination, 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:

- (a)** Halting the performance of all Work under this Agreement on the date(s) and in the manner specified by City.
- (b)** Terminating all existing orders and subcontracts to the extent possible, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- (c)** 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.

- (d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (e) Completing performance of any Work that City designates to be completed prior to the date of termination specified by City.
- (f) Transferring title to City and delivering in the manner, at the times, and to the extent, if any, directed by the City the fabricated or un-fabricated parts, work in process, completed work, supplies, and other material produced as part of, or acquired in connection with the performance of the work terminated, and the completed or partially completed plans, drawings, information and other property which, if the contract had been completed, would have been required to be furnished to City
- (g) Using its best efforts to sell, in the manner, at the times, to the extent, and at the price(s) directed or authorized by the City, any property of the types referred to above; provided, however, that the Contractor shall not be required to extend credit to any purchaser, and may acquire any such property under the conditions prescribed by and at a price(s) approved by the City; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by City to the Contractor under this Contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the City may direct;
- (h) 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.

16.1.3 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:

- (a) The cost to Contractor for all Deliverables completed and accepted prior to the specified termination date, for which Deliverables City has not already tendered payment. Contractor may also recover the reasonable cost of preparing the invoice.
- (b) 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.
- (c) 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 Deliverables.

16.1.4 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 Section 16.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Work under 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 Section 16.1.3.

16.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for Deliverables 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 16.1.3; and (4) in instances in which, in the opinion of the City, the cost of any Work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

16.2 Default; Remedies

16.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

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

Submitting False Claims.	Payment of Taxes
Assignment	Nondisclosure of Private, Proprietary or Confidential Information
Insurance and Indemnity	

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten Days, as may be extended by City, after written notice thereof from City to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) 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; (iii) makes an assignment for the benefit of its creditors; (iv)

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 (v) takes action for the purpose of any of the foregoing.

(d) 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.

16.2.2 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, where applicable, 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: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

16.2.3 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. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

16.2.4 Any notice of default must be sent by registered mail to the address set forth in Section 19.6.

16.3 Rights and Duties upon Termination or Expiration

16.3.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

Payment Limited to Satisfactory Deliverables	Warranty (nothing in this Section 16.3.1 shall be construed to extend the three-year warranty period set forth in Section I.A.3 of Appendix A)
Disallowance	Works for Hire / Ownership of Results

Submitting False Claims Audit and Inspection of Records	Nondisclosure of Private Proprietary or Confidential Information
Insurance and Indemnity	Contracts Made in California; Venue
Incidental and Consequential Damages	Section Headings
Liability of City	Entire Agreement
Payment of Taxes and other Governmental Changes	Severability

16.3.2 Subject to the survival of the Sections identified in Section 16.3.1, if this Agreement is terminated prior to expiration of the term specified in Section 2, this Agreement shall 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.

17 OPTION PARKING METERS

17.1 Exercise of Options. The City reserves an option to procure up to 10,000 additional Parking Meters. The City may exercise this option at any time prior to one year before Contract termination.

17.2 Delivery. Delivery of the option Parking Meters shall be as provided in Appendix D.

18 AUTHORITY OF CONTRACT ADMINISTRATOR; CLAIMS; DISPUTES

18.1 Authority of SFMTA Contract Administrator. The SFMTA Contract Administrator shall decide all questions which may arise as to the quality or acceptability of materials furnished and work performed and as to the manner of performance and rate of progress of the Work; all questions which may arise as to the acceptable fulfillment of the Contract on the part of the Contractor; and all questions as to compensation. In discharging the responsibilities outlined above, the SFMTA Contract Administrator shall at all times act fairly and reasonably. Any appeal of the SFMTA Contract Administrator's decisions shall be in accordance with the provisions of Section 18.4 of this Agreement. As with any claim, change, extra or additional work, Contractor shall be paid in accordance with the payment provisions set out in Section 4 of this Contract when the dispute is finally resolved.

Should any questions arise as to the meaning and intent of the Contract, the matter shall be referred to the SFMTA Contract Administrator, who, in consultation with other City representatives, as applicable, and with input from the Contractor, shall decide the true meaning and intent of the Contract. The SFMTA Contract Administrator's decision in this regard shall be administratively final and conclusive.

18.2 Claims for Additional Compensation.

18.2.1 Contractor shall not be entitled to the payment of any additional compensation for any action, or failure to act, by the SFMTA, including failure or refusal to issue a Contract Modification or for the

happening of any event, thing, occurrence, or other cause, unless Contractor shall have given the Project Manager due written notice of potential claim.

18.2.2 The written notice of potential claim shall set forth the reasons for which Contractor believes additional compensation will or may be due, the nature of the costs involved, and insofar as possible, the amount of the potential claim. The said notice as above required must have been given to the SFMTA Contract Administrator prior to the time that Contractor shall have performed the work giving rise to the potential claim for additional compensation, or in all other cases, within 15 Days after the happening of the event, thing, occurrence, or other cause giving rise to the potential claim.

18.2.3 It is the intention of this Section 18.2 that differences between the Parties arising under and by virtue of the Contract be brought to the attention of the SFMTA at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly be taken. Contractor agrees that it shall have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing, or occurrence for which no written notice of potential claim as herein required was filed.

18.3 Other Claims. For any dispute involving a question of fact that does not involve a claim for additional compensation, the aggrieved party shall furnish the other party with a notice of dispute within 15 Days of the determination of the dispute. The party receiving a notice of dispute shall submit a written reply with 15 Days of delivery of the notice. The notice and response shall contain the following: (a) a statement of the party's position and a summary of the arguments supporting that position, and (b) any evidence supporting the party's position.

18.4 Resolution of Disputes. Disputes arising in the performance of this Agreement that are not resolved by negotiation between the SFMTA Contract Administrator and Contractor may be appealed to the SFMTA Director, who will decide the matter after affording the Contractor an opportunity to be heard and to offer evidence in support of its position. The decision of the Director shall be administratively final and conclusive.

18.5 No Cessation of Work. Pending final resolution of a dispute hereunder, the Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the written directions of the SFMTA Contract Administrator.

18.6 Alternative Dispute Resolution. If agreed to by both parties, disputes may be resolved by a mutually agreed to alternative dispute resolution process.

19 GENERAL REQUIREMENTS

19.1 Contract Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

19.2 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.

19.3 Nondiscrimination; Penalties

19.3.1 Contractor Shall Not Discriminate. In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.

19.3.2 Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k) (see Appendix D for 12B Provisions), of the San Francisco Administration Code and section 12C.3 (see Appendix E, section 4 for 12 C Provisions), 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.

19.3.3 Non-Discrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the terms of this Agreement, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within 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 section 1, 4-B. of Appendix D for 12B Provisions, 12B.2(b) of the San Francisco Administrative Code.

19.3.4 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, see Appendix A) with supporting documentation (see www.SFHRC.org) and secure the approval of the form by the San Francisco Human Rights Commission after submitting SFMTA with the Price Proposal.

19.3.5 Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as through 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 of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) (see Appendix D) 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.

- 19.4 Assignment/Subcontractors.** This Contract may not be assigned without the express written consent of the City. The City's consent shall be by resolution of the Board of Directors of Agency, and shall not be unreasonably withheld; however, no assignment shall be approved unless it appears to the Agency that the proposed assignee is in every way equally reliable and responsible and fully able to perform the portion of the work covered by the proposed assignment, and to complete said work in accordance with the specifications. No transfer or assignment of this Contract, or any interest hereunder, shall release Contractor from its obligations hereunder.

All persons engaged as subcontractors or suppliers will be considered by the City as if they were employees of the Contractor, and thus the Contractor will be held responsible for the subcontractors' or suppliers' work, which shall be subject to the provisions of this Contract.

- 19.5 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.

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

To City: San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103
Attn: Lorraine R. Fuqua, Contract Administrator
415.701.4678
lorraine.fuqua@sfmta.com

To Contractor: IPS Group Inc.
5601 Oberlin Drive Suite 100
San Diego, CA 92121
Attn: Chad P. Randall, Chief Operating Officer
chad.randall@ipsgroupinc.com

Any notice of default must be sent by registered mail.

- 19.7 Non-Collusion.** By submitting a proposal, the Proposer represents and warrants that such proposal is genuine and not sham or collusive or made

in the interest or on behalf of any person not therein named, and that the Proposer has not, directly or indirectly, induced or solicited any other Proposer to submit a sham proposal, or any other person, firm, or corporation to refrain from proposing, and that the Proposer has not in any manner sought by collusion to secure to the Proposer an advantage over any other Proposer. If at any time it shall be found that the person, firm, or corporation to whom a contract has been awarded has, in presenting any proposal or proposals, colluded with any other party or parties, then the contract so awarded shall be null and void and the Contractor and its surety shall be liable to the City for all loss or damage which the City may suffer thereby; and the City may advertise for a new contract for said equipment.

- 19.8 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.
- 19.9 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 or its employees, agents or assigns shall be deemed a material breach of contract.
- 19.10 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
- 19.11 First Source Hiring Program.** Contractor shall comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, including but not limited to the remedies for noncompliance provided therein, The provisions of Chapter 83 are incorporated herein by this reference, and made part of this Agreement as though fully set forth herein.
- 19.12 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 the Contractor, or by any of its employees, even though such equipment be furnished, rented, or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees shall be construed to mean that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend, and save

harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse, or failure of such equipment, whether such damage be to the contractor, its employees, City employees, or third parties, or to property belonging to any of the above.

19.13 Independent Contractor; Payment of Employment Taxes and Other Expenses

19.13.1 Independent Contractor. For the purposes of this Subsection 19.13.1, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, it is an independent contractor and is wholly responsible for the manner in which it performs the Services. 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 is liable for the acts and omissions of itself, its employees and its agents and is 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 Services. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and 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 the Services.

19.13.2 Payment of Employment 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, 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. A determination of employment status pursuant to the preceding 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 payment obligation 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. In the event the Agreement has expired, Contractor agrees to pay the City the amounts assessed so that the City's financial obligations are no greater than the total not-to-exceed amount stated in this Agreement. City may offset the amount from any payment due or to become due to Contractor under this or any other Agreement with the City.

- 19.14 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.
- 19.15 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable state and federal laws, as they may be amended from time to time.
- 19.16 Time.** Time is of the essence in this Agreement.
- 19.17 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.
- 19.18 Articles Not to be Prison Made.** No Parking Meter or other equipment furnished under this Contract shall have been made in a prison or by convict labor.
- 19.19 Limitations on Contributions.** By executing 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. 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. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City

- 19.20 Prohibition on Use of Public Funds for Political Activity.** In performing the Work, Contractor shall comply with San Francisco Administrative Code Chapter 12.G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. The provisions of Chapter 12.G, including but not limited to the penalties for noncompliance provided therein, are incorporated by reference and made a part of this Agreement as though fully set forth herein.
- 19.21 Section Headings.** The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of this contract.
- 19.22 Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
- 19.23 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required under law.
- 19.24 Entire Agreement.** This Contract sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. No change or waiver of any provision hereof shall be valid unless made in writing and executed as required under City law.
- 19.25 MacBride Principles – Northern Ireland .** By signing below, Contractor acknowledges that the City 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 urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY

CONTRACTOR

<p>MUNICIPAL TRANSPORTATION AGENCY</p> <p>_____</p> <p>Edward D. Reiskin Director of Transportation</p>	<p>IPS GROUP INC.</p> <p>_____</p> <p>Chad P. Randall Chief Operating Officer</p> <p>5601 Oberlin Dr. Suite 100 San Diego, CA 92121 (877) 630-6638</p> <p>_____</p> <p>Vendor I.D. Number</p>
<p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS RESOLUTION NO. _____ Dated: _____ ATTEST:</p> <p>_____</p> <p>Roberta Boomer, Secretary</p>	
<p>Approved as to form: Dennis J. Herrera, City Attorney</p> <p>by: _____</p> <p>Robin M. Reitzes, Deputy City Attorney</p>	
<p>BOARD OF SUPERVISORS RESOLUTION NO. _____ Dated: _____</p> <p>ATTEST:</p> <p>_____</p> <p>Angela Cavillo, Clerk of the Board</p>	