THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

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SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY

</div>

DIVISION: Streets

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Contract No. SFMTA 2021-03 Parking Meter Maintenance Agreement, with IPS Group, Inc. for Service Fees, Support and Parts for Single-Space Parking Meters in an amount not to exceed $9,550,000, and for a term not to exceed three years with an optional one-year extension.

SUMMARY:

- The Parking Meter Program was established to maintain parking availability in high demand areas and manages 28,000 on-street parking spaces and lots for the SFMTA and the Port of San Francisco; the SFpark Program uses demand responsive pricing to adjust metered parking rates to encourage drivers to park in underused areas, consequently reducing demand in overused areas.
- In 2013, the SFMTA Board awarded Agreement SFMTA No. 2014-09 for single-space parking meters to IPS Group, Inc. (IPS Group) for $54 million. The Board of Supervisors also approved the agreement due to the dollar amount. The agreement will expire on April 30, 2021.
- Equipment installed is now nearing end-of-life due to technological advancements, and the fact that modems currently allowing the mechanisms to communicate payment and maintenance information will not be supported by wireless communication service providers after October 2022.
- The SFMTA issued Request for Proposals (RFP) No. 2020-46 to replace existing paystation and meter mechanisms. Contract award for the new meters is expected no later than Summer 2021, with deployment to begin in late Fall 2021.
- Because new meter and paystation installation will take approximately three years, legacy meter support, payment of service fees, and parts replacement requires a maintenance agreement until installation of new meter hardware is completed.
- Costs in the maintenance agreement will decrease as new meters are installed.
- Under Administrative Code Section 21.30(d), this is a sole source contract due to the proprietary nature of the parking meter equipment and software, and the maintenance services the SFMTA requires are only available from IPS Group, until the new equipment and software is procured and installed. Due to the sole-source determination, local business enterprise (LBE) goals are waived for this agreement.

ENCLOSURES:
1. SFMTAB Resolution
2. Parking Meter Maintenance Agreement

APPROVALS:		**DATE**
DIRECTOR	*[signature]*	April 13, 2021
SECRETARY	*[signature]*	April 13, 2021

ASSIGNED SFMTAB CALENDAR DATE: April 20, 2021

PURPOSE:

Authorizing the Director of Transportation to execute Contract No. SFMTA 2021-03 Parking Meter Maintenance Agreement, with IPS Group, Inc., for Service Fees and Support for Single-Space Parking Meters, in an amount not to exceed $9,550,000 and for a term not to exceed three years, with an optional one-year extension.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

The item will support the following goals and objectives of the SFMTA Strategic Plan:

Goal 2: Make transit and other sustainable modes of transportation the most attractive and preferred means of travel.
  Objective 2.3: Manage congestion and parking demand to support the Transit First policy.

This item will support the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
3. Decisions regarding the use of limited public street and sidewalk space shall encourage the use of public rights of way by pedestrians, bicyclists, and public transit, and shall strive to reduce traffic and improve public health and safety.
7. Parking policies for areas well served by public transit shall be designed to encourage travel by public transit and alternative transportation.

DESCRIPTION

Background
The Parking Meter Program was established to maintain parking availability in high demand areas. The current program manages 28,000 on-street parking spaces and lots for the SFMTA and the Port of San Francisco. SFMTA manages meter operations on behalf of the Port, however each agency pays for their portion of contract expenses and retains their portion of meter revenue. Single-space meters account for 85% of metered spaces and multi-space paystations account for 15% of metered spaces. Until 2011, meters only accepted coin payments.

In 2011 the SFpark Pilot was established to test new technologies and policies to reduce traffic by periodically adjusting metered and garage rates up or down to match demand. This demand-responsive pricing encourages drivers to park in underused areas, consequently reducing demand in overused areas. Credit cards, SFMTA-issued pre-paid parking meter cards, and the option to pay for parking via smartphone application were added to the coin payment option. In 2017, the SFMTA Board of Directors approved the SFpark Program for citywide use.

In addition to managing parking availability and mitigating traffic, the programs are a consistent source of revenue to fund transit and parking operations. Revenue collected by single-space meters since the 2014 meter installment began are summarized in Table 1. In 2020, revenue was impacted by the pandemic and shelter-in-place mandates. Revenue shown is through February 2021.

TABLE 1 – Single-Space Meter Revenue

Year	Amount
2014	$37,187,495
2015	$55,866,441
2016	$62,179,477
2017	$61,590,606
2018	$58,955,023
2019	$56,276,982
2020	$28,901,586
2021	$6,165,076
Total*	**$367,122,686**

*Port revenue is 7.5% of total revenue.

Current Agreement
In September 2013, the SFMTA approved Contract No. 2014-09 with IPS Group, Inc. (IPS Group) to purchase single-space parking meters to replace coin-only mechanical meters, and pay for operational costs for a not-to-exceed amount of $54 million, for a term of five years and the option to extend for two years. The Board of Supervisors also approved the agreement due to its dollar value on November 26, 2013, reducing the not to exceed amount to $51.2 million. Capital costs for 28,000 meters were approximately $16 million.

There have been two amendments to the agreement:
- The First Amendment extended the agreement for two years, extended meter warranties and established a meter retrofit program to replace displays, coin-validators and keypads.
- The Second Amendment extended the agreement for an additional three months to allow time to negotiate a new procurement agreement.

Ongoing operational costs for meter functionality consist of the following:
- Merchant fees – fees charged by credit card companies for each meter payment transaction
- Communications fees – access to wireless communication for meter operation, maintenance needs, rate adjustments and transmission of payment via credit card and smartphone application
- Meter Management System fees – use of meter programming and maintenance tracking software
- Parts – batteries, modem upgrades and part replacements not covered under warranty

Operational expenses for the existing parking meters as of February 2021 are in Table 2:

TABLE 2 – Parking Meter Expenses

Year	Credit Card Transaction Fees	Management System Fees	Communication Fees	Parts
2014	$ 174,470	$ 456,593	$ 296,033	$ -
2015	$ 602,593	$ 1,328,268	$ 861,185	$ -
2016	$ 685,713	$ 1,332,536	$ 889,680	$ 2,160
2017	$ 747,526	$ 1,342,832	$ 942,493	$ 118,437
2018	$ 747,735	$ 1,325,474	$ 948,873	$ 232,795
2019	$ 715,555	$ 1,268,135	$ 937,275	$ 1,712,172
2020	$ 416,438	$ 1,690,300	$ 452,108	$ 1,549,594
2021	$ 68,108	$ 333,750	$ 20,720	$ -
Subtotals	$ 4,158,138	$ 9,077,887	$ 5,348,367	$ 3,615,158
			Total Cost*	$ 22,199,550

*Port expenses are 4.4% of total expenses.

Parking Meter Replacement
On June 16, 2020, the SFMTA Board approved issuance of an RFP for a new parking meter and paystation procurement. MacKay Meters was selected as the highest-ranked proposer. The Agency is currently in negotiations with MacKay Meters, Inc. for the new procurement and will submit the procurement agreement for SFMTA Board approval no later than Summer 2021. Staff anticipates that, if approved, new equipment will be available to begin installation in late Fall 2021. However, complete replacement of existing meters will take approximately three years to complete.

The primary reason for meter replacement is that the existing equipment is nearing the end of its useful life and uses an older version of modem technology (3G) for telecommunications. SFMTA was advised by the telecommunication provider that support for 3G networks will end in December of 2022. Given the modem support time constraint, Meter Shop staff proactively retrofitted enough of the 3G devices with 4G LTE modems to allow adequate time for replacement of the entire meter inventory.

In addition, hardware and software upgrades since 2014 have rendered the current meters problematic with regard to wear and tear on displays and keypad buttons, battery efficiency and programming flexibility. The meter equipment is also out of warranty, so there will be an increase of costs for parts replacement.

Proposed Maintenance Agreement
The current agreement with IPS Group for single-space meters will expire on April 30, 2021. Because meter replacement will take place over a three-year period, maintenance agreements are needed for the existing mechanisms to continue payment of operational fees and to purchase parts as needed. A one-year optional extension would be exercised if installation exceeds the projected three-year timeframe.

Under Administrative Code Section 21.30(d), as the parking meter equipment and operating software are proprietary to IPS Group, and the maintenance services that the SFMTA requires are only available from IPS Group, this contract is a sole source procurement. Because of the sole-source determination, a waiver was granted for Local Business Enterprise requirements under Section 14B of the San Francisco Administrative Code.

STAKEHOLDER ENGAGEMENT

Stakeholders from the Meter Shop, Parking and Curb Management Division, Enforcement, and Finance and Technology, as well as from the City's Treasurer and Tax Collector provided input as to the scope of services, and desired meter/paystation functionality.

ALTERNATIVES CONSIDERED

The option to discontinue payments for fees and access to spare parts to keep the parking meters operational while the new meters are procured was rejected because metered parking is necessary to maximize parking availability, mitigate traffic to transit's benefit, and continue the current revenue stream from on-street parking and lot usage.

FUNDING IMPACT

Funds required for fees, services and parts for the maintenance agreement will be paid through SFMTA's operational budget.

The proposed budget is in Table 3 below. Yearly costs in the maintenance agreement will decrease as new meter equipment is installed

TABLE 3 – Projected Parking Meter Budget

Contract Year	1	2	3	Total
Credit Card Transaction Fees	$ 702,113	$ 438,397	$ 306,081	$ 1,446,590
Meter Management System Fees	$ 2,290,013	$ 1,429,877	$ 998,314	$ 4,718,203
Communication Fees	$ 263,366	$ 164,445	$ 114,813	$ 542,624
Parts	$ 1,366,083	$ 852,978	$ 595,534	$ 2,814,594
	$ 4,621,574	$ 2,885,696	$ 2,014,741	$ *9,522,011

Port budget is 4.5% of total budget.

ENVIRONMENTAL REVIEW

On March 22, 2021, the SFMTA, under authority delegated by the Planning Department, determined that the Parking Meter Maintenance Agreement is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney has reviewed this report.

RECOMMENDATION

Staff recommends that the SFMTA Board authorize the Director of Transportation to execute Contract No. SFMTA 2021-03, Parking Meter Maintenance Agreement, with IPS Group, Inc. for Services and Parts Support for Single-Space Parking Meters, in an amount not to exceed $9,500,000 and for a term not to exceed three years, with an optional one-year extension.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No._____

WHEREAS, The Parking Meter Program was established to maintain parking availability in high demand areas; and,

WHEREAS, The program manages 28,000 on-street parking spaces and lots for the SFMTA and the Port of San Francisco; SFMTA manages meter operations on behalf of the Port, however each agency pays for their portion of contract expenses, and retains their portion of meter revenue; and,

WHEREAS, The SFpark Program, approved by the SFMTA Board of Directors in 2017 for citywide application, uses demand responsive pricing to adjust metered parking rates to encourage drivers to park in underused areas, consequently reducing demand in overused areas; and,

WHEREAS, In addition to managing parking availability and mitigating traffic, the meter programs are a consistent source of revenue to fund transit and parking operations; and,

WHEREAS, Equipment installed is now nearing end-of-life due to technological advancements, and the fact that modems currently allowing the mechanisms to communicate payment and maintenance information will not be supported by wireless communication service providers after October 2022; and,

WHEREAS, The SFMTA issued Request for Proposals (RFP) No. 2020-46 on June 18, 2020 to replace existing paystation and meter mechanisms and contract award for the new meter and paystation procurement is expected no later than Summer 2021, with installation to begin in late Fall 2021; and,

WHEREAS, The installation of new meters will take three years to complete, and until installation is complete, the SFMTA will need to continue payment for operational fees and part purchases for the existing meters through a maintenance agreement; a one-year option to extend the maintenance agreement will be exercised if the installation exceeds three year; and,

WHEREAS, Yearly costs under the maintenance agreement will decrease as new meters are installed; and,

WHEREAS, Under San Francisco Administrative Code Section 21.30(d), because the parking meter equipment and operating software are proprietary to IPS Group and the maintenance services that the SFMTA requires are only available from IPS Group, this contract is a sole source procurement; and,

WHEREAS, On March 22, 2021, the SFMTA, under authority delegated by the Planning Department, determined that the Parking Meter Maintenance Agreement is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

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

RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA 2021-03, Parking Meter Maintenance Agreement, with IPS Group, Inc. for Services and Parts Support for Single-Space Parking Meters, in an amount not to exceed $9,550,000, and for a term not to exceed three years, with an optional one-year extension.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of April 20, 2021.

_____
Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

Agreement between the City and County of San Francisco and

IPS Group, Inc.

Contract No. SFMTA 2021-03

Table of Contents

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

Agreement between the City and County of San Francisco and

IPS Group, Inc.

Contract No. SFMTA-2020-04

This Agreement is made as of May 1, 2021, in the City and County of San Francisco (City), State of California, by and between IPS Group, Inc. ('Contractor') and the City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A.   In response to Request for Proposals (RFP) #2013-09 issued in October 2012, the SFMTA Board of Directors and the San Francisco Board of Supervisors approved SFMTA Contract No. 2014-09 for the procurement of single-space Parking Meters for deployment to parking spaces under the jurisdiction of the SFMTA and the Port of San Francisco.

B.   The contract had a five-year base term, with the option to extend for two additional years. The SFMTA exercised its options to extend the agreement, and the agreement will expire on April 30, 2021.

C.   The SFMTA issued a new RFP (#2020-46) on June 18, 2020 to replace the Meters and Paystations procured via Contract No. 2014-09 because they are nearing end-of-life. Contract award for procuring new Meters and Paystations is expected by Summer 2021, with deployment to begin soon afterward.

D.   In the interim, the SFMTA must continue services for existing meters, including monthly Meter Management System (MMS) fees, communications fees, secure gateway/wireless data fees and credit card transaction fees; and support for meter rate adjustments, as well as procure replacement parts until the new meters are procured and installed. This Agreement will enable services and support for the existing meters.

E.   The Director of Transportation approved this Agreement as subject to a sole source exemption pursuant to San Francisco Administrative Code Section 21.30(d).

Now, THEREFORE, the parties agree as follows:

Article 1   Definitions

The following definitions apply to this Agreement. Where any word or phrase defined below, or a pronoun in place of the word or phrase, is used in any part of this Agreement, it shall have the meaning set forth below:

1.1   "Agreement" or "Contract" means 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, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2   "Amendment" or "Contract Modification" means 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.

1.3   "Board of Supervisors" means the Board of Supervisors of City.

1.4   "CCO" means the SFMTA Contract Compliance Office.

1.5   "Certification" means 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.

1.6   "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency.

1.7   "City Data" or "Data" means all data given to Contractor by City in the performance of this Agreement.

1.8   "CMD" means the Contract Monitoring Division of the City.

1.9   "Confidential Information" means 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).

1.10 "Contract Administrator" means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

1.11 "Contractor" or "Consultant" means IPS Group, Inc., 7737 Kenamar Ct., San Diego, CA 92121.

1.12 "Controller" means Controller of the City.

1.13 "C&P" means SFMTA Contracts and Procurement.

1.14 "Data Breach" means any access, destruction, loss, theft, use, modification or disclosure of City Data by an unauthorized party or that is in violation of the Agreement terms and/or applicable local, state or federal law.

1.15 "Day" (whether or not capitalized) means a calendar day, unless otherwise designated.

1.16 "Deliverable" means Contractor's work product resulting from the Services provided by Contractor to City during the course of Contractor's performance of the Agreement.

1.17 "Director" means the Director of Transportation of the SFMTA or his or her designee.

1.18 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 4.1.

1.19 "Meter", "Parking Meter," or "Paystation" means equipment consisting of a Meter Mechanism, as defined in Appendix A - Scope of Services installed into a dome or other housing, which allows a customer to pay for use of a single parking space.

1.20 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code that impose specific duties and obligations upon Contractor, including the duly authorized rules, regulations, and guidelines implementing such laws.

1.21 "MMS" means the Contractor's Meter Management System.

1.22 "MMS Application/MMS Software/Software" means the Meter Management System (MMS), which is the Contractor's licensed and hosted computer program and associated documentation, as listed in this Agreement and Appendices, and any modification or upgrades or modifications to the program(s), residing in Contractor's servers that provides the MMS services that may be accessed by Users through the

Internet. All software, revisions and versions provided by Contractor shall be subject to the terms and conditions of this Agreement, including any amendments thereto.

1.23 "Notice to Proceed" means a written notice to the Contractor of the date on which it shall begin Services.

1.24 "Party" and "Parties" mean the City and Contractor either collectively or individually.

1.25 "Performance Bond" means 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.

1.26 "Project Manager" means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.

1.27 "Purchase Order" means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 2.1.

1.28 "San Francisco Municipal Transportation Agency," "SFMTA," or "Agency" means the agency of City with jurisdiction over surface transportation in San Francisco, as provided under Article VIIIA of the City's Charter.

1.29 "Services" means the work performed by Contractor under this Agreement other than the provision of equipment as specifically described in the "Scope of Services" attached as Appendix A, 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, Parking Meter rate modifications, and warranties for replacement parts.

1.30 "Subcontractor" means 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.

1.31 "Surety" means 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.

1.32 "Technical Specifications" means 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.

1.33 "User"   means an authorized person who accesses the MMS (e.g., SFMTA Meter Shop staff). Access shall be limited to SFTMA staff and shall not include any 3rd party vendor without the written permission of Contractor. Contractor's permission shall not be unreasonably withheld.

1.34 "Work" means the furnishing of all Deliverables and 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.

Article 2   Term of the Agreement

The term of this Agreement shall commence on the Effective Date, as evidenced by SFMTA's issuance of the Notice to Proceed, and expire three years from the Effective Date, with the option to extend for one year, unless earlier terminated as otherwise provided herein.

Article 3   Scope of Services

The Agreement covers costs for Meter spare parts, and various Services 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 and product support, and support, including Parking Meter rate adjustments, as set forth in Appendix B (Price/Schedule).

Article 4   Financial Matters

4.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

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

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

4.2 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. Absent an authorized Emergency per the City Charter or applicable Code, 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 provided in Section 14.5 (Modification of this Agreement).

4.3 Compensation

4.3.1 Payment

Compensation shall be made in monthly payments on or before the 30th day of each month for work, as set forth in Article 4 of this Agreement, that the SFMTA's Director of Transportation, in their sole discretion, reasonably concludes has been performed as of the last day of the immediately preceding month, the City agrees to pay an amount not to exceed nine million, five hundred fifty thousand dollars (the total Contract amount) in accordance with the terms and conditions of this Agreement. The breakdown of costs associated with this Agreement appears in Appendix B (Price Schedule), 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.

4.3.2 Payment Limited to Service Compliance

 Contractor is not entitled to any payments from City including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace non-compliant Deliverables, including equipment, components, materials, or Services even if the non-compliant character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City

4.3.3 Payment Schedule

a. Monthly Operational Expenses. The City will make monthly progress payments for operational expenses as set forth in Appendix B (Price Schedule).

b. Spare Parts. The City will make payment for each order of spare parts after verification via packing slip signed off by the Meter Shop. and receipt of a proper invoice.

4.3.4 Withhold Payments

If Contractor fails to provide parts or services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor for such services 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.

4.3.5 Invoice Format

Contractor may invoice SFMTA for all parts and services performed under this Agreement. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the City's Controller and the SFMTA, and must include a unique invoice number. City will make payment as specified in Section 5.1.1, or in such alternate manner as the Parties have mutually agreed upon in writing.

Each invoice shall also include (as applicable):

1) Purchase order number
2) Quantity of items
3) Description of items
4) Unit price
5) Amount of sales taxes requested to be paid
6) Total invoice amount

Contractor's invoices shall be supported by evidence (such as original delivery notes, 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.

4.3.6 Currency

All payments by the City to Contractor pursuant to this Section 5 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.

4.3.7 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.

4.3.8 Inflation Risk

Each year, on the first calendar day of the anniversary month of the Effective Date of the Agreement, the Contractor shall have the right to adjust Agreement pricing in direct proportion to the percentage increase in the Consumer Price Index All Urban Comers (CPI-U) for the US City Average, for the closest month preceding the applicable

anniversary date ("Current Index") divided by the CPI for the closest month preceding the Effective Date of the Agreement ("Base Index"), If the Current Index has increased over the Base Index, the adjusted fee amount shall be calculated by multiplying the current fee amount by a fraction, the numerator of which is the Current Index and the denominator of which is the Base Index, as follows:

$$\frac{\text{Current index}}{\text{Base index}} \times \text{current fee amount} = \text{adjusted fee amount}$$

4.3.9 Reserved. (LBE Payment and Compliance Tracking System.)

4.3.10 Getting Paid by the City for Goods and/or Services

a. All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

b. The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

4.4 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 fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. 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.

4.5 Submitting False Claims

The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

4.6 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.

4.7 Reserved. (Payment of Prevailing Wages.)

Article 5   Technical Specifications

5.1 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 keep Parking Meters functional 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.

5.2 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.

5.3 Responsibility for Materials/Accessories

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.

Article 6   Single-Space Parking Meter Mechanisms

6.1 Deliverables

Contractor shall provide parts and services according to the Specifications set forth in Appendix A.

6.2 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. Risk of loss for Meters and spare parts shall pass to the City upon Delivery. Transfer of title to Meters and spare parts shall take place upon full payment thereof to the Contractor.

Article 7   Services and Resources

7.1 Services Contractor Agrees to Perform

Contractor agrees to perform the Services stated in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 15.5 (Modification of this Agreement).

7.2 Qualified Personnel

Contractor shall use only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

7.3 Subcontracting

7.3.1 Subcontracting Requirements

Contractor may subcontract portions of the Services only upon prior written approval of City, which shall not be unreasonably withheld. Contractor is responsible for its

subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 15 (Additional Requirements Incorporated by Reference) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

7.4 Independent Contractor; Payment of Employment Taxes and Other Expenses

7.4.1 Independent Contractor

For the purposes of this Article 8, "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, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City reasonably determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City

shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

7.4.2 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 performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 8.3.2 shall be solely limited to 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, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

7.5 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. Any purported Assignment made in violation of this provision shall be null and void.

7.6 Warranty

Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services

are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement. The warranties contained in this section are Contractor's sole and exclusive warranties for Spare Parts and software defects. The extent of Contractor's liability for such a warranty claim is limited to the repair or replacement of the defective equipment or defective software at the sole option of Contractor. Contractor affirmatively excludes any and all other warranties, conditions, or representations (express or implied, oral or written), with respect to the equipment and/or services provided including any and all implied warranties or conditions of title, merchantability, or fitness or suitability for any purpose (whether or not Contractor knows, has reason to know, has been advised, or is not otherwise in fact aware of any such purpose) whether arising by law or by reason of custom of the trade.

7.7 Liquidated Damages

7.7.1 LD Schedule

The Schedule of Liquidated Damages (LDs) can be found in Appendix C. LDs will not be assessed in situations where actual damages are known and for which Credit Assessments may be imposed (see Section 7.7.2 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.

7.7.2 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; pandemics; 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.

7.7.3 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.

7.7.4 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 decide 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.

Article 8   Insurance and Indemnity

8.1 Insurance

8.1.1 Required Coverages

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:

a.   Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 each accident, injury, or illness; and

b.   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

c.   Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

d.   Reserved. (Professional Liability Coverage).

e.   Technology Errors and Omissions Liability coverage, with limits of $1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the

performance of services defined in the contract and shall also provide coverage for the following risks:

> **i.** Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

> **ii.** Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

f. Contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance with limits of not less than $1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

8.1.2 Commercial General Liability

Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

8.1.3 Commercial General Liability and Commercial Automobile Liability Insurance

Contractor's Commercial General Liability and Commercial Automobile Liability Insurance policies shall 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

8.1.4 Endorsement

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 15.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

8.1.5 Claim-made Form

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.

8.1.6 General Annual Aggregate

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

8.1.7 Lapse of Insurance

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.

8.1.8 Certificates of Insurance and Additional Insured Policy Endorsements

Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements from 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.

8.1.9 Workers' Compensation Policy

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.

8.1.10 Subcontractor Insurance

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.

8.2 Indemnification.

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 privacy or personally identifiable information, health information, 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.

8.3 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.

8.4 Intellectual Property.

If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the MMS Application and Services or Meters infringes a patent, copyright, or any right of a third-party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise, provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. 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 MMS Application, Services and/or Meters 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. In the event a final injunction

is obtained against City's use of the MMS Application, Services and/or Meters by reason of Infringement, or in Contractor's opinion City's use of the MMS Application, Services and/or Meters is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the MMS Application, Services and/or Meters as contemplated hereunder, (b) replace the MMS Application, Services and/or Meters with a non-infringing, functionally equivalent substitute MMS Application, Services and/or Meters, or (c) suitably modify the MMS Application, Services and/or Meters to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the MMS Application, Services and/or Meters. If none of these options is reasonably available to Contractor, then the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing MMS Application and/or Services. Any unauthorized modification or attempted modification of the MMS Application and Services by City or any failure by City to implement any improvements or updates to the MMS Application and Services, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the MMS Application and Services with products or data of the type for which the MMS Application and Services was neither designed nor intended to be used.

Article 9   Liability of the Parties

9.1 Liability of City.

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 4.3.1 (PAYMENT) OF THIS AGREEMENT, INCLUDING ANY AMENDMENTS THERETO.

9.2 Liability for Use of Equipment.

Contractor or 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 the other Party, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by the other Party. The acceptance or use of such equipment by Contractor or City, respectively, or any of its employees shall be construed to mean the Party using the equipment accepts full responsibility for and agrees to exonerate, indemnify, defend, and save harmless the other Party 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 Party using the equipment, its employees, the other Party's employees, or third parties, or to property belonging to any of the above.

9.3 Mutual Waiver of Liability for Incidental and Consequential Damages.

Notwithstanding any other provision of this agreement, in no event shall either party 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.

Article 10   Payment of Taxes

10.1 Contractor to Pay All Taxes

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.

10.2 Possessory Interest Taxes

This Agreement may, but the Parties do not intend, that this Agreement creates a possessory interest. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. But if it is determined that a possessory interest has been created, then the following applies:

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

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

10.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in

ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

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

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. The City will pay Contractor any monies withheld under this paragraph, without interest, when Contractor comes into compliance with its obligations.

Article 11   Termination and Default Termination for Convenience

11.1 Termination for Convenience

11.1.1 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 75-Day written notice of termination. The notice shall specify the date on which termination shall become effective.

11.1.2 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 may include any of the following, without limitation:

    a. Halting the performance of all Work under this Agreement on the date(s) and in the manner specified by the SFMTA.

    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 the SFMTA's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the SFMTA 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 the SFMTA'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 the SFMTA designates to be completed prior to the date of termination specified by the SFMTA.

f. Transferring title to the SFMTA and delivering in the manner, at the times, and to the extent, if any, directed by the SFMTA 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 the SFMTA. Such transfer of title shall only pass on full payment of monies owed to the Contractor.

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

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

a. The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the SFMTA or otherwise disposed of as directed by the SFMTA.

b. 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 the SFMTA, and any other appropriate credits to the SFMTA against the cost of the Deliverables.

11.1.4 In no event shall the City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by the SFMTA, except for those costs specifically listed in Section 11.1.3. 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 11.1.3.

11.1.5 In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Deliverables covered by

Contractor's final invoice; (ii) any claim which the SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 11.1.4; and (iv) in instances in which, in the reasonable opinion of the SFMTA, 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 the SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

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

11.2 Termination for Default; Remedies

11.2.1 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:

4.5	Submitting False Claims
7.5	Assignment
Article 10	Payment of Taxes
13.9	Alcohol and Drug-Free Workplace
14.10	Compliance with Laws
Article 16	Data and Security

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 is not cured in a period of time that is mutually acceptable to both parties. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, the SFMTA may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

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 (i) 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, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Contractor.

11.2.2 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 reasonable 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 direct 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.

11.2.3 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.

11.2.4 Any notice of default must be sent to the address set forth in Article 14.1, and in the manner prescribed in Article 14.1.

11.3 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.

11.4 Rights and Duties upon Termination or Expiration

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

4.3.2	Payment Limited Service Compliance

Article 12   Rights In Deliverables

12.1 Ownership of Results

Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities. Subject to Section 12.2, and for purposes of this section, Contractor retains sole ownership of and all rights to all intellectual property, instruments of service, trade secrets, any patented and non-patented technology relating in any way to the Deliverables or the Services, whether existing prior to or developed by Contractor during this Agreement unless newly developed during the term of the Agreement, specifically and expressly for use by the City only (collectively "Intellectual Property".) To the extent such Intellectual Property is contained or reflected in any of the Services or Deliverables, Contractor hereby grants City a license to use such Intellectual Property only for City's governmental purposes during the term of the Agreement. This section remains subject to and does not lessen the rights of the City under Article 17.

12.2 Works for Hire

If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes,

systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, 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 shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities. Contractor's Intellectual Property shall not be considered Works for Hire.

12.3 Licenses Granted

12.3.1 MMS Application and Services

Subject to the terms and conditions of this Agreement, Contractor grants City and Users a renewable, irrevocable, non-exclusive, license to access, display, and execute the MMS Application, Services and Deliverables during the Term of this Agreement and any renewals thereof, if any. 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 manual. Contractor hereby warrants that it has title to and/or the authority to grant a license of such Services, and all other Deliverables to the City.

12.3.2 MMS Application Title

City acknowledges that title to each Services and Deliverables shall at all times remain with Contractor, and that City has no rights in the MMS Application or Services except those expressly granted by this Agreement.

12.3.3 Authorized APIs

City shall be permitted to access and use Contractor's MMS Application Program Interfaces (APIs) when commercially available to develop and modify, as necessary, macros and user interfaces for use with any existing or future City systems and infrastructure. For purposes of this Agreement, such development shall be deemed an authorized modification but will not be supported by Contractor unless provided for in this Agreement. Functionality and compatibility of City-developed macros will be sole responsibility of City. Any such macros or user interfaces developed by City shall

become the property of City. All flat-file exchanges will be over an encrypted file transport service (ftps/vsftpd/scp/sftp) to a secure private ftp site.

12.3.4 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.

12.3.5 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, MMS, MMS Application/MMS Software/Software or documentation provided by Contractor, for example (but not limited to), for the purposes of reverse engineering or competitive evaluation 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 to other City Governments or City Agencies currently using IPS meters, or (2) to consultants hired by the City to assist with the SFMTA's off-street parking program, provided that the SFMTA will obtain written confirmations that the consultants agree to be bound by the same confidentiality requirements contained in this Agreement.

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. 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.

Article 13   Additional Requirements Incorporated by Reference

13.1 Laws Incorporated by Reference

The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at http://www.amlegal.com/codes/client/san-francisco_ca.

13.2 Conflict of Interest

By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

13.3 Prohibition on Use of Public Funds for Political Activity

In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, 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. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

13.4 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.

13.5 Nondiscrimination Requirements

13.5.1 Non-Discrimination in Contracts

Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

13.5.2 Nondiscrimination in the Provision of Employee Benefits

San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

13.6 Minimum Compensation Ordinance

If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at http://sfgov.org/olse/mco. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

13.7 Health Care Accountability Ordinance

If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to

offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at http://sfgov.org/olse/hcao. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

13.8 First Source Hiring Program

Contractor must 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, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

13.9 Alcohol and Drug-Free Workplace

City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

13.10 Limitations 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, (c) a candidate for that City elective office, or (b) 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.

13.11 Reserved. (Slavery Era Disclosure)

13.12 Reserved. (Working with Minors).

13.13 Consideration of Criminal History in Hiring and Employment Decisions

13.13.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at http://sfgov.org/olse/fco. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

13.13.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

13.4 Reserved. (Public Access to Nonprofit Records and Meetings)

13.15 Food Service Waste Reduction Requirements

Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

13.16 Reserved. (Distribution of Beverages and Water)

13.17 Tropical Hardwood and Virgin Redwood Ban

Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

13.18 Reserved. (Preservative Treated Wood Products)

Article 14   General Provisions

14.1 Notices to the Parties

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

>To City: San Francisco Municipal Transportation Agency
>1 South Van Ness Avenue, 3rd Floor
>San Francisco, CA 94103
>Attn: Lorraine R. Fuqua, Contract Administrator
>415.646.4524
>lorraine.fuqua@sfmta.com

>To Contractor: IPS Group Inc.
>7737 Kenamar Court
>San Diego, CA 92121
>Attn: Chad P. Randall, Chief Operating Officer
>chad.randall@ipsgroupinc.com

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

14.2 Compliance with Americans with Disabilities Act

Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state, and local disability rights legislation.

14.3 Incorporation of Recitals

The Recitals are incorporated into and made part of this Agreement.

14.4 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.

14.5 Modification of this Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 15.1 (Notices to Parties) regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

14.6 Dispute Resolution Procedure

14.6.1 Authority of SFMTA Contract Administrator

The SFMTA Contract Administrator shall decide all questions which may arise as to the quality or acceptability of 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 15.6.2 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.

14.6.2 Negotiation; Alternative Dispute Resolution

The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

14.6.3 Government Code Claim Requirement

No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions

of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

14.7 Agreement 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.

14.8 Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

14.9 Entire Agreement

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. All appendices to this Agreement are incorporated by reference as though fully set forth. This Agreement may be modified only as provided in Section 15.5 (Modification of this Agreement).

14.10 Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules 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 laws as they may be amended from time to time.

14.11 Time

Time is of the essence in this Agreement.

14.12 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.

14.13 Cooperative Drafting

This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an

ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

14.14 Order of Precedence

Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement and any implemented task orders. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

14.15 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 City Data, or which in any way might reasonably require access to City's 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.

Article 15   SFMTA Specific Terms

15.1 Large Vehicle Driver Safety Training Requirements

15.1.1 Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletrainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

15.2.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City

will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars ($1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

Article 16   Data and Security

16.1 City Data

16.1.1 Ownership of City Data

The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data, and any derivative works of the City Data, is the exclusive property of the City. The Contractor warrants that the MMS Application does not maintain, store, or export the City Data using a database structure, data model, entity relationship diagram or equivalent.

16.1.2 Use of City Data

Contractor agrees to hold City Data received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data except as permitted or required by the Agreement or as otherwise authorized in writing 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. Contractor is provided a limited non-exclusive license to use the City Data 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, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data 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 unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

16.1.3 Access to and Extraction of City Data

City shall have access to City Data 24-hours a day, 7 days a week. The MMS Application shall be capable of creating a digital, reusable copy of the City Data, in whole and in parts, as a platform independent and machine-readable file. Such file

formats include, without limitation, plain text files such as comma-delimited tables, extensible markup language, and JavaScript object notation. City Data that is stored in binary formats, including without limitation portable document format, JPEG, and portable network graphics files, shall instead be reproducible in the same format in which it was loaded into the MMS Application. This reusable copy must be made available in a publicly documented and non-proprietary format, with a clearly-defined data structure and a data dictionary for all terms of art contained in the data. For purposes of this section, non-proprietary formats include formats for which royalty-free codecs are available to Users. Contractor warrants that City shall be able to extract City Data from the MMS Application on demand, but no later than 24-hours of City's request, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees to Contractor).

16.1.4 Backup and Recovery of City Data

As a part of the MMS Services, Contractor is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event of data corruption or interruption of the Services. Unless otherwise described in Appendices A, Contractor shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and maintain the security of City Data as further described herein. Contractor's backup of City Data shall not be considered in calculating storage used by City.

16.1.5 Data Privacy

The City shall be regarded as the data controller and the Contractor shall be regarded as the data processor.

16.1.6 Data Breach; Loss of City Data

In the event of any Data Breach, act, MMS software error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of City Data, Contractor shall, as applicable:

a. Notify City immediately following discovery, but no later than 24 hours, of becoming aware of such occurrence or suspected occurrence. the nature of the unauthorized access, use or disclosure;

b. the Confidential Information accessed, used or disclosed; the person(s) who accessed, used, disclosed and/or received protected information (if known);

c. what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and

d. what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure.

e. In the event of a suspected Breach, Contractor shall keep the City informed regularly of the progress of its investigation until the uncertainty is resolved;

f. Contractor shall coordinate with the City in its breach response activities, including, without limitation:

i. Immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;

ii. Promptly (within two business days) designate a contact person to whom the City will direct inquiries, and who will communicate Contractor responses to City inquiries;

iii. As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;

iv. Provide status reports to the City on Data Breach response activities, either on a daily basis or a frequency approved by the City;

v. Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;

vi. Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and

g. Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City Contractor's report shall identify:

h. In the case of personally identifiable information (PII) or protected health information (PHI), at City's sole election, (a) notify the affected individuals as soon as practicable, but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five Days of the occurrence; or, (b) reimburse City for any costs in notifying the affected individuals;

i. In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any

legally required monitoring services, for no fewer than 24 months following the date of notification to such individuals;

j. Perform or take any other actions required to comply with applicable law as a result of the occurrence;

k. Recreate lost City Data in the manner and on the schedule set by City without charge to City; and

l. Provide to City a detailed plan within 10 Days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

m. Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain (at the City's election) information that may include: name and contact information of Contractor's (or City's) representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor.

n. 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.

o. City shall conduct all media communications related to such Data Breach, unless in its sole discretion, City directs Contractor to do so.

> **p.** City agrees to cooperate with Contractor in the event that the data breach is caused by City or its employees.

16.2 Proprietary or Confidential Information

16.2.1 Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement may involve access to City Data that is Confidential Information. Contractor and any subcontractors or agents shall use Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of Confidential Information, and only as necessary in the performance of this Agreement. Contractor's failure to comply with any requirements of local, state or federal laws restricting access, use and disclosure of Confidential Information shall be

deemed a material breach of this Agreement, for which City may terminate the Agreement. In addition to termination or any other remedies set forth in this Agreement or available in equity or law, the City may bring a false claim action against the Contractor pursuant to Chapters 6 or 21 of the Administrative Code, or debar the Contractor. Contractor agrees to include all of the terms and conditions regarding Confidential Information contained in this Agreement in all subcontractor or agency contracts providing services under this Agreement.

16.2.2 Obligation of Confidentiality

Subject to San Francisco Administrative Code Section 67.24(e), any state open records or freedom of information statutes, and any other applicable laws, the Contractor agrees to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third-parties other than its employees, agents, or authorized subcontractors who have a need to know in connection with this Agreement, or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. Contractor agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

16.2.3 Nondisclosure

Contractor agrees and acknowledges that it shall have no proprietary interest in any proprietary or Confidential Information and will not disclose, communicate or publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Agreement or as otherwise authorized in writing by the City, any of the Confidential Information it produces, receives, acquires or obtains from the disclosing Party. Contractor shall take all necessary steps to ensure that the Confidential Information is securely maintained. Contractor's obligations set forth herein shall survive the termination or expiration of this Agreement. In the event Contractor becomes legally compelled to disclose any of the Confidential Information, it shall provide the City with prompt notice thereof and shall not divulge any information until the City has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by the disclosing Party are unsuccessful, or the disclosing Party otherwise waives its right to seek such remedies, the receiving Party shall disclose only that portion of the Confidential Information that it is legally required to disclose.

16.2.4 Litigation Holds

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.

16.2.5 Cooperation to Prevent Disclosure of Confidential Information

Contractor shall use its best efforts to assist the City in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, Contractor shall advise the City immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will cooperate with the City in seeking injunctive or other equitable relief against any such person.

16.2.6 Remedies for Breach of Obligation of Confidentiality

Contractor acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the City, which damage may be inadequately compensable in the form of monetary damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available, to include, at the sole election of City, the immediate termination of this Agreement, without liability to City.

12.2.7 Surrender of Confidential Information upon Termination

Upon termination of this Agreement, including but not limited to expiration of the term, early termination or termination for convenience, Contractor shall, within five Days from the date of termination, return to City any and all Confidential Information received from the City, or created or received by Contractor on behalf of the City, which are in Contractor's possession, custody, or control. The return of Confidential Information to City shall follow the timeframe and procedure described further in this Agreement (Article 13.

16.2.8 Data Security

To prevent unauthorized access or "hacking" of City Data, Contractor shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) the MMS website, (c) Contractor's physical facilities, and (d) Contractor's networks. Contractor shall provide security for its networks and all Internet connections consistent with best practices observed by well-managed MMS working in the financial services industry, and shall promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. Contractor will maintain appropriate safeguards to restrict access to City's Data to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor. For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., most current industry standard encryption for transport and storage, such as the National Institute of Standards and Technology's Internal Report 7977 or Federal Information Processing Standards [FIPS] 140-2 [Security Requirements for Cryptographic Modules] or FIPS-197 or successors, intrusion prevention/detection or similar barriers) and secure authentication (e.g., password protected) access to the City's Confidential Information and hosted City Data.

For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City Data. City Data classified as Confidential Information shall be encrypted at rest and in transit with controlled access. Contractor shall also establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect City Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, NIST Special Publication 800-18 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards, or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Contractor warrants to the City compliance with the following (as periodically amended or updated) as applicable:

a. Information Practices Act/California Consumer Privacy Act (Civil Code §§ 1798, et seq):

b. The European General Data Protection Regulation (GDPR)

c. Compliance with the following, as applicable:

i. Federal Risk and Authorization Management Program (FedRAMP) certification, where federal funding is involved, and show evidence of having an active compliance program;

ii. Based upon the City's classification of Data: Relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the PCI DSS Cloud Computing Guidelines.

16.2.9 Data Privacy and Information Security Program

Without limiting Contractor's obligation of confidentiality as further described herein, Contractor shall establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of the City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the City Data; (iii) protect against unauthorized disclosure, access to, or use of the City Data; (iv) ensure the proper disposal of City Data; and, (v) ensure that all of Contractor's employees, agents, and subcontractors, if any, comply with all of the foregoing.

16.2.10 City's Right to Termination for Deficiencies

City reserves the right, at its sole election, to immediately terminate this Agreement, without limitation and without liability, if City reasonably determines that Contractor fails or has failed to meet its obligations under this Article 16.

16.2.11 Data Transmission

The Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (e.g., HTTPS or SFTP or most current industry standard established by NIST). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. The Contractor shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. Contractor is prohibited from accessing City Data from outside the continental United States.

16.3 SSAE 18, SOC 2, Type II Report, and/or SOC 1 Audit Report

Contractor shall provide to City, on an annual basis, an SSAE 18, SOC 2, Type II Report, and an SSAE SOC 1 audit report, to be conducted by an independent third party ("Audit Reports") (if Contractor is using a hosting service provider, Contractor shall provide such Audit Reports it receives from its service provider or providers) as follows: (a) the Audit Reports shall include a 365 day (12-month) testing period; and (b) the Audit Reports shall be available to City no later than thirty (30) days after they are received by Contractor. Upon City's written request, Contractor shall provide a so-called "negative assurance opinion" to City as soon as said opinion is received by Contractor. Contractor shall implement reasonably required safeguards as identified by any audit of Contractor's data privacy and information security program. In the event that an annual Audit Report that finds a material data privacy or information security issue, Contractor shall, upon written request by City, provide to City any additional Audit Reports and "negative assurance opinions" as City may reasonably request in order to help enable City to see if Contractor's mitigation measures have been effective in addressing such issue(s).

16.3.1 Audit of Contractor's Policies

Contractor agrees to make its policies, procedures and practices regarding Data Security available to City, if needed, and agrees that City reserves the rights, including, but not limited to, making a site visit, scanning for malicious codes, and hiring a third-party to perform a security audit if City determines that the Audit Report is unsatisfactory.

16.3.2 Information Security Audits

Contractor must contract with an independent third-party to perform yearly information security audits of their primary and backup Data Centers. The annual audits must include an outside penetration/vulnerability test, and internal penetration and vulnerability tests with the third-party directly on the internal network. The summary results of the audits must be shared with the City. All audit findings must be remedied.

16.3.4 Audit Findings

Contractor shall implement reasonably required safeguards as identified by City or by any audit of Contractor's data privacy and information security program.

16.4 Payment Card Industry (PCI) Requirements

Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

16.4.1. PA-DSS

Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

16.4.2 PCI DSS

Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (https://www.pcisecuritystandards.org/index.shtml). Compliance with the PCI DSS shall be achieved through a third party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

16.4.3 Letter of Affirmation

For items 16.4.1 to 16.4.2 above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI compliance certificate.

16.4.4 Updates

Contractor shall be responsible for furnishing City with an updated PCI compliance certificate 30 Days prior to its expiration.

16.4.5 Bank Accounts

Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party's bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

16.5 Reserved. (Business Associate Agreement)

16.6 Disaster Recovery

In the event of a disaster, as defined below, Contractor shall provide disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Appendix E hereto, or as otherwise set forth in this Agreement or any Scope of Services. Notwithstanding Section 7.7.3, an Unavoidable Delay shall not excuse Contractor of its obligations for performing disaster recovery services as provided in this Section. In the event that a disaster occurs, and Contractor fails to restore the hosting services within 24 hours of the initial disruption to Services, City may, in its discretion, deem such actions to be a material default by Contractor incapable of cure, and City may immediately terminate this Agreement. For purposes of this Agreement, a "disaster" shall mean an interruption in the hosting services or the inability of Contractor to provide City with the MMS Application and hosting services for any reason that could not be remedied by relocating the MMS Application and hosting services to a different physical location outside the proximity of its primary data center.

Article 17   MacBride Principles And Signature

17.1 MacBride Principles -Northern Ireland.

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and 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 first mentioned above.

CITY	CONTRACTOR
San Francisco **Municipal Transportation Agency** _____ Jeffrey P. Tumlin Director of Transportation Authorized By: Municipal Transportation Agency Board of Directors Resolution No: _____ Adopted: _____ Attest: _____ Secretary, SFMTA Board of Directors Approved as to Form: Dennis J. Herrera City Attorney By: _____ 　　Julie H. Veit 　　Deputy City Attorney	**IPS Group, Inc.** _____ Chad P. Randall Chief Operating Officer 5601 Oberlin Dr. Suite 100 San Diego, CA 92121 (877) 630-6638 Acknowledgement of Large Vehicle Driver Safety Training Requirements: By signing this Agreement, Contractor acknowledges that it has read and understands Section 16.1: Large Vehicle Driver Safety Training Requirements. City Supplier Number: 0000018144

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Appendices

A: Scope of Services
B: Cost Schedule
C: Liquidated Damages and Credit Assessments

Appendix A

Scope of Services

Single-Space Meters

TABLE OF CONTENTS

SECTION I: METER PROGRAMMING

1. General

The Contractor must utilize SFMTA's API service for its Meter hardware programming for Meter inventory attributes, policy and special events is SFMTA's API service.

    a. Sample process would look as following:
        i. A policy change is made within SFMTA's data warehouse.
        ii. Appropriate SFMTA's API end point is updated.
        iii. Contractor queries SFMTA's API.
        iv. Contractor validates and propagates the changes to the specified Meter Hardware.
        v. Contractor sends a confirmation to SFMTA's API that changes have been applied.
    b. Meter hardware shall accept programming in two different modes:
        i. API: Inventory, Policy and Special Event policies.
        ii. Manual: programming via MMS.
    c. All programming modes shall support the concept of an effective date or a deferred Meter schedule of rates, Operating Hours, Time Limit and other schedule attributes.
    d. All programming modes shall support the acknowledgement of inventory, policy and SE configuration changes propagated to the Meter hardware (i.e. API web service "APPLIED" message to SFMTA's data warehouse, corresponding to each affected space).
    e. All programming modes shall result in the following exception lists. Exception lists shall be available via email and as a report in MMS.
        i. Changes received but not applied.
        ii. Changes applied but not downloaded.
    f. All programming modes shall support editing and cancelation of the Special Events policy.
    g.   The Contractor must program all Meter holidays (i.e. free parking days) during the term of the Agreement. Current Meter holidays are: New Year's Day, Thanksgiving and Christmas.
    h. All programming modes shall support deployment within 15 hours for 100% of all Active and communicating assets.

i. On any given Day, 98% of Accepted and normally communicating Meters shall behave in accordance with assigned programming.

j. Programming via MMS shall not involve any specific software (i.e. Java or other special plugins) and should perform using standard internet browsers such as Firefox, Chrome etc.

2. Programming Special Events
   a. Meter hardware shall be able to accommodate four different special event (SE) types:

      i. Price override - Rate override over dates defined by a SE calendar
      ii. TOW override - TOW Away override over dates defined by a SE calendar
      iii. No Parking override – Restricts parking but results in No Parking message rather than in TOW Away message
      iv. Time Limit override - Time Limit override over dates defined by a SE calendar

   b. SE programming may never override regular TOW schedule.

   c. Meter hardware shall be able to support a full calendar year of SE formatting.

   d. Meter hardware shall be able to support multiple SE overrides during any one Day.

   e. Meter hardware shall be able to support SE related configurable display messages (e.g. Special Event Areas).

   f. Special events overrides are mutually exclusive (i.e. no two overrides can be scheduled for the same space/time bucket combination).

SECTION II: INTEGRATION

1. General

    a. The Contractor shall constantly monitor SFMTA policy, inventory and SE API services and integration points (i.e. visual indication integration with PBP) for availably and up time, based upon the fees defined in Appendix B.

    b. The Contractor shall implement a monitoring and alerting system (aka "watchdog software") to monitor all data transmissions to and from SFMTA and its SFTP portal, at no cost to SFMTA.

    c. The Contractor shall, at SFMTA's request, send inventory, policy and SE policy changes exceptions alerts (e.g. which spaces were scheduled for SE policy but did not apply it) directly to SFMTA staff via email or other agreed-upon communication methods, at no cost to SFMTA.

    d. Each Meter hardware communication session with the MMS shall update hardware's internal clock, calendar, and day of week information.

    e. The Contractor shall monitor and resend all maintenance and revenue events that were not accepted by SFMTA data warehouse. All failed/undelivered maintenance and revenue events shall continue to be send until received by SFMTA.

    f. The Contractor shall dedicate an appropriate technical and administrative resource to support SFMTA's integration points (no less than ten hours per month), at no cost to SFMTA.

    g. Should SFMTA request development of a new integration point or changes to an existing API, the Contractor shall allocate appropriate administrative and technical resources within 30 Days of the request. The Contractor and the SFMTA must agree upon the scope of the requested enhancements before the NTP is issued. The delivery schedule for requested enhancements shall not exceed six calendar months from the NTP, unless an extension is authorized in writing by the SFMTA.

2. Policy API

    a. The Contractor shall conform to SFMTA policy API specifications.

    b. The Contractor shall support API functionality for the term of this Agreement based upon the fees defined in Appendix B.

    c. Policy API consist of two modules: Inventory and Policy. Inventory module includes information about all inventory data attributes and policy module includes all policy details such as Operating Hours, Time Limits, closures, prepay, rates.

3. Special Event API
    a. The Contractor shall conform to SFMTA SE API, based upon the fees defined in Appendix B.

    b. The Contractor shall support API functionality for the term of this Agreement based upon the fees defined in Appendix B.

    c. The Contractor shall support year-round SE programming.

4. Visual Indication (PayByPhone API)
    a. The Contractor shall support visual indication integration with SFMTA's pay-by-phone vendor (currently PayByPhone Technologies Inc.).

    b. The integrated solution shall support communicating PBP payments to the Meter hardware within 90 seconds of receiving the data from PBP vendor for 90% of the inventory.

    c. The Contractor shall support visual indication functionality for the term of the Agreement based upon the fees defined in Appendix B.

5. Real-Time Meter Payments
    a. The Contractor shall submit Meter payments to SFMTA API service.

    b. The Contractor shall differentiate between two possible transaction event types: new session (NS) and add-time session (AS), where an AS is defined as one where a Customer adds time to a parking session already in progress (i.e. the Meter is already paid when the Customer conducts his/her transaction).

    c. The Contractor shall differentiate between payment time and parking session start time.

    d. Mixed payment transaction: When a Customer uses more than one payment type (i.e. coins and credit card) within a payment window to pay for a single parking session, system shall transmit separate transactions for the different payment types.

e. The Contractor shall deliver Meter payments to SFMTA's API service within 120 seconds from the time of the transaction (at the Meter hardware level). This condition should be true for 95% of Accepted inventory.

f. The Contractor shall ensure that submitted Meter payments are 99% accurate with compared with MMS totals. This condition should be true for each payment method (coin, credit card, smart card, PBP) for 99% of Accepted inventory. This should be measured over a seven Day period.

g. The Contractor shall support real-time Meter payment functionality for the term of the Agreement based upon the fees defined in Appendix B.

SECTION III: METER MANAGEMENT SYSTEM (MMS)

The Contractor must provide the following with regard to its Meter Management System. .

1. General
   a. The MMS shall be accessed via any standard web browser (e.g. Firefox, Chrome, Safari. IE).

   b. The MMS shall not require any custom software to be installed on the end user's machine.

   c. The Contractor shall be responsible, for the duration of this Agreement, for all updates to its MMS to ensure full compatibility with the latest versions of the internet browsers.

2. Revenue Reports
   a. The MMS shall contain summary revenue reports.

   b. The MMS shall contain detail revenue reports, to the Meter level.

   c. The MMS shall report revenue broken down by payment type (i.e., coin, SFMTA parking card, credit card, other).

   d. The MMS shall include a Transaction Detail Report that lists the Transaction ID and Transaction Date, Transaction Start Time, Transaction End Time, the Amount Paid, the Payment Type, the Time Purchased. In the case where payment is made during prepayment hours, the Time Purchased shall include only time starting at the beginning of operating hours for which payment is required.

   e. The MMS shall, at a minimum, have the ability to generate the following (or similar) reports by date/date range:

i. Revenue by parking space Post ID, collection zone, maintenance route, or other geographically defined areas, e.g., Parking Management Area or Parking Management Zone.

ii. Payment for parking session by parking space Post ID, collection zone, maintenance route, or other geographically defined area.

iii. Current location of mechanism by mechanism serial number.

iv. Daily Meter collection report with Meter numbers, route numbers and amount collected by metered space.

v. Exception report for meters not collected.

vi. Revenue over a specified time period.

vii. Collection revenue over a specified time.

viii. Average number of meters and % of inventory out of order over a specified time period.

ix. Average repair time over a specified time period.

x. Rejected and Declined cards (e.g. credit cards, smart cards, NFC cards etc.) over specified period of time and area (e.g. collection route, maintenance route, enforcement route etc.). The report shall also be able to identify overall share of rejected/declined transactions based on card transaction counts and revenue.

f. The MMS shall include a standard report showing the usage of the maintenance cards, maintenance feature that disable revenue totaling, and maintenance payments.

g. The MMS shall include a standard report showing the number of rejected meter smart cards and declined credit/debit cards per each mechanism.

h. The MMS shall include a standard report showing revenue from each collection day to the following collection day.

3. Faults and Maintenance

a. The MMS shall contain reports on Meter health status.

b. The MMS shall record Meter maintenance performed by repair staff.

c. The MMS shall record all meters' general status and performance, including fault and maintenance events, parking sessions, financial transactions, and payment status time.

d. The MMS shall contain, at a minimum, the following reports:

i. Maintenance activity by mechanism serial number, parking space Post ID, parking Meter repairer, or operational status.

ii. Exception report for meters not repaired.

iii. Exception report for meters that have not communicated with the MMS within 24 hours or more, including the number of hours since last communication.

iv. Operational status by mechanism serial number, parking space Post ID, date and time. The latter shall include automatic health events created by Meter and manually entered by PMR's maintenance activity (e.g., cleared cotton jam, cleaned Meter dome, remove graffiti).

4. Alarms
   a. The MMS shall log all alarms and retain information, including time of alarm, time resolved, who resolved the problem, and the action taken.

   b. The MMS shall include, at a minimum, initial warning alarms and subsequent shutdown/failure alarms for the following events:

      i. Coin collection – when physical collection occurs.

      ii. Coin collection – when the coin canister is full.

      iii. Initial low battery setting has been reached.

      iv. Battery is experiencing a fault.

      v. Wireless communications interruption.

      vi. Coin payment and card payment operation failure.

      vii. Operating system fault.

      viii. Operational functions.

      ix. Status/record of all meter event and transaction activities.

      x. Live alarm to detect communication status.

      xi. Notice of various initialization and machine setting routines.

      xii. Communication failure alarm in back office software.

      xiii. No transaction within defined timeframe.

      xiv. No coin transaction within defined timeframe.

      xv. No card or credit card transaction within defined timeframe.

c. The MMS shall have the report displaying non-reporting meters based on active inventory.

Appendix B – Cost Schedule

Cost Schedule

Line #	Category	Unit Cost	Quantity	Subtotal	Tax (8.5%)	Annual Total
1	Credit Card Transaction Fees	$ 0.06	11,850,000	$ 711,000	$ -	$ 711,000
2	Meter Management System Fees	$ 8.25	276,000	$2,277,000	$ -	$ 2,277,000
3	PayByPhone Visual Indication Fees	$ 0.06	2,520,000	$ 151,200	$ -	$ 151,200
4	RMA Service	$ 95.00	1,000	$ 95,000	$ 8,075	$ 103,075
5	Misc. Spare Parts (budget includes modems, if needed)	$ 20.00	23,000	$ 460,000	$ 39,100	$ 499,100
7	Batteries	$ 45.00	16,000	$ 720,000	$ 61,200	$ 781,200
8	Engineering Support Services (Development)	$ 175.00	0	$ -	$ -	$ -
9	Inactive Terminal Fee	$ 1.75	66,000	$ 115,500	$ -	$ 115,500
10	Project Management Services	$ 3,500	12	$ 42,000	$ -	$ 42,000
			FY2021 Total :	**$4,571,700**	**$ 108,375**	**$ 4,680,075**

Projected Budget

Line #	Category	Year 1	Year 2	Year 3	Total
1	Credit Card Transaction Fees	$ 702,113	$ 438,397	$ 306,081	**$ 1,446,590**
2	Meter Management System Fees	$2,248,538	$1,403,980	$ 980,233	**$ 4,632,751**
3	PayByPhone Visual Indication Fees	$ 149,310	$ 93,229	$ 65,091	**$ 307,629**
4	RMA Service	$ 101,787	$ 63,555	$ 44,373	**$ 209,715**
5	Misc. Spare Parts (budget includes modems, if needed)	$ 492,861	$ 307,741	$ 214,859	**$ 1,015,461**
7	Batteries	$ 771,435	$ 481,682	$ 336,301	**$ 1,589,418**
8	Engineering Support Services (Development)	$ -	$ -	$ -	**$ -**
9	Inactive Terminal Fee	$ 114,056	$ 71,216	$ 49,722	**$ 234,995**
10	Project Management Services	$ 41,475	$ 25,897	$ 18,081	**$ 85,453**
		$4,621,574	**$2,885,696**	**$2,014,741**	**$ 9,522,011**
	# of Meters Replaced	*4,400*	*8,300*	*9,600*	*22,300*

Appendix B – Cost Schedule

Line Item #	Category	Unit Cost
1	Credit Card Transaction Fees (per transaction)	$ 0.06
2	Communications Fees (per each Meter Mechanism)	included in item 4
3	Additional Communication Fees (per 1 Megabyte of extra usage per each Meter Mechanism)	No Charge
4	Meter Management System Fees (per each SS Meter per month)	$ 8.25
5	Pay by Phone Transaction Fees (per transaction)	No Charge
6	On-going Support (Rate Changes, Reconciliation, etc.) per month	No Charge
7	Mobile Meter Management System (per each Meter Mechanism)	No Charge
8	MMS – General Programming	No Charge
9	Meter Behavior Programming	No Charge
10	Initial Meter Behavior Programming	No Charge
11	Meter Programming Reconciliation	No Charge
12	Screen Programming	No Charge
13	MMS Customization Programming	see attached
14	Inventory and Asset Management Reports Programming	No Charge
15	Faults and Maintenance Programming	No Charge
16	Revenue Reports Programming	No Charge
17	Pay-by-Phone Transmission Reports (used for visual indication of PBP transactions) Programming	No Charge
18	Data Integration Programming	No Charge
19	Meter Backend Settings Programming	No Charge
20	Re-Programming of Existing Metered Spaces Programming	No Charge
21	Special Event Programming (Hours, Rates, Time Limits, and Restrictions)	No Charge
22	Transaction Data Feed Programming	No Charge
23	Monitoring Software Programming	No Charge

NOTE   *"No Charge" is provided based on the services provided today. If customization or change requests in the future require customization charges, they will be quoted separately or as provided in Appendix C.*

Part #	Replacement Components	Unit Price
147-080	Meter Mechanism (M5 with 12 month warranty)	$475.00
147-080-NFC	Meter Mechanism with NFC (M5 with 12 month warranty)	$520.00
147-052	Card Entry Die Casting with Keypad Assy	$55.00
147-060	Complete Top Cover (with Lexan insert)	$75.00
147-404	Lexan for Top Cover	$25.00
555-706	Validator Connector Board	$35.00
795-628	Validator Connection Cable	$9.00
795-600-H3	Battery Pack 795-600-H3 (non-rechargeable)	$35.00
795-600-H5	Battery Pack 795-600-H5 (non-rechargeable)	$45.00
BAT-0005	Battery Pack (rechargeable single-cell)	$19.00
555-733S5A	Solar Panel / Comms Board (ATT 4G)	$185.00
555-7134V	Solar Panel / Comms Board (Verizon 4G)	$185.00
795-054	M5 Coin Validator	$75.00
555-701	Main Board	$185.00
555-732	Display Board with NFC	$140.00
555-702-ASY	Display Board without NFC	$95.00
555-704	Expiry Indicator (rear)	$15.00
555-611	Cable - MK5 Charger 11 Right-Angle Daisy Chain	$77.00
555-612	MK5 Charger Trans Wall Plug 12VDC 1.0A	$50.00
795-111-D	Coin Entry Slot	$2.00
795-430	Battery Door Cover (standard)	$4.00
555-415	Battery Door Cover (H5P cover)	$5.00
147-009	RFID Meter Housing Tag Assembly	$10.00
Painted Domes	Painted Dome (per dome)	$35.00
101-031-ASY-G	Meter Housing Assy, Equivalent to MKH4500 or Duncan 95 (including Nexgen vault lock - no sealed coin can)	$385.00
SWN-STANDBY	Communications Fees (per each Meter Mechanism per month) when in standby mode	$1.75

Appendix B – Cost Schedule

Support Services / Development

Fee Type	Description	Unit Price
Engineering Fees	*Engineering Customization Services (rate per hour)*	*$175.00*
Program Management	*Services Provided by Dixon Resources (actual will be passthrough and vary based on invoice)*	*$3,500.00*
Local Office	*IPS to provide local office to support SFMTA (rate per month)*	*$4,500.00*
San Diego RMA	*IPS to provide RMA service in San Diego, CA (shipping costs to be added)*	*$95.00*
San Francisco RMA	*IPS to provide RMA service in San Francisco, CA (requires local office fee)*	*$115.00*

I. DEFINITIONS:

In addition to the definitions in the Agreement and the Statement of Work ("SOW"), the following definitions shall pertain to the terms used within this document:

A. "Consumables" shall mean items that are not subject to credit assessments and/or loss compensation, such as ticket roll paper, batteries and attached graphic panels and signs.

B. "Failure" or "Fail" or "Failing" shall refer to functionality described under the column heading "Description of Failure" in the tables herein, that is below the threshold set out in the column titled "Threshold for LD Assessment" of said tables for a particular hardware or software requirement.

C. "Vandalism" shall mean any willful damage caused to the Meters which affects the appearance or operation of the Meters or interferes with the normal use of the Meters.

II. GENERAL EXCLUSIONS:

Liquidated damages shall not be imposed for the following Failures or to the extent the following are solely responsible for noncompliance with the Performance Standards:

1. Unavoidable Delays.

2. Failures that are self-corrected by the Meters within agreed performance specifications (e.g., clock re-syncs).

3. Infant mortality, i.e., parts Failure during the first 60 Days after installation of the Meters, provided that such parts are replaced within seven Days of the Failure.

4. Failures in Meters that are being field tested on new software or hardware during the mutually agreed upon field test period.

5. Failure of Consumables.

6. Failure as a result of use of replacement parts for the Meters other than those authorized by the Contractor.

7. Failures that are solely caused by the negligent actions or inactions of SFMTA or its contractors or subcontractors.

8. Failure of third-party providers of electrical power, internet access or cellular communications.

III. LIQUIDATED DAMAGES:

The Contractor acknowledges that its failure to perform certain obligations under this Agreement during the respective time limits imposed will cause the SFMTA to incur cost and inconvenience not contemplated under this Agreement, which cost and inconvenience will constitute damage to the SFMTA, the City and the public, and that the exact amount of such damage will be extremely difficult or impractical to fix. The SFMTA and Contractor agree that the amounts described as liquidated damages in this Agreement are not penalties, but represent a fair and reasonable estimate of the damages that the SFMTA will incur by reason of Contractor's failure to perform, and are fair compensation to City for its losses. Failure by the SFMTA to impose liquidated damages for specified violations will not be a waiver of the right to enforce this Section, nor will it constitute a waiver of any other right of the SFMTA under this Agreement.

The SFMTA may deduct a sum representing the liquidated damages assessed from any money due to Contractor under this Agreement. Should an assessment take place, the SFMTA will send written notification to the Contractor. Assessments within a given month shall not exceed 35 percent of the Monthly Operational Expenses paid to Contractor. Excess liquidated damages (over a monthly cap) will be carried over to the following month.

If two or more Failures are determined for a particular event, Contractor will be charged for the Failure with the highest assessment.

Where, under the provisions below, SFMTA is required to issue a written warning prior to assessment of liquidated damages, Contractor's obligation to repair, replace, correct, adjust, or modify a Failure or respond or provide shall not commence until the date SFMTA issues such written warning, which written warning shall include a reasonable description of the nature of the Failure as known to SFMTA at the time. Any extensions to the cure period must be authorized by the SFMTA in writing.

Where, under the provisions below, SFMTA is not required to issue a written warning prior to assessment of liquidated damages, SFMTA, as soon as practicable after the Failure, will send a written notice of assessment to Contractor, setting forth a reasonable description of the nature of the Failure, as known to SFMTA at the time, and the amount of the assessment.

SFMTA will make full monthly assessments of liquidated damages regardless of whether a Failure is cured prior to the end of the month.

If in the reasonable determination of SFMTA that the actual damage is less than the imposed liquidated damage assessment, the Contractor shall only be required to pay the actual damage.

In the event of an imposed liquidated damage assessment which would exceed $100,000 cumulatively in any calendar year, SFMTA shall allow and will support the efforts of the Contractor to process such claims as an insurable claim under the insurance policies provided, and at no time shall liquidated damage exceed the limits of the insurance policies provided.

	Description of Failure:	Threshold for LD Assessment:	Potential Assessment:
1	An event that results in a system-wide Failure of the Meters. The event would impact parking revenue and /or enforcement.	During Operating Hours: A single system-wide Failure that exceeds 20% or multiple system-wide Failures that cumulatively exceed 40% over a two-week period.	No warning will be issued prior to assessment of liquidated damages for this Failure. The Contractor may be assessed liquidated damages at the rate of $5,000 a Day.
2	The Contractor Fails to apply accurate meter rates.	More than two percent of Meters Fail at any one Day.	The SFMTA will issue a written warning to Contractor prior to assessment of liquidated damages. The Contractor shall cure the Failure within 72 hours thereafter. If the Failure is not cured within the allotted time frame, the Contractor may be assessed liquidated damages of $10 per Failing metered space per Day, from the date of the initial Failure until the Failure is cured. .
3	The Contractor Fails to apply accurate time limit changes.	More than two percent of Meters Fail at any one Day.	The SFMTA will issue a written warning to Contractor prior to assessment of liquidated damages. The Contractor shall cure the Failure within 72 hours thereafter. If the Failure is not cured within the allotted time frame, the Contractor may be assessed liquidated damages of $10 per Failing metered space per Day, from the date of the initial Failure until the Failure is cured.

	Description of Failure:	Threshold for LD Assessment:	Potential Assessment:
4	The Contractor Fails to apply accurate operational hours changes.	More than two percent of Meters Fail at any one Day.	The SFMTA will issue a written warning to Contractor prior to assessment of liquidated damages. The Contractor shall cure the Failure within 72 hours thereafter. If the Failure is not cured within the allotted time frame, the Contractor may be assessed liquidated damages of $10 per Failing metered space per Day, from the date of the initial Failure until the Failure is cured.
5	Contractor Fails to apply accurate Special Event Programming.	More than two percent of Meters Fail at any one Day.	No warning will be issued prior to assessment of liquidated damages for this Failure. The Contractor may be assessed liquidated damages at the rate of $1,000 per week until the Failure is cured.