

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

**MODIFICATION NO. 5 TO
AGREEMENT BETWEEN SIEMENS MOBILITY, INC.
AND
THE CITY AND COUNTY OF SAN FRANCISCO FOR
PROCUREMENT OF NEW LIGHT RAIL VEHICLES (LRV4)
(SFMTA No. 2013-19)**

This Modification No. 5 to Agreement is made and entered into on 10/22/2019, by and between Siemens Mobility Inc. (Contractor), and the City and County of San Francisco, a municipal corporation (City), acting by and through its Municipal Transportation Agency (SFMTA).

RECITALS

- A.** On September 30, 2014, the City entered into an agreement with Contractor (Agreement) to provide 175 light rail vehicles (LRVs), together with associated equipment and spare parts, as well as Options for additional LRVs and parts.
- B.** On March 31, 2015, the City approved Modification No. 1 to the Agreement to exercise Option 1 in accordance with Section 64.1 of the Agreement for 40 additional LRVs to be delivered after the Phase 1 delivery of 24 vehicles, and to exercise Options for additional Spare Parts and Equipment, in accordance with Sections 64.2, 64.3 and 64.4 of the Agreement.
- C.** On October 30, 2015, the City approved Modification No. 2 to the Agreement to update the list of approved major suppliers listed in Section 29, clarify the purpose of Item 1.1 (Allowance) in Exhibit 2 of Volume I, and specify the payment structure for changes to the LRVs paid under Item 1.1.
- D.** On August 16, 2016, the City approved Modification No. 3 to the Agreement to update the list of approved major suppliers, modify radio/CAD/AVL systems on the Vehicles, including related price and payment schedules, provide extra time for

delivery of the Vehicles and other project submittals, add a new parent guarantee, and make miscellaneous changes to the Technical Specifications.

- E. On June 20, 2017, the City approved Modification No. 4 to the Agreement to procure four additional LRVs to be delivered after the 24th production LRV, which Vehicles shall be part of the production fleet, conform to all requirements of the Technical Specifications, and all prior design approvals and Buy America audits.
- F. On November 28, 2018, the SFMTA, through the Director of Transportation, approved an Assignment and Assumption Agreement, assigning the Contract from Siemens Industry, Inc., to Siemens Mobility, Inc.
- G. The SFMTA now wishes to modify the Agreement to commence design of and initiate the addition of track brakes to the power trucks as a method to reduce the size and frequency of flat spots on wheels caused by activation of the push button emergency brake (PBEB) in service. The change will provide operational commonality with the LRV2/3 vehicle in response to emergency brake applications initiated by the PBEB.
- H. This Modification No. 5 expedites the start of this work in order to avoid service disruptions caused by the occurrence of flat spots. The Modification provides for engineering, testing and the implementation of the track brakes on eight Vehicles. Future implementation for the remaining LRVs to be procured under the Agreement will be included in a forthcoming modification.

The parties agree that the Agreement shall be modified as follows:

1. *A new definition is added to the Agreement to read as follows:*

Confidential Information: Confidential City information including, but not limited to, personally-identifiable information (PII), protected health information (PHI), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

2. *A new Section 10.3 (Withholding) is added to the Agreement to read as follows:*

10.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

3. *Section 24 (Proprietary or Confidential Information of City) is deleted in its entirety.*
4. *Section 30 of Agreement (Assignment) is replaced in its entirety to read as follows:*

30 Assignment

The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with City; and (c) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

5. *Section 41 (Notification of Limitations on Contributions) of the Agreement is replaced in its entirety to read as follows:*

41. Limitation on Contributions

By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (a) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (b) a candidate for that City elective office, or (c) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the

later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

6. *Section 53 (Reserved) is replaced in its entirety with a new Section 53 (Consideration of Salary History), to read as follows:*

53 Consideration of Salary History.

Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

7. *Section 55 (Protection of Private Information) is replaced in its entirety by a new Section 55 (Management of Private, Proprietary or Confidential Information and City Data), to read as follows:*

55. Management of Private, Proprietary or Confidential Information and City Data

55.1 Protection of Private Information. If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M. However, the Parties acknowledge that the Agreement does not require the City to provide, and

the City will not provide, Contractor with any "Private Information" within the meaning of San Francisco Administrative Code Chapter 12M

55.2 Confidential Information. In the performance of Services, 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.

55.3 Access to City Data. City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (City Data or Data), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

55.4 Use of City Data and Confidential Information. Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. The City provides Contractor with a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

55.5 Disposition of Confidential Information. Upon termination of Agreement or request of City, Contractor shall, within 48 hours, return all Confidential Information, including all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor, within 10 business days, shall purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement,

work stations that were used to process the Data or for production of the Data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five business days of the purge.

55.6 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests (Legal Requests) related to all City Data given to Contractor by City in the performance of this, or which in any way might reasonably require access to City Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

8. *A new Exhibit 1A.3 (Schedule of Prices-Modification No. 5 Work) is added to the Agreement and is attached to this Modification.*
9. *A new Exhibit 2.3 (Payment Schedule-Modification No. 5 Work) is added to the Agreement and is attached to this Modification.*
10. *Exhibit 3A (Project Delivery Schedule) is replaced in its entirety by a new Exhibit 3A, attached to this Modification.*
11. *A new Section 12.2.4 (Track Brakes) is added to the Technical Specifications of the Agreement to read as follows (currently applicable to the Vehicles retrofitted under this Modification):*

12.2.4 Track Brakes

All trucks shall contain track brakes. Track brakes shall be used in all emergency braking modes as well as with manual, track brake-only applications.

12. **Release.** Contractor acknowledges and agrees that the amounts agreed for the work described in Modification Nos. 1-4 and this Modification No. 5 shall be full accord and satisfaction for all past, current and prospective costs incurred in connection with Contractor's performance of all work for all executed Modifications up to and including the work covered under this Modification No. 5, without limitation, including any and all markups and overhead. If this modification involves the granting of an extension of time, with or without cost, Contractor releases the City from all claims and costs associated with such extension of time. Said costs

may include, but are not limited to, costs for labor, materials, equipment, disruption, lost productivity, escalation, delay, extended overhead, administration and extended performance time. Contractor releases the City from all claims for which full accord and satisfaction is made, as set forth above. Notwithstanding the foregoing, this Release does not apply to any work associated with change orders that are currently under discussion between Contractor and the City at the time of this Modification. This paragraph replaces the release paragraphs in Modification Nos. 1, 2, 3 and 4.

13. **Effective Date.** Each of the amendments set forth above shall be effective on and after all parties have signed the Amendment.
14. **Legal Effect.** Except as expressly modified by this Modification No. 5, all other terms and conditions of the Contract remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Modification No. 5 on the date set forth on page 1 above.

CITY

San Francisco Municipal Transportation Agency



Thomas G. Maguire
Interim Director of Transportation

Approved as to Form:

Dennis J. Herrera
City Attorney

By: Robin Reitzes
Robin M. Reitzes
Deputy City Attorney

CONTRACTOR



Michael Cahill
President



Christopher Halleus
Vice President, FBA

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

Attachments

- Exhibit 1A.3 – Schedule of Prices – Modification No. 5 Work
- Exhibit 2.3 – Payment Schedule - Modification No. 5 Work
- Exhibit 3.A – Project Delivery Schedule

EXHIBIT 1A.3
Schedule of Prices – Modification No. 5 Work

ITEM	DESCRIPTION	UNIT PRICE	QUANTITY	EXTENDED PRICE
Item 15.1	Non-recurring Costs for track brake, including engineering, testing, and updates to manuals.	Lump Sum	1	\$286,617
Item 15.2	Installation of track brakes on Phase 1 fleet.	\$22,486	8 Vehicles	\$179,888*
TOTAL				\$466,505**

Notes: * Prices reflect the total of all labor (\$245,924) and all materials (\$220,581) to retrofit and test track brakes.

**Prices do not include sales taxes.

Exhibit 2.3
PAYMENT SCHEDULE
(All Item references are to Exhibit 1A.3)

Item 15 - Modification No. 5 Work

Item 15.1 – Non-Recurring Costs

	Milestone	Percent of Bid Item
A	Submittal and approval of engineering submittals and test documentation and manuals for additional track brakes on power trucks	100%

Item 15.2 – Vehicle Installation

	Milestone	Percent of Bid Item
A	Installation, testing, and Acceptance of track brakes on power trucks on 8 LRVs	100%

**EXHIBIT 3
PROJECT DELIVERY AND VEHICLE DELIVERY SCHEDULES**

A. Project Delivery Schedule

Item	Date
Notice To Proceed	9/30/2014
Project Plan	11/29/2014
Training Start	4/17/2017
Training Complete	8/15/2017
Special Tools / Diagnostic Test Equipment	4/17/2017
Delivery of Publications (Manuals, Parts Book, Drawings) - Prelim	2/16/2017
Delivery of Publications (Manuals, Parts Book, Drawings) - Final	11/13/2017
Delivery of Spare Parts (Phase 1)	8/15/2017
Contract Mod 5, Item 15.1 Completion of Engineering for Additional Track Brakes	9/30/2019
Contract Mod 5, Item 15.2 Installation of Additional Track Brakes on 8 Vehicles	10/31/2019
Delivery of Spare Parts (35% of Phase 2 Quantity)	5/15/2021
Delivery of Spare Parts (35% of Phase 2 Quantity)	With Delivery of 50th Vehicle (Phase 2)
Delivery of Spare Parts (30% of Phase 2 Quantity)	With Delivery of 100th Vehicle (Phase 2)
Acceptance of Training Simulator 1	4/17/2017
Delivery of Additional Spare Parts (Exhibit 1 C)	TBD
Delivery of Spare Parts for Option Vehicles	TBD
Delivery of Training Simulator 2	TBD

Note: See Exhibit 3.B for Vehicle Delivery Schedule.



London Breed, Mayor

Malcolm Heinicke, Chair
Gwyneth Borden, Vice Chair
Cheryl Brinkman, Director
Amanda Eaken, Director

Steve Heminger, Director
Cristina Rubke, Director
Art Torres, Director

Tom Maguire, Interim Director of Transportation

DATE: October 17, 2019

MUNICIPAL TRANSPORTATION AGENCY
SFMTA SIGNATURE ROUTING

SUBJECT: Requesting Signature from the Director of Transportation to execute Contract Modification No. 5 to Contract No. CPT 762, Procurement of New Light Rail Vehicles (LRV4) with Siemens Industry, Inc.

Modification No. 5 will commence design of and initiate the addition of track brakes to the power trucks as a method to reduce the size and frequency of flat spots on wheels caused by activation of the push button emergency brake (PBEB) in service. The change will provide operational commonality with the LRV2/3 vehicle in response to emergency brake applications initiated by the PBEB.

Final Routing	Approval Authority	Initials	Date	Comments
6	Leo Levinson, Director of Finance & Information Technology	LL	October 22, 2019	
5	Tom Maguire, Interim Director of Transportation	<i>TM</i>	October 22, 2019	
4	Robin Reitzes, Deputy City Attorney	RR	October 21, 2019	
3	Virginia Harmon, Manager of Contract Compliance	VH	October 19, 2019	
2	Trinh Nguyen, Manager Contracts & Procurement, Federal	TN	October 18, 2019	
1	Douglas Lee for Janet Gallegos Program and Delivery Support	DL	October 17, 2019	

Contact: Alexandra Hallowell at 415.646.4112